

3. Transfer of Development Rights

DETAILED TECHNICAL ANALYSIS

CASE STUDY
Central Pine Barrens,
Long Island, New
York
see Section 3.8

MODEL ORDINANCE
see Section 3.9

The Transfer of Development Rights (TDR) has become a popular strategy for protecting open space and farmland. TDR is based on the premise that land ownership confers upon the owner a bundle of specific development rights, as shaped by municipal zoning regulations, State and federal environmental regulations, and other laws. By allowing the owner to separate those development rights from the land, and then allowing those rights to be transferred elsewhere, it is possible to conserve the underlying land as open space.

It is important to note that TDR is not the same thing as cluster development. Both TDR and cluster development involve the shifting of development rights, but cluster development involves the re-organization of development yield *on the same property*, whereas TDR involves the transfer of rights *from one property to another*.

TDR has the potential to create "win-win" situations for preservationists and property owners, unlike many other approaches to open space preservation. Through TDR, significant land areas are preserved in rural or open space areas, while property owners retain their equity value by being able to sell development rights to property owners in more urbanized areas.

As promising as TDR may be, it can be difficult to administer and it may not be effective in achieving open space preservation. In order to work, a TDR program requires an extensive administrative support structure, a regional "exchange" area, large enough open space areas to warrant protection, and other areas able to support high-density development and/or redevelopment, all guided by a comprehensive planning framework. The program must also be tailored to the real estate economics of an area, and it requires a willingness on the part of landowners, developers, and investors to participate in the system. In addition, TDR raises questions of property takings. Any TDR program must be able to meet the legal standards established through case law.

3.1 SMART GROWTH REGULATIONS AND INCENTIVES

SENDING AND RECEIVING ZONES

Two critical components of a TDR program are the *sending* and *receiving* zones. The *sending* zone is the area of open space to be protected from development and from which development rights can be transferred. The *receiving* zone is the area to which those development rights can be sent, preferably in a higher-density area where public utilities are existent or planned. The creation of these sending and receiving zones helps further the purposes of smart growth in two ways. First, it conserves open space and natural resources in targeted areas. Second, it focuses development in higher-density nodes, where there is the opportunity for more efficient use of public utilities and services, as well as transit use and walking.

Sending and receiving zones function as overlay zones. They are superimposed over existing residential, agricultural, commercial, and/or industrial base districts. The regulations of the

base districts determine how much development would normally be permitted, typically expressed as residential units per acre or commercial floor area ratio (FAR). A sending overlay zone would allow those development rights to be severed from the property and sold. A receiving overlay zone would allow development at a density over and above what would normally be permitted in the base district, if development rights have been purchased from a site in a sending zone.

Some communities have experimented with TDR programs that do not have designated sending or receiving zones. One example of this approach is to allow density transfers within the same zoning district, regardless of the particular location. These approaches may be useful in protecting open space in a few select areas, but the resulting open space areas may be fragmented by higher-density pockets of development. No single development node is created that can support extensive transit use, walking, or public infrastructure investments. Thus, programs without designated sending or receiving sites have been less successful from a smart growth perspective.

Where local TDR programs have been established in the Hartford region, the TDR program has lacked sending and receiving zones. In the Town of Windsor's program, for example, development rights can be transferred among all residential zones and the agricultural zone. The Planning Commission must approve both the sending and the receiving site, based on certain criteria. Although the program was established in the 1970's, the program resulted in only one transfer by the year 2000. The lack of structure in the Windsor program partially explains why it was not extensively redeemed. Because the entire town served as a potential sending area, there was a larger number of TDRs than could ever possibly have been utilized. As a result, it was a buyer's market for TDRs, and landowners were more likely to make money from developing their property than from selling the development rights.

UNITS OF MEASUREMENT FOR DEVELOPMENT RIGHTS

Two complex aspects of a TDR program are the questions of (1) how to measure a development right and (2) how to translate a development right from one property to another. In the case of residential development, this exercise is relatively simple. A single development right is typically identified as one housing unit. If both the sending and receiving zones allow residential development, then the transfer of the single development right from the sending to the receiving zone means, quite simply, that the unit that would have been built in the sending zone would now be built in the receiving zone.

The exercise is more complex when commercial development is considered, as there is no uniform definition of one commercial development right. One possible definition of a commercial development right is as a specified amount of floor area, or floor area ratio (FAR)¹, equivalent to the average size of a single-family house. A typical new single family house (of 2,500 square feet) on one acre of land (43,560 square feet) would yield an FAR of 0.057. Thus, the commercial development right could be defined as approximately 0.06 FAR.

There are other approaches as well. In the Long Island Central Pine Barrens region (see case study in Section 3.8), which is a special district covering portions of the towns of Brookhaven, Riverhead, and Southampton, a formula is used to determine the transferable development

¹ Floor area ratio is defined as the ratio of total building floor area to total lot area.

“credits” on each individual tax lot. This formula takes into account the size of the parcel, the zoning in effect in June 1995 (when the Central Pine Barrens Comprehensive Land Use Plan was adopted), and any “unique features” on the property. Unique features include the existing use of the parcel, whether the parcel has any structures or other improvements, whether development permits have been issued for development, and the extent of frontage on an existing improved road.²

Another unique approach has been used in Riverhead, Long Island as part of its townwide TDR program. Within a sending area, each property is allocated one development right for every 80,000 square feet of total land area, regardless of existing or allowable use. When development rights are sought to be redeemed in a receiving zone, the base zoning of the site within the receiving zone defines the use. Thus, the purchase of a development right within a residential base zone allows the development of one additional dwelling unit, and the purchase of a right within an industrial base zone allows any additional industrial development that would result in an additional 150 gallons of sanitary wastewater disposal.³ Because Riverhead’s sewer system is limited in size, and because the expansion potential of the regional wastewater plant is limited by environmental constraints, sewer capacity in Riverhead is a highly coveted and extremely scarce resource. Thus, the ability to purchase additional sewer capacity through the TDR program is not only an innovative way to calculate development rights, but it also helps create an incentive for the purchase of development rights.

ESTABLISHING A TDR MARKET

A TDR seller must have an incentive to sell the development right, rather than either developing the property or simply using the development right as equity for a loan. One simple incentive that could be offered is a TDR bonus, in which density yields for the purpose of calculating transferable development rights would be set at a higher level than density yields for the purpose of on-site development. For example, if on-site development is permitted at a density of 1 unit per acre, then the density yield for the purpose of TDR calculation could be set at a ratio of 1.25 units per acre. This concept is discussed further in Section 3.2.

