

Realizing the Promise: Transfer of Development Rights in New Jersey

**A Report of the New Jersey TDR
Statewide Policy Task Force**



August 2010

Acknowledgments



Message from the Task Force Co-Chairs

This report culminates a significant effort by members and government liaisons of the New Jersey TDR Statewide Policy Task Force, convened and supported by staff at New Jersey Future. The Task Force represents a diverse and broad range of perspectives on land use policy. As a result, there was a robust, in-depth debate on the recommendations. However, the shared belief in TDR as an important tool to shape New Jersey's preservation and growth patterns led members to work together and find compromise.



We gratefully acknowledge the tremendous commitment and contributions from task force members and liaisons, who are listed on the following page. We especially thank the committee chairs: Tony DiLodovico, Jim Hartling, Brian Kelly, Bob Melvin, Monique Purcell, and Ed Schmierer.

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Phil Caton and Chris Sturm
Co-Chairs, New Jersey TDR Statewide Policy Task Force

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Executive Summary

TDR: Achieving Land Preservation AND Economic Growth

Transfer of Development Rights, or TDR, offers communities and regions an important tool to simultaneously achieve both land preservation and economic growth. By incorporating TDR provisions in their land-use regulations, municipalities and regions can preserve natural, agricultural, or historic areas and direct growth where it is desired. Owners of land targeted for conservation may sell their building rights to developers, agreeing in return to a restrictive covenant that preserves their land in perpetuity. Builders gain the right to build at a higher density, in areas planned for growth by the community. Resources are preserved with private, not public, funds by harnessing forces in the real estate market. And landowners gain another option for extracting the equity from their land. TDR thus advances many of the state's overarching goals: conserving farmland, open space and historic resources; expanding economic growth and creating jobs; promoting compact development and redevelopment that uses land efficiently; strengthening communities; and implementing the state's energy conservation and climate change agenda.

TDR preserves land and historic resources with private, not public funds, by harnessing forces in the real estate market.

Lessons from the New Jersey Experience

New Jersey has witnessed successful deployment of TDR on the municipal level in two Burlington County municipalities and on the regional level in the Pinelands region. These efforts have been recognized nationally. Subsequent efforts to implement TDR, however, have stalled or are moving slowly. Since the State TDR Act was passed in 2004, despite widespread interest, only Woolwich Township in Gloucester County has passed a TDR enabling ordinance, and it faces implementation hurdles. A handful of municipalities are engaged in TDR planning but are hampered by the obstacles addressed in this report. The 2004 legislation creating the Highlands regional planning council created the opportunity for a regional TDR program, but implementation is lagging.

Why has such a promising tool been used successfully in only a few places? Planning for TDR is a complex process because it requires site-specific details for a vast area, as well as careful consideration of private market forces. Where TDR programs include the creation of new communities, the municipality must plan for a host of infrastructure and public services at once. Statutory planning requirements add extra, sometimes unnecessary, burdens, which increase up front municipal costs. Municipalities need major coordination and assistance from state agencies, but they often lack the stature to resolve inter-agency conflicts and ensure delivery of needed financial and regulatory support. Regional TDR programs face additional hurdles. Not only is development

transferred across municipal boundaries, but with it comes the attendant “costs of growth,” including education expenses, traffic and affordable-housing obligations. Municipalities generally resist accepting such growth from outside their borders.

Why TDR Is Worth Fixing

Many of the obstacles facing TDR also confront other smart growth initiatives, including transit-oriented development and downtown revitalization.

Given all these complexities, the threshold question is whether TDR is worth fixing. An analysis of TDR obstacles shows that many of the problems encountered by TDR programs also confront other smart growth initiatives, including transit-oriented development and downtown revitalization. Addressing them will advance sustainable economic growth and job creation, coordination of state agencies and local governments behind sound planning and cutting red tape. TDR offers all levels of government a model for long-term financial savings through a wise up-front investment in planning, by permanently preserving land with private funds and reducing the cost to build, maintain and service infrastructure. Meanwhile, there is broad recognition that we cannot afford to purchase all the land that needs protecting, and a variety of approaches, including TDR, will be needed if New Jersey is to remain “the Garden State.”

Recommendations to Facilitate Widespread Use of TDR

In late 2009, the William Penn Foundation funded New Jersey Future to convene a task force to recommend ways to achieve widespread implementation of TDR on both the municipal and regional level. The TDR Statewide Policy Task Force represents a strategic group of more than 40 stakeholders: local and county officials, municipal planners, engineers and attorneys, environmentalists, developers, smart growth advocates and farming representatives, as well as liaisons from regional and state agencies. They have met in a variety of settings since December 2009, not only as a full group but also in seven subcommittees, ad-hoc working groups, and through frequent email communications.

This report contains the task force’s recommendations for statutory, regulatory, programmatic and policy changes to facilitate the use of TDR at the municipal level. The recommendations also set a direction for addressing obstacles to regional programs.

