

Transfer of Development Rights

Smart Growth Recommendations from New Jersey Future

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Why we need TDR

New Jersey municipalities gained a new smart growth tool in March 2004 when Governor James E. McGreevey signed the State Transfer of Development Rights Act (TDR). The law will take effect in September 2004.

TDR offers communities an important way to preserve land and grow smarter without having to make land purchases. This is especially important because there is not enough money from government or private sources to buy all of the natural, agricultural and parkland that needs protection in New Jersey. At the same time, the price of land purchase is rising sharply, and the available parcels are shrinking in size.

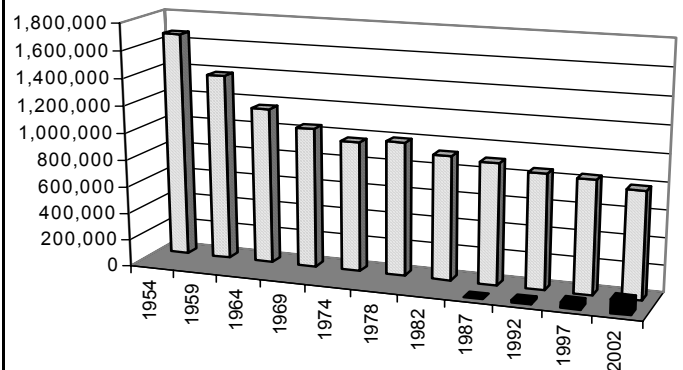
The average per-acre cost of land preserved as open space under the state's Green Acres program rose 87 percent between 1998 and 2003. The average per-acre cost of land protected under the state's farmland preservation programs rose 68 percent in the same period. These purchases are funded by state taxpayer dollars.

Meanwhile, despite preservation efforts, we are losing about 10,000 acres of farmland and 8,000 acres of other open land per year to development: a loss of about 18,000 acres or 28 square miles each year.

In addition to purchasing land, it is possible to save land and manage sprawl by engaging incentives in the real estate market. Transfer of Development Rights, or TDR, gives us exactly such a tool. By incorporating TDR provisions in their land-use regulations, municipalities can allow the transfer of development rights from historic, natural, or farming areas to other areas where building is desired. Owners of land targeted for conservation may sell their building rights to developers, agreeing in return to a restrictive covenant that protects their land in perpetuity.

With TDR, towns preserve their open lands at far less cost than outright purchase. Growth is directed to places where it can enrich community and regional growth. TDR has been employed successfully in the New Jersey Pinelands and some Burlington County towns – as well as in many regions and towns in other states. But until recently, towns elsewhere in New Jersey were not authorized to use this important smart growth tool to its full potential. Now, TDR will be available to help any town better manage growth pressures.

Land in Farming vs. Preserved Farmland (in acres)



Although preserved farmland (in black) totals more than 124,000 acres, the farmland preservation program cannot protect all of the remaining farmland from development.

Recommendations in Brief

Municipalities or groups of municipalities anywhere in New Jersey can set up a TDR program if they have approval from the State Planning Commission on their initial petition for Plan Endorsement.

To launch TDR, a municipality or group of municipalities must amend its master plan in three ways, by:

- ✓ Identifying local “sending” and “receiving” areas for development, with an analysis of expected growth and a vision for how growth will be accommodated;
- ✓ Adding a capital improvement plan for the receiving zone; and
- ✓ Adding a utility service plan for the receiving zone.

Also required is a real estate market analysis conducted by a certified consultant, a “reality check” to ensure sufficient demand for TDR credits.

Once these steps are completed, the municipality can draft its TDR ordinance and implement the program, subject to review by the county planning board.

(For details, see Recommendations for an Effective TDR Program on page 4).

How TDR works

Transfer of Development Rights starts with a land-use plan that identifies both growth and conservation areas. Growth areas should be served by (or targeted to receive) infrastructure such as sewer and transit. Conservation areas may be farmland, historic districts, or environmentally sensitive land. Transfer of development rights programs may be regional or may be operated by a single municipality.

Transfer of Development Rights recognizes that property owners have a “bundle” of rights, among which may be the right to farm, mine, build, sell and so on. Some or all of these rights can be transferred or sold to another person. TDR programs allow owners of land that is targeted for conservation to sell their right to build on the “sending” parcel to a developer in the growth area or “receiving” zone. When the rights are transferred from the sending parcel, the land is restricted from development with a restrictive covenant. By buying rights, a receiving-zone developer may build at a density higher than that permitted by the base zoning.

Transfer of Development Rights programs enable private market transactions where landowners and/or developers buy and sell their development rights. A TDR “bank” can help create a market for development rights by buying rights from willing sellers in preservation areas, and then

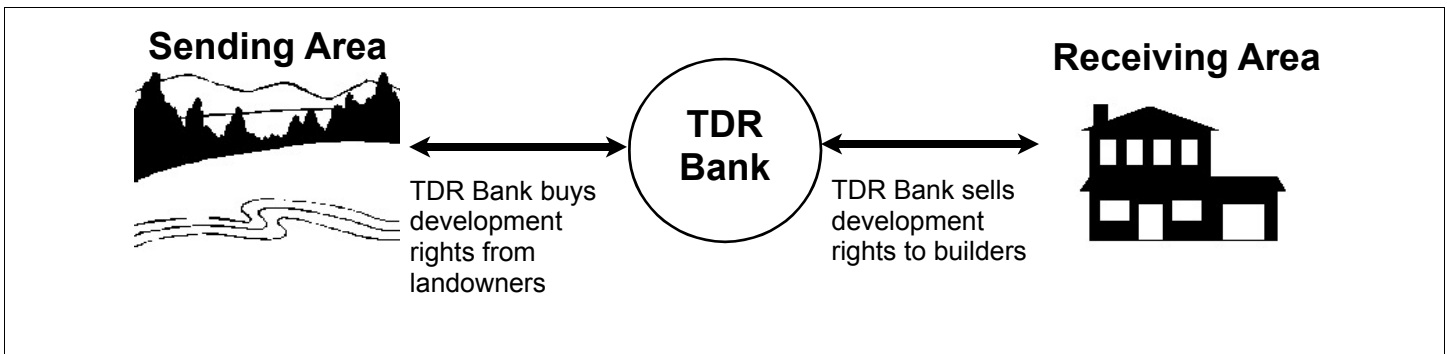