Another more fundamental way to create an incentive to sell is to design a market-based TDR program in which purchasers would be willing to compete over (and thus bid on) the available pool of development rights. Such competition would be more likely to occur if the demand for development rights exceeds the supply.⁴ That is, when designing the TDR program, the governing body should determine the number of development rights that would be created within the sending area and the number of redeemable rights that could be applied within the receiving area, making certain that the redeemable rights in the receiving area exceed those available in the sending area. This task would involve a detailed assessment of existing

² Central Pine Barrens Joint Planning and Policy Commission, *Pine Barrens Credit Program Handbook: A User’s Guide to the Central Pine Barrens Transferable Development Rights Program*, October 1995.

³ Town of Riverhead Code, Chapter 95A: Transfer of Development Rights, Section 95A-9: Calculation of Development Rights.

⁴ Joseph Stinson and Michael Murphy, *Transfer of Development Rights*. White Plains, NY: Pace University School of Law, Land Use Law Center, 1996.

development (number of housing units and building area on each parcel) and buildout potential under the zoning and TDR provisions. A Geographic Information System (GIS) could be extremely useful for this purpose.

The TDR buyer must have an incentive as well. He or she must be able to gain a profit from the additional development afforded by the development right that is larger than the cost of buying that right. For example, if the developer were to pay \$10,000 for the right to construct an additional dwelling unit, then the sale price of the additional unit minus the additional cost of building the unit would have to be at least \$10,000 (to cover the TDR cost), if not significantly more (to create a real profit motive). Thus, a TDR program would be most successful in areas where the receiving zone has an extremely strong real estate market, where the profit potential from additional development is high. The success of the TDR program in Montgomery County, Maryland, in the Washington D.C. metropolitan area, is partly attributable to the strong growth trends in the county's receiving zones.

Another way to create a natural, market-based incentive for TDR purchasers is to set the base density in the receiving zone at a level that is below the market demand, such that the purchase of TDRs is necessary in order to meet that demand. For example, if the predominant market demand is for housing at a density of 1 unit per acre, and the base zoning in the receiving zone allows development at 1 to 2 units per acre, then there will be no incentive to purchase TDRs. However, if the base zoning is set at one unit for every 5 acres, then a developer would have a market-based incentive to seek out and purchase development rights in order to get closer to meeting market demand.

The Town of Windsor's experience with its TDR program demonstrates the need to respect real estate trends. Because Windsor is a slow-growth suburban area⁵, there has been relatively little demand for high-density residential development in recent decades. Moreover, because the Town was reportedly overzoned for industrial uses, the excess industrial land tended to dampen the possibility for higher-density industrial development.⁶ Another observation was that the large zoning incentives — the 100 percent density bonus in residential areas and the 50 percent coverage bonus in non-residential areas — did not stimulate interest in purchasing TDRs. This may have occurred because the base zoning already provided enough density to meet the demands of the real estate market.

TDR PROGRAMS COMBINED WITH DOWNZONING

Some TDR programs have been designed to compensate landowners for development rights that have been lost as a result of rezoning for lower densities. This was the approach utilized in Montgomery County, Maryland. Development in the sending zones is permitted at a ratio of one dwelling unit per 25 acres, with lots clustered together on one-acre parcels, leaving large

⁵ According to the U.S. Census, the Town of Windsor's average annual growth rate between 1970 and 2000 was 0.8% per year. The average annual growth rate for the period 1990-2000 was 0.1% per year. Source: Connecticut State Library, Population of Connecticut Towns, 1900-1960; < www.sots.state.ct.us/RegisterManual/SectionVII/Population1900.htm>; Connecticut State Library, Population of Connecticut Towns, 1970-2000; < www.sots.state.ct.us/RegisterManual/SectionVII/Population1970.htm>;

⁶ Rick Pruetz, *Saved By Development: Preserving Environmental Areas, Farmland, and Historic Landmarks with Transfer of Development Rights*, 1997, pp. 23, 403-404.

stretches of undisturbed open space. Nevertheless, for the purposes of the TDR program, the development yield is calculated as a rate of 1 unit per 5 acres, the previously permissible development density. Jurisdictions around the country have copied this approach. Thurston County, Washington (where the state capitol is located) adopted this approach in 1995.⁷

The legal validity of using a TDR program as compensation for rezoning has not been directly addressed by the U.S. Supreme Court. The case of *Suitum v. Tahoe Regional Planning Agency*, 96 U.S. 243 (1997), is often cited as demonstrating the court's unease toward the use of TDRs as compensation for a reduced density zoning, but in reality, the case does not touch on that issue. The plaintiff Suitum had been stripped of the ability to build on her property, but had been allotted a TDR that could be sold. The plaintiff claimed that "the agency's determinations amounted to a regulatory taking of her property without just compensation." The Court did *not* address this question, but rather, addressed and overturned the finding by the lower court regarding the timing of the lawsuit relative to the agency's regulatory review process, an issue not concerned with the validity of the TDR program in and of itself.

Moreover, it is unclear how the Court would adjudicate a TDR program used as compensation for a reduction in property rights. In *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), the Supreme Court found that "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause [of the Fifth Amendment] until it has used the procedure and been denied just compensation." This finding suggests that the TDR program would be adequate as compensation as long as the TDR rights were "saleable", that is, if the property owner would reasonably be able to utilize the program to recuperate some of the lost value.

3.2 COMPLEMENTARY ACTIONS

REGIONAL SCOPE AND INTERJURISDICTIONAL COOPERATION

The most effective TDR programs in the country have covered extensive geographical areas, typically at the county or regional level. One of the most lauded programs was implemented in Montgomery County, Maryland, and other notable programs in the northeast have been established in the Central Pine Barrens of Long Island and the Pinelands region of central New Jersey. The regional scope is effective because it is better suited to the patterns of real estate economics.

With a larger land area to work with, a county or regional entity can divert development rights from low-value, low-density rural areas to high-value, higher-density nodes. The extreme difference in development patterns and property values allows the economics of the TDR program to work. In a higher-density, high-value setting, a developer would have a strong incentive to obtain additional development rights. It would be relatively cost-effective for a developer to add additional units or square footage to a higher-density development project, and the potential added profit could be significant. Moreover, a rural landowner would have a strong incentive to sell development rights, because they are not directly in the path of

⁷ Rick Pruetz, *Saved By Development Supplement* (handout distributed at the 2000 American Planning Association Conference in New York City). Marina Del Rey: Rick Pruetz, 2000.

suburban growth and they would have fewer opportunities to cash out on their property through development.