1. **Empower local governments with a full spectrum of planning tools to transfer growth and preserve resources.** Municipalities lack adequate planning tools for preserving farmland, open space and historic resources on different scales, from municipality-wide to site-specific. Planning tools that transfer development from one location to another should be made simpler and less expensive to use.
 - Municipalities are currently authorized to create TDR programs that are considered “voluntary” or “mandatory” from the perspective of sending area landowners. The planning requirements for voluntary TDR programs should be less involved than those for mandatory programs, since in voluntary programs landowners retain all their pre-existing rights (to sell their land for development) in the event the TDR program falters.
 - Through the non-contiguous cluster tool, municipalities may allow development to be transferred from one site to another, even if the sites are non-contiguous. This tool should be strengthened and made more accessible for municipalities to utilize.

- Municipalities may allow development to be clustered on a portion of a site. Some municipalities have adopted ordinances that require such clustering, and they have been upheld in court. Additional statutory clarification that such authority exists may be helpful.

Amendments are also needed to make TDR easier to use in urban areas, ensure developers can purchase development rights when needed, ease redundant notification requirements and prevent sprawl development in receiving districts.

2. **Provide a streamlined planning review and collaborative partnership with state government.** TDR planning stalls in the face of state requirements for plan endorsement that are unnecessarily burdensome, unclear due to inter-agency conflicts and/or that fail to deliver needed technical and financial support.

Municipal, county and state governments should collaborate in a TDR planning process that allows for early feedback from state agencies on a conceptual plan, followed by more thorough state review of a refined TDR plan and, finally, state agency approval and commitment to a proactive, problem-solving partnership with the town and county.

The statutory requirement for “Initial Plan Endorsement” should be changed to facilitate this partnership by allowing towns to obtain either a streamlined, tailored version of plan endorsement or an alternative state approval process. Plan endorsement (or its replacement) should:

- Integrate planning for natural resource protections, affordable housing, market forces and other goals.
- Limit requirements to those needed for a successful TDR program that is not inconsistent with state policies. Allow requirements to be limited to TDR sending and receiving areas when appropriate.
- Offer tangible state benefits commensurate with the local planning effort. Ensure agencies incorporate their agreed-upon contributions into their own functional plans to ensure necessary follow-through.
- Be facilitated by a single point of contact (presumably at the State Planning Commission in conjunction with the TDR Bank Board) with the authority to facilitate solutions and ensure state agency follow-through on commitments, with the support of staff and a high-level interagency body.

3. **Support well-planned receiving districts through regulatory reform.**

Conservation in TDR sending areas cannot occur without developers building in receiving districts. Too often, receiving districts stall, because they are either inappropriately located or get caught in red tape.

Municipalities must locate and size receiving districts carefully so that they can obtain infrastructure and development permits. Once state government approves a TDR program, it must facilitate the provision of infrastructure and provide a stable, responsive regulatory environment for development through:

- Priority permitting
- A sector permit/general development plan approach that provides regulatory stability over time

- A clear regulatory path for small-scale wastewater solutions
- Integrating water and wastewater planning with TDR planning

In addition, the Department of Environmental Protection (DEP) should publicize where water and wastewater capacity exists. The Department of Transportation (DOT) should evaluate transportation access permits based on overall mobility. DEP should develop a habitat planning tool to determine fair options for mitigation, when warranted.

4. Make TDR a sound fiscal choice for local government.

TDR programs save the public money over the long run by permanently preserving land with private (not taxpayer) funds and by reducing the cost of building, maintaining and servicing infrastructure with compact receiving areas. However launching TDR requires a large up-front investment, which can be daunting for any municipality, but especially intimidating for rural municipalities that have a limited tax base and limited planning resources.

To ensure TDR makes financial sense to municipalities, the state should provide the necessary tools to fund, finance, and recover costs associated with:

- Planning, including education and outreach, design and market analysis
- Infrastructure for the receiving district
- General expenses related to the accelerated pace of growth

State law can also provide TDR municipalities with legal protections to reduce their risk. The State TDR Bank, which facilitates the exchange of TDR credits and provides planning grants, should also provide educational materials for local officials, local residents, landowners and developers. Special incentives for developers in TDR receiving districts should be identified.

5. Explore ways to make regional TDR programs viable.

Regional TDR programs face additional hurdles, especially when the designation of receiving districts is voluntary.

The following general approaches merit greater review:

- Identify additional financial resources to encourage municipalities to create regional receiving districts.
- Substantially increase the demand for development rights by requiring credit purchases for a variety of development opportunities statewide.

With award-winning TDR programs under its belt, an array of natural resources to protect and a multitude of communities to strengthen, New Jersey needs a TDR program that works.

Taking TDR to the Next Level in New Jersey

The goal of the task force is to provide municipalities and regions with workable tools to shape future development through TDR and other density-transfer tools. Toward that end, New Jersey Future and its colleagues from the task force will pursue these recommendations through changes to statutes, regulations, policies and programs. With award-winning TDR programs under New Jersey's belt, an invaluable array of natural resources to protect and a multitude of communities to strengthen, New Jersey needs a TDR program that works.



About New Jersey Future www.njfuture.org

New Jersey Future is a statewide research, policy and educational organization that advocates for sustainable growth, environmental preservation, neighborhood revitalization and transportation choice. Founded in 1987, New Jersey Future is a nonpartisan, nonprofit 501(c)(3) organization focused on promoting smart growth in New Jersey and advancing implementation of the State Development and Redevelopment Plan.