In contrast, the use of TDRs within the confines of a small rural or suburban town does not work as well. In a rural town, there is usually no high-value, high-density node with significant demand for additional development rights. In a suburban town, the real estate values have usually escalated so high already in the face of development, that landowners in sending areas are generally unwilling to give up in their equity value or the ability to develop their properties. A TDR program operating at a regional level can have both the high-value, high-density receiving area and the low-value, low-density sending area that make the program workable.

In Connecticut, establishing such a regional program would require interjurisdictional cooperation between towns. With regard to land use regulation, Connecticut has a tradition of local home rule. Under Connecticut Gen. Stat. § 8-2e, development rights can be transferred between local municipalities upon the agreement of the legislative body of each municipality. To date, no cities or towns have taken advantage of this provision. Nothing in the State statutes now allow a regional body to be empowered with the authority to purchase, hold, or trade development rights.

TDR BANK

Some of the most effective TDR programs have made use of a centralized coordinating agency that serves as a TDR bank. The bank is intended to facilitate the private-sector exchange of the TDR market, by acting as an intermediary between the sender and the receiver. The responsibility of such a TDR bank would be to purchase development rights within a designated sending zone, using public funds or private donations. The agency would either hold onto those rights indefinitely or eventually sell them to developers in receiving zones. This strategy can be extremely useful in areas where open space resources are being threatened, but development pressures are not strong enough to create private-sector demand for those development rights. In the long run, if the TDR bank sells off the development rights, it is possible that the bank could achieve a positive return on initial investments, which could then be used to make additional purchases of development rights.

An excellent example of a program that has made use of a TDR bank is the Central Pine Barrens program on Long Island. Called the Pine Barrens Credit Clearinghouse, this agency coordinates the interjurisdictional TDR program and also participates in the purchase and sale of Pine Barrens Credits (PBCs). The long-term goal of the Clearinghouse is *not* to act as a permanent land bank, in which the agency would hold development rights in perpetuity, but rather, to help stimulate the private-sector sale and purchase of development rights.⁸

⁸ Central Pine Barrens Joint Planning and Policy Commission, *Pine Barrens Credit Program Handbook: A User's Guide to the Central Pine Barrens Transferable Development Rights Program*, October 1995.

3.3 FISCAL AND ECONOMIC IMPACTS

THE VALUE OF DEVELOPMENT RIGHTS

The most common concern expressed by property owners about TDR programs is the potential loss of property value. Because there are barriers to the exchange and utilization of transferable development rights (financial, geographic, lack of familiarity), it is commonly believed that development rights are not generally as valuable when they are divorced from a specific piece of property. That is, a developer typically feels that he or she stands to gain more from building and selling a house than from selling off the equivalent development right.⁹

The problem with this perspective is that it is based on the false assumption that the house built on the property and the equivalent development right would be driven by the same source of demand. In reality, the house built on the property would be valued based on the prevalent market trends in the surrounding sending area, whereas the transferable development right would be valued based on the real estate market trends in the receiving zone. Thus, if the receiving zone has a strong real estate market, then the development rights can be as valuable — if not more valuable — than on-site development.

What this suggests is that TDR receiving zones should be located in areas where there is exceptionally high demand for real estate and market support for higher-density development. One common mistake made with TDR programs is that urban, downtown, and brownfield areas are often designated as receiving zones, regardless of whether these areas are attractive real estate. In Southampton, Long Island, for example, the selection of disturbed sites as receiving zones is one of main reasons for the lack of interest in the TDR program.

Areas other than urban centers, downtowns and brownfields could also be considered for designation as TDR receiving zones. In rural and suburban areas, the real estate market provides a natural incentive for higher-density development in the vicinity of key transportation facilities. In the Hartford region, these include major highway interchanges (i.e., the I-84/Route 9 interchange), important connector roads (i.e., I-291), Bradley International Airport, and the future busway stations. Highly desirable business parks, where land area for expansion is limited, may also be considered for designation as receiving zones (i.e., the cluster of office parks off I-91 at Exit 23 in Rocky Hill, or Powder Forest Business Park in Simsbury).

THE VALUE OF LAND IN SENDING AND RECEIVING ZONES

In the long run, conservation efforts in the sending zone can positively affect the values of the remaining property there. In developing suburban areas, low-density development adjacent to open space preserves tends to sell at a premium.¹⁰ One potential drawback of this potential increase in land value is that it inadvertently creates a disincentive for remaining property

⁹ Rick Pruetz, *Saved By Development: Preserving Environmental Areas, Farmland, and Historic Landmarks with Transfer of Development Rights*, 1997, pp. 23, 150.

¹⁰ Michael Peddle, *Farmland Protection Policy: The Effects of Growth Management Policies on Agricultural Land Values*, January 1997, p. 11.

owners to sell their development rights. For this reason, it is preferable that sending areas are designated in outlying rural areas, beyond the immediate reach of suburban sprawl, where land values are not rapidly increasing; or that a TDR bank be created and endowed to move aggressively with TDR purchases before this dynamic has its full impact.

The value of land in a receiving zone would tend to increase as a result of the TDR program, because it would allow additional space to be developed. However, it is critical that the increases in density are carefully planned to prevent the negative impacts of overdevelopment. Parking, access, and transit all need to be designed to ensure that the zone functions as well as it did at lower densities of development. Also, attention to architectural design, landscaping, and the pedestrian environment also needs to be considered.

IMPACTS ON TAX REVENUE

If development rights are transferred across municipal lines, the municipality with the sending site risks the loss of potential future tax revenue from that property. The municipality with the receiving site gains tax revenue, but could also inherit a larger concentration of housing. Because housing tends to generate less tax revenue than it requires in municipal expenses, additional housing could actually burden a town financially.

Since most property tax revenue pays for local schools, intermunicipal TDR also becomes problematic with regard to school planning. That is, by transferring more housing into a town, more school children would be expected, and thus, additional school expansions or space may be necessary. Although the town with the receiving site would also receive tax revenue from the new housing unit, the additional revenue would generally not be enough to pay for school related services for the additional school children associated with the average household. The town with the sending site, meanwhile, would lose tax revenues that help pay for the local school system.

These factors have dampened initiatives for voluntary intermunicipal TDR arrangements, pursuant to Connecticut Gen. Stat. § 8-2e. If regional tax sharing arrangements were to be developed in the Hartford region, as discussed in Chapter 1, then such TDR arrangements would pose less of a problem. Also, the State passed legislation in 2000 that allows voluntary municipal revenue sharing between towns (Connecticut Public Act No. 00-85). By agreeing to share the tax revenues associated with transferred development rights, towns may be able to resolve the tax problems that arise with intermunicipal TDR exchanges.

Even if TDR is wholly contained within a single municipality, there may be tax revenue impacts. Different properties are assessed at different values for a variety of reasons, from location, to topography, to the presence of complimentary uses, to presence of nuisances (i.e., traffic, industry). If the sending and receiving sites differ significantly in terms of their characteristics, then there could be either a positive or negative impact on the potential tax revenue. In all likelihood, the impact would be positive, because the receiving area should be located in a high-value, high-demand area.

If the transfer of rights also involves a change of use, the impact on tax revenue could be even greater. Single-family homes typically have a net negative impact on total municipal tax revenue, and non-residential development (i.e., retail, industry, office) typically has a net positive impact. Thus, a development right transferred from a residentially zoned sending area to a commercially zoned receiving area (i.e., effectively trading in a house for additional non-

residential floor area) could result in a net increase in potential tax revenue over time. Vice-versa, a transfer from non-residential to residential development would likely result in a decrease in the potential revenue stream.

3.4 IMPLEMENTATION STRATEGIES

Successful implementation of the TDR program hinges upon its ultimate workability in the marketplace. The boundaries of sending and receiving areas must be carefully drawn in order to tap into regional market forces. In addition, the TDR program needs to be closely coordinated with zoning regulation, so that there are built-in incentives for buying and selling development rights.

DESIGNATING SENDING AREAS

The number of development rights created in the sending zones should be less than the number that could be potentially purchased for use in the receiving zones. This suggests that the size of the sending zone should be limited. If a community were to limit the size of the sending area, there are various different criteria that can be used to select one parcel of open space over another:

- One approach would be to include those sites with the greatest number of natural resources, such as steep slopes, wetlands, floodplains, habitat areas, because there is a clear need to conserve those areas.
- On the other hand, local government should also consider that many of those natural resources (particularly floodplains and wetlands) are already protected under federal and state regulations, and/or might not be included in yield calculations under local zoning (particularly steep slopes). Thus, rather than adding a dual layer of protection to land areas already protected by other mechanisms, the municipality may wish to focus on land areas that may have fewer natural resources but which are more vulnerable to development, whether by nature of their location or other characteristics.¹¹
- Alternatively, the local body may wish to focus on resources like Prime Farmland, which are not protected under existing federal or state regulations.

Instead of limiting the size of the sending area, another approach is to be more restrictive in terms of how TDRs are calculated. For many years, the standard practice among Connecticut towns has been to count the undevelopable parts of a lot (like wetlands, floodplains, and steep slopes), toward the development yield. This practice could be changed, such that natural resources areas are excluded. Currently, State law neither permits nor prohibits towns from deducting undevelopable areas from density yields, although many towns have recently adopted such provisions, including the Towns of Bethany, Oxford, and Wilson.¹² If this method is used, on-site density yields should be calculated in the same way. Otherwise, the

¹¹ Rick Pruetz, *Saved By Development: Preserving Environmental Areas, Farmland, and Historic Landmarks with Transfer of Development Rights*, 1997, pp. 23, 157-58.

¹² Phone conversation with Norman Cole, City of Stamford, January 10, 2002; phone conversation with Hiram Peck, Town of New Canaan, January 10, 2002.

on-site density yield would be greater than the TDR yield, resulting in a hidden incentive to develop on-site.

DESIGNATING RECEIVING AREAS

As discussed in Section 3.3, receiving areas should be located not necessarily in the most densely developed area, but in the area with a strong real estate market, where there would conceivably be demand for more intensive development over and above what is permitted under the zoning regulations. This suggests that some areas that currently have low densities of development could be identified as potential receiving zones. Residents, employers, businesses, workers, developers, and property owners may be concerned that an increase in density would potentially degrade existing property values by generating traffic, parking problems, noise and/or unattractive development.

The best approach to counteract such fears to conduct a planning process for each receiving area that considers how best to accommodate additional development, and how circulation, parking, open space, and design standards would have to be adjusted or improved. The preferred approach is not simply to add additional buildings, but to use intensification as an opportunity to add amenities to the receiving zone, such as pedestrian facilities, transit, parks, and improved landscaping.

INCENTIVES FOR PURCHASING TDR

To promote the purchase of TDRs, the density increment that could be realized through the purchase of TDRs in the receiving zone needs to be significant. As already discussed, the preferred approach would be to downzone both sending areas (to limit the supply of TDRs) as well as the receiving zone (such that the base zoning is below market demand), allowing TDR purchase to make up for the lost density on the receiving site. For example, in the City of San Francisco, the City reduced the as-of-right density, but then offered bonuses to projects that purchased TDRs from historic landmarks.

Because reducing as-of-right densities is a politically difficult proposition, however, it may be preferable to select receiving zones that have both a strong real estate market and relatively low-density zoning. In that way, the base yield does not need to be lowered, but a bonus density can be provided for any project that purchases TDRs.

PROGRAM ADMINISTRATION

Another final implementation issue is administration. TDR programs can be relatively complex to establish, administer, and monitor, requiring a significant commitment of funding and staffing from the municipal government. Part of the reason that regional or countywide programs tend to work better is that they tend to have a larger pool of resources available for administration. In designing local programs, officials should strive for simplicity, in light of the fact that vast administrative resources may not be available. Programs can be simplified by clearly delineating sending and receiving zones, establishing decipherable units of measurement, and outlining base and bonus densities permitted in receiving zones. Another option is to work with neighboring towns, State agencies, or regional bodies to develop intermunicipal programs in which all member municipalities share the costs of administration.

3.5 IMPLICATIONS AND RECOMMENDATIONS

In Connecticut, land use decision-making authority is held by local government. Many of the towns interested in protecting open space are in suburban and rural areas, lacking any high-density nodes that could function as receiving districts. In more densely developed areas, and lack higher-density nodes, much of the former open space has already been developed. For these reasons, TDR programs have not been extensively or effectively used among the towns in the Hartford region. The question is whether — and how — a regional TDR program could be established and utilized for open space preservation.

EXPLORE THE POTENTIAL FOR A REGIONAL TDR PROGRAM

Creating a *regional* TDR program would be challenging in the Hartford region, because it would have to be retrofitted into the home-rule model of local land use regulation. The success of the TDR program in Montgomery County, Maryland is partly attributable to its regional scope and governance, as counties in the State of Maryland have virtually all authority to regulate development. In other parts of the country, multi-jurisdictional TDR programs have been organized in a variety of different ways, in order to fit into a home-rule context. Three examples of intermunicipal TDR programs are described below.

New Jersey Pinelands

In 1979, the New Jersey State Legislature enacted the Pinelands Protection Act and thereby created the Pinelands Commission, which oversees the protection of the pinelands region. The Commission is charged with the development and implementation of the Comprehensive Management Plan for the Pinelands. Local plans and ordinances are required to be consistent with the plan. Some provisions of the plan are absolutely mandatory (such as overall density limitations and the requirement that growth areas accept development credits). Other parts of the plan outline more general resource management goals, and allow local municipalities flexibility in terms of regulatory approaches.

If a municipality does not bring its provisions into compliance with the Comprehensive Management Plan, then the Pinelands Commission retains primary responsibility for reviewing development applications within that municipality's borders. In that case, the Commission is required to implement the provisions of the plan verbatim, without the benefit of locally tailored provisions or local review. As soon as local plans are brought into compliance with the Pineland plan, the local municipality regains the ability to review their own development proposals. The Commission reviews local decisions periodically to ensure compliance with the provisions of the plan. As outlined in the plan, development rights are transferable from "preservation" to "growth" areas.¹³

The Pinelands approach involved the creation of a regional entity that had the authority to enforce compliance with a regional plan. Part of the reason why this worked was that the protection of the pinelands region, as a natural resource, had the strong political and financial support from all levels of government. Also, the pinelands are a discrete natural resource located in a defined geographical area, with a built-in logic for designation of the area.

¹³ New Jersey Pinelands Commission, <www.state.nj.us/pinelands/>, visited November 20, 2001.

Long Island Central Pine Barrens

Section 3.8 provides a detailed discussion of the Pine Barrens TDR program. As compared to the New Jersey Pinelands, the Pine Barrens program is less top-down. The Pine Barrens area covers portions of the three towns of Brookhaven, Riverhead, and Southampton on Long Island and functions as an enormous sending zone. Each of the three towns is required to establish receiving zones for development rights outside of the Pine Barrens area.

This approach is more flexible because the receiving zones are not determined by the regional authority, as in New Jersey, but by the local government. The problem has been that, since there are several different entities drawing the boundaries for receiving areas, and because the size of the sending area is so large, the program did not create a strong market-based incentive for TDR purchase. A TDR bank is being used to facilitate and stimulate private-sector transactions.

Cape Cod Commission

Another regional approach to growth management was implemented in Cape Cod. The Cape Cod Commission was established in 1990, as a department of Barnstable County. The Commission does not focus exclusively on TDR, but it functions as a regional planning agency with limited authority. The Commission had developed a regional plan and works with local governments to develop local plans that are coordinated with regional planning policies.

The Commission has generated a series of model ordinances and bylaws of innovative planning techniques, including TDR, and encourages local bodies to adopt such techniques. Adherence to the regional plan is not required, but the Commission wields power through its role in development review. The Commission is responsible for reviewing and approving proposals for "development of regional impact," and such proposals must be consistent with the regional plan. Commission approval is required before any local permits or approvals may be issued.

A TDR APPROACH FOR THE HARTFORD REGION

None of the three programs discussed above would be recommended as *the* model for the Hartford region, as each would involve a significant removal of local home rule over land use. Rather than establishing a top-down regional TDR program (as in New Jersey or Long Island), a regional TDR program in the Hartford region should work from the bottom-up, coordinating TDR programs among towns. Rather than becoming involved in the development review process (as in Cape Cod), the Hartford program should focus on getting involved in the process of updating Comprehensive Plans and zoning ordinances.

A regional body should be established or empowered in Hartford to coordinate intermunicipal TDR programs. As communities consider upzoning portions of their towns for higher-density development, the regional body would work with towns to consider intermunicipal TDR as an alternative to a simple rezoning. That is, the regional body would play a matchmaking role. The Hartford program would pair up a community that is considering a higher-density zoning in a high-value, relatively high-density area, with communities that are interested in preserving open space and farmland. The regional body would work closely with local

government to identify candidate "sending" and "receiving" zones and to determine how to make the program work effectively in the real estate market.

State legislation would be required to create such a regional program, and CRCOG should work with the State to encourage adoption of such legislation. CRCOG should work with the State and local government to determine what authority should be endowed to the regional body overseeing the program. The most hands-off approach would be to require only that local governments *consult with* the regional body when updating their comprehensive plans or considering density changes or zoning district changes in their ordinances. A stronger approach would be to require the use of TDRs, to the greatest possible extent, wherever a higher-density zoning is being considered.

3.6 RESOURCES FOR MORE INFORMATION

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Roddewig, Richard J. and Cheryl A. Inghram. *Planning Advisory Service Report Number 401: Transferable Development Rights Programs: TDRs and the Real Estate Marketplace*. Chicago: American Planning Association, 1987.

Stinson, Joseph and Michael Murphy. *Transfer of Development Rights*. White Plains, New York: Pace University School of Law, Land Use Law Center, 1996.

NON-PROFIT ORGANIZATIONS

American Farmland Trust
1200 18th Street, NW, Suite 800
Washington, DC 20036
Phone: (202) 331-7300
Fax: (202) 659-8339
<www.farmland.org>

Center of Excellence for Sustainable Development
Energy Efficiency and Renewable Energy Network
U.S. Department of Energy
Boston Regional Office
JFK Federal Building, Suite 675
Boston, MA 02203
Phone: (617) 565-9700

Fax: (617) 565-9723
<www.sustainable.doe.gov>

Trust for Public Land
116 New Montgomery Street, 4th Floor
San Francisco, CA 94105
Phone: (415) 495-4014
Fax: (415) 495-4103
<www.tpl.org>

1000 Friends of Minnesota
370 Selby Avenue, Suite 300
Saint Paul, MN 55102
Phone: (651) 312-1000
Fax: (651) 312-0012
<www.1000fom.org>

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Stinson, Joseph and Michael Murphy. *Transfer of Development Rights*. White Plains, New York: Pace University School of Law, Land Use Law Center, 1996.

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3.8 CASE STUDY: LONG ISLAND CENTRAL PINE BARRENS, NEW YORK

The Central Pine Barrens is a 100,000-acre area in central and eastern Long Island, covering portions of the towns of Brookhaven, Riverhead, and Southampton in Suffolk County. The Central Pine Barrens was identified as a critical resource area for a number of reasons. It contains unique woodlands and wetlands, including pitch pine and pine-oak forests, coastal plain ponds, marshes, and streams. It also has one of the greatest concentrations of endangered and threatened species in New York State. Even more importantly from public health point of view, the area provides deep-flow recharge to Long Island's sole-source aquifer, which serves as the primary source of drinking water to most of the island.

The Long Island Pine Barrens Protection Act of 1993 created the five-member Central Pine Barrens Joint Planning and Policy Commission, whose charge was to create and implement a comprehensive land use plan for the area that would protect the area's natural resources. The members of the Commission consist of the supervisor of each town in the Pine Barrens region, the Suffolk County Executive, and an appointee of the Governor. The Central Pine Barrens Comprehensive Land Use Plan was adopted on June 28, 1995.¹⁴

COMPREHENSIVE LAND USE PLAN

The Comprehensive Land Use Plan is divided into two regions: the 52,500-acre Core Preservation Area and the 47,500-acre Compatible Growth Area. The Core Preservation Area is extremely limited in its range of permissible development. The plan states that the "allowable uses within the Core Preservation Area shall be limited to those operations or uses which do not constitute development." Although agricultural uses are permitted in the Core Preservation Area, the expansion of agricultural activity is strictly limited in order to protect the pine forests in the area. The Plan states that "any existing, expanded, or new activity involving agriculture or horticulture in the Core Preservation Area is an allowable use if it does not involve material alteration of native vegetation."

The Compatible Growth Area allows a wider variety of land uses, although development is still heavily restricted. All development must comply with specific environmental performance standards. Additional standards must be met with regard to chemical contaminant levels in the groundwater and surface water, distance from wellheads, and distance and buffering from wetland areas. In addition, stormwater must be recharged on-site, and clearance of natural vegetation and soil disturbance must be limited. Guidelines that outline "best practices" for local municipalities are also included in the plan.¹⁵

¹⁴ Central Pine Barrens, Joint Planning and Policy Commission. *Central Pine Barrens Fact Sheet*, Revised August 1997.

¹⁵ Central Pine Barrens, Joint Planning and Policy Commission, *Central Pine Barrens Comprehensive Land Use Plan: Volume 1: Policies, Programs and Standards*. June 1995.

IMPLEMENTATION MEASURES

The three towns in the Central Pine Barrens region are required to update their comprehensive plans and zoning regulations to be consistent with the Central Pine Barrens Comprehensive Land Use Plan. According to the Plan, the *standards* for the Core Preservation and Compatible Growth areas "are to be implemented, and are enforceable, by municipalities, municipal agencies and the Commission, or any other agency with enforcement powers within the Central Pine Barrens." Guidelines are provided for local bodies making discretionary decisions on development proposals. However, all discretionary decisions regarding standards are "to be made by the Commission." Municipalities are permitted to adopt standards and guidelines that are more restrictive than those in the Pine Barrens plan.

The Commission is responsible for reviewing all development proposals within the Core Preservation Area. The Commission also reviews all development within the Compatible Growth Area that does not conform to the standards set forth the plan. The Commission also has the ability to review other development proposals, as follows:

- The Commission, by a Commissioner's petition and a majority vote, can assert review jurisdiction over any other proposed development within the Compatible Growth Area.
- The Commission has the authority to review all development within the Compatible Growth Area that also falls within a "Critical Resource Area," a list of which is provided in the Pine Barrens plan.
- The Commission is responsible for reviewing any proposed project in the Compatible Growth Area that constitutes a Development of Regional Significance as defined in the plan.

THE TDR PROGRAM

Under the Pine Barrens Credit (PBC) program, a landowner in the Pine Barrens area may be eligible for receiving a certain number of PBCs, which can be sold to other parts of eastern and central Long Island. PBCs can be allocated to any parcel within the Core Preservation Area or to any parcel in the Compatible Growth Area that is designated as a "sending zone." When the landowner receives a PBC certificate, the development rights are automatically severed from the land, and the land is placed under a permanent conservation easement.

Receiving zones where those PBCs may be redeemed are established in each of the three towns. Each town, under the plan, was required to develop a "receiving capacity" plan, such that the total number of development rights generated in the Pine Barrens area could be absorbed into the receiving zones. No further requirements were made as to the location of those receiving zones, or the preparation of a market study that would address the demand for PBCs.

As part of the Pine Barrens plan, the Commission established a Clearinghouse to "purchase, sell, and track" PBCs. The purpose of the Clearinghouse is not to act as a permanent land bank; rather, it is intended to stimulate the PBC market and to encourage private-sector sales and purchases. Through November 2001, approximately 23 percent of the PBCs were purchased by the Clearinghouse. Although a private market does seem to be growing for

PBCs, these figures suggest that the Clearinghouse is nevertheless the single largest participant in the market.

The market for PBCs has been strongest in the Town of Brookhaven, where 75 percent of all PBCs redeemed for higher-density development have been located. Nearly all of those have been redeemed for residential development. Brookhaven is the westernmost of the three towns in the Pine Barrens area, located within commuting distance of job centers in western Suffolk County (towns of Babylon, Islip, and Huntington) and Nassau County. Due to its prime location, Brookhaven has a very strong market for moderate- to high-density housing, generating a significant demand for PBCs.¹⁶

In Riverhead and Southampton, however, demand has been more subdued. The Town of Riverhead established an industrial receiving area for PBCs. However, the Town is overzoned for industrial development, and the low demand and abundant land area for industrial development has created little interest in purchasing PBCs. The Town of Southampton designated both residential districts and Planned Development Districts as receiving zones for PBCs. However, while real estate values and demand in Southampton are high, there is relatively little demand for moderate- to high-density housing. The real estate market there tends toward large estates and vacation homes.

CONCLUSIONS

Long Island's Central Pine Barrens program overall has been partially effective, not only in terms of its ability to generate a market for development credits, but also in that it managed to coordinate development transfers in a multi-jurisdictional context. One critical lesson of the Pine Barrens program is that the Commission might have played a stronger role in identifying and selecting receiving areas, or at least establishing stronger criteria for the selection of receiving areas, such that high-demand, high-value areas were selected.

Another observation of the program is that its authority was largely justified on the premise that the Pine Barrens region was an endangered resource area and in need of preservation for public health purposes. For these reasons, the Commission was allowed to make significant intrusions into the "home rule" of land use regulation. It could be difficult to apply such a strong program to the Hartford region unless a similarly critical resource area is identified. As discussed in Section 3.5, a preferable approach for Hartford may be to establish a program or agency that is less involved in local land use decision-making, but nevertheless promotes, coordinates, and encourages intermunicipal TDR, perhaps even with the use of a clearinghouse to foster a market for development rights.

3.9 MODEL ORDINANCE

To make a TDR program work, it is necessary to tailor the program to the real estate market and the regional context, as discussed throughout this chapter. Given that the location of sending and receiving zones have been carefully considered, the ordinance needs to determine how development rights are calculated in the sending zones, and how development rights are

¹⁶ Central Pine Barrens Joint Planning and Policy Commission, <pb.state.ny.us/>, visited November 21, 2001.

added — with what sorts of restrictions — in the receiving zones. The following subsections discuss some of the major policy decisions that need to be made, and then, the language for model ordinance is presented at the end of the section.

SENDING ZONES

The major regulatory decision to be made in the sending zones is whether to make TDR mandatory or voluntary.

- A mandatory program is one where the sending zone is rezoned to reduce the allowable development yield, and TDR is provided as a means for recuperating some of the lost value from the rezoning. This is considered mandatory, because the allowable on-site development is reduced.
- A voluntary program is one where the yield in the sending zone is not reduced, but TDR is allowed as an option for the property owner. That is, the property owner can either utilize all property rights on the site or sell them to be used elsewhere.

Generally, the mandatory program is more effective from a preservation standpoint, but the voluntary program can be just as effective if the receiving zone has a highly desirable real estate market. Also, the voluntary program tends to encounter less political resistance from property owners in the sending area.

RECEIVING ZONES

As an overlay district, a receiving zone may have a variety of underlying base districts, ranging from residential, commercial, office, to industrial zones. As part of the zoning ordinance's density regulations, there should be a maximum density increment permitted with the purchase of TDRs, depending on the conditions and character the area. Base densities in the receiving zone should be set below market demand, such that there is an incentive to purchase TDRs for additional development.

For example, the Town of Riverhead, Long Island, is currently considering designation of areas along its principal retail commercial corridor (Route 58) as TDR receiving zones. Retail properties are generally developed at a floor area ratio (FAR) of 0.30 to 0.40. The format of such development is that the entire floor area of the structure(s) is generally contained in a single story on approximately one-third of the property. The other two-thirds of the property is taken up by parking and landscaping. Riverhead is considering a proposal that would place the base F.A.R. considerably lower than the prevalent market trend, at 0.10 F.A.R., requiring a considerable dedication of open space on-site. However, the property owner would be allowed to double the allowable F.A.R. with the purchase of development rights, and increase the F.A.R. even further (to the market-based ideal of 0.30) with a connection into the sewer district.

LANGUAGE FOR A MODEL TDR ORDINANCE

Article I: Transfer of Development Rights

Section 101: Purpose

Pursuant to the State's zoning enabling legislation (Conn. Gen. Stat. § 8-2), which allows local governments to establish Transfer of Development Rights programs, the purposes of this Article are as follows:

- A. To conserve open space, especially those areas containing natural resources, such as wetlands, flood plains, woodlands, steep slopes, streams, reservoir watershed areas, wellhead protection areas, and habitat areas for endangered or threatened species.
- B. To conserve farmland, particularly those areas containing Prime Farmland or Farmland of Statewide Importance, as identified by federal or State agencies.
- C. To promote more efficient and sustainable patterns of development, where development is clustered in mixed-use, higher-density nodes that reduce auto-dependency and provide greater opportunities for transit use, walking, and biking.
- D. To preserve scenic views and rural character.

Section 102: Intent

In order to achieve the purposes stated in § 101 above, this ordinance establishes a Transfer of Development Rights program in the City/Town of _____. This program makes possible the following:

- A. The development rights of a property in a designated "Sending Zone" may be sold, donated, or otherwise transferred to a property located in a designated "Receiving Zone."
- B. A "Sending Zone" (from which development rights can be sold) may be designated in areas where there are natural resources that could benefit from protection,
- C. A "Receiving Zone" (in which development rights can be purchased and used) may be designated in areas where higher-density development is desirable, feasible, and marketable.
- D. The development potential of the "Sending Zone" property would be reduced by the number of development rights sold off, and the development potential of the "Receiving Zone" property would be increased beyond otherwise permissible limits.

Section 103: Definitions

- A. *Development Rights*. The maximum amount of residential or nonresidential development that would be permitted on a parcel of land under the applicable zoning and subdivision regulations. Development rights would be expressed as the maximum number of dwelling units per acre for parcels located in residential zones or the maximum square feet of gross floor area for parcels located in nonresidential zones.

- B. *Receiving Site*. A parcel of land located within a Receiving Zone to which development rights may be transferred.
- C. *Receiving Zone*. An overlay zoning district established by the City/Town Council upon recommendation from the Planning Board as an area in which development rights can be purchased and used.
- D. *Sending Site*. A parcel of land located within a Sending Zone from which development rights may be sold.
- E. *Sending Zone*. An overlay zoning district established by the City/Town Council upon recommendation from the Planning Board as an area from which development rights can be sold.
- F. *Transfer of Development Rights (TDR)*. The practice of shifting development rights from one property to another, or a program established to facilitate that practice.

Section 104: Establishment of Sending and Receiving Zones

The location of Sending Zones and Receiving Zones shall be as shown on the attached map. The Sending Zones and the Receiving Zones shall function as overlay zones, such that all of the provisions of the underlying zone shall apply, unless altered by the provisions of the overlay.

Commentary: This map would have to be prepared by the City/Town after careful consideration of potential Sending Zone and Receiving Zone locations. As suggested in the purpose statements in this model ordinance, Sending Zones should be located in areas with farmland and natural resources that are considered important for long-term protection. Receiving zones should be located in areas that can support higher-density development. In determining the ability to support high-density development, the City/Town should consider not only sewer availability or septic capacity, but also existing densities, existing neighborhood character, and market demand.

Section 105: Development and Transfer Options in Sending Zones

Commentary: The options outlined in this section are based upon a voluntary transfer program, as such programs are more common.

The landowner of a property located in a Sending Zone shall have the following development and transfer options:

- A. Option 1: A landowner may develop her or his property in compliance with all density limitations applicable to the property under City/Town, State, and federal regulations, including those limitations that may be imposed as a condition of special permit procedures, environmental regulations, or other procedures or regulations during the application process.
- B. Option 2: A landowner may sell all or part of the development rights associated with the property to the landowner of a property located in a Receiving Zone.

3. Transfer of Development Rights.

1. If all the development rights are sold, the landowner of the Sending Site shall retain the title to the property but shall be required to attach a permanent deed restriction to the title prohibiting future development, including all residential, commercial, industrial, utility, or public/institutional development.

Commentary: Agricultural uses and parks could still be permitted, provided that such uses are consistent with the uses regulations of the base zone.

2. If part of the development rights are sold, the landowner of the Sending Site shall retain the title to the property but shall be required to attach a permanent deed restriction to the title prohibiting future development, including all residential, commercial, industrial, utility, or public/institutional development, upon a portion of the parcel. The restricted portion shall be equivalent in size to the land area that would have been necessary to accommodate the sold-off development rights. The remaining unrestricted portion of the parcel could still be developed with the remaining development rights.

Commentary: As an example, assume that there is a 100-acre site in a Sending Zone that is zoned for 2-acre lots, yielding a potential buildout of 50 units. Further assume that the property owner sells off 40 of those development rights and retains the remaining 10. Forty (40) development rights would have occupied 80 acres, and therefore, when transferring those 40 development rights, the property owner would have to deed-restrict 80 acres of the site. The remaining 20 acres would remain developable.

Section 106: Purchase Option in Receiving Zones

The landowner of a property located in a Receiving Zone shall have the following development and transfer options:

- A. Option 1: A landowner may develop her or his property in compliance with all density limitations applicable to the property under City/Town, State, and federal regulations, including those limitations that may be imposed as a condition of special permit procedures, environmental regulations, or other procedures or regulations during the application process.
- B. Option 2: A landowner may purchase additional development rights from a property located in a Sending Zone and apply those development rights to the Receiving Site.
 1. If a landowner purchases development rights, the maximum allowable density of the base district may be increased by the number of rights purchased.
 2. However, in no case shall the maximum allowable density be increased above the "bonus maximum" indicated in Schedule xxx.

Commentary: This schedule would have to be prepared by the City/Town after careful consideration of appropriate densities. Factors to be considered include, but are not limited to, existing densities, existing neighborhood character, market demand, sewer or septic capacity, presence of sensitive natural resources, topography, and accessibility. A different "bonus maximum" would have to be established for each of the base districts within the Receiving Zones.

Section 107: Calculation of Transferable Development Rights in Sending Zones

- A. For properties located in both a residential base zone and a Sending Zone (overlay), each housing unit permitted under City/Town, State, and federal regulations on the property shall be considered one (1) development right.
- B. For properties located in both a non-residential base zone and a Sending Zone (overlay), each 15,000 square feet of non-residential development shall be considered one (1) development right.

Commentary: The selection of 15,000 square feet is based on market trends for commercial, office, and industrial development. To make the purchase of non-residential development rights worthwhile in a Receiving Zone, the increment of square footage must be large enough to allow a significant addition to a retail, office, or industrial complex. A 15,000-square foot addition would allow: (1) space for two to three small-sized shops or restaurants in a shopping center or mall, or about half the space for a moderate-size retail establishment, like a Barnes & Noble Bookseller; (2) space for about 40 additional employees in an office building; or (3) space for additional equipment and about 20 additional employees in an industrial structure. Any smaller increment would force the potential TDR purchaser to make many more transactions to achieve a sizeable increment in development, and would potentially dampen interest in TDR. This benchmark of 15,000 square feet is a generalized figure. It should be adjusted by the City/Town to take into account the capacity, character, and market conditions of the local Receiving Zones.

- C. In order to determine the total number of development rights on a property located in a sending zone, the City/Town may require the landowner to submit a subdivision plat and/or a site plan, prepared pursuant to the appropriate regulations, to illustrate the number of dwelling units or the amount of non-residential square footage that could be established on the property under the base zoning.

Section 108: Purchase and Use of Transferable Development Rights in Receiving Zones

- A. For each additional development right purchased, the landowner of a property located in a Receiving Zone shall be permitted to build either one (1) additional housing unit on the property or (2) 15,000 square feet of non-residential space, provided that such uses are permitted under the base zoning.
- B. Development added to a property in a Receiving Zone through the purchase of development rights shall be (1) consistent with the list of permitted uses in the base zone; and (2) compatible with the existing and/or proposed uses on the property.
- C. The resulting density of the property, after the addition of the purchased development rights, shall not exceed the "bonus maximum", pursuant to § 106(B).
- D. Prior to using any purchased development rights, the landowner of a property located in a Receiving Zone is required to obtain a Special Permit from the City/Town Planning Board that authorizes the use of those development rights on the Receiving Site.
 - 1. If the landowner is already required to obtain a Special Permit from the City/Town Planning Board for another aspect of the same development proposal, then a

3. Transfer of Development Rights.

combined Special Permit application covering both aspects of the proposal can be submitted.

2. The Special Permit application shall identify the parcel in the Sending Zone from which development rights are being purchased.

Commentary: This step would be necessary only in the case of a Receiving Site landowner purchasing a development right directly from a Sending Site landowner through a private market transaction. In the case where a Receiving Site landowner is purchasing a development right from a public entity, it would not be necessary for the landowner to identify the parcel(s) from which those development rights originated. The public entity would have already taken this step.

Section 109: Title Recordation, Tax Assessment, and Restriction of Development Rights

- A. All instruments implementing the transfer of development rights shall be recorded in the City/Town Clerk's Office for both Sending Sites and Receiving Sites. The instrument evidencing such transfers shall specify the sheet, block, and lot numbers of the sites.
- B. The City/Town Clerk shall transmit to the Town Assessor for both the Sending Site and the Receiving Site all pertinent information required by the Assessor to value, assess, and tax the respective sites at their fair market value, as enhanced or diminished by the transfer of development rights.
- C. The landowner of the Sending Site shall, within sixty (60) days of the approval of the Special Permit authorizing the transfer of development rights, record a deed restriction on the Sending Site in the Clerk's Office, pursuant to § 105(B).
 1. Evidence of said recording shall be transmitted to the Planning Board.
 2. The grant of the Special Permit, pursuant to § 108(D), shall be conditioned upon the recording of such deed restriction, and no such Special Permit shall be effective until the deed restriction has been recorded in the Clerk's Office.

Section 110: Severability

If any provision of this ordinance is held invalid by a court of competent jurisdiction, the remainder of the ordinance shall not be invalidated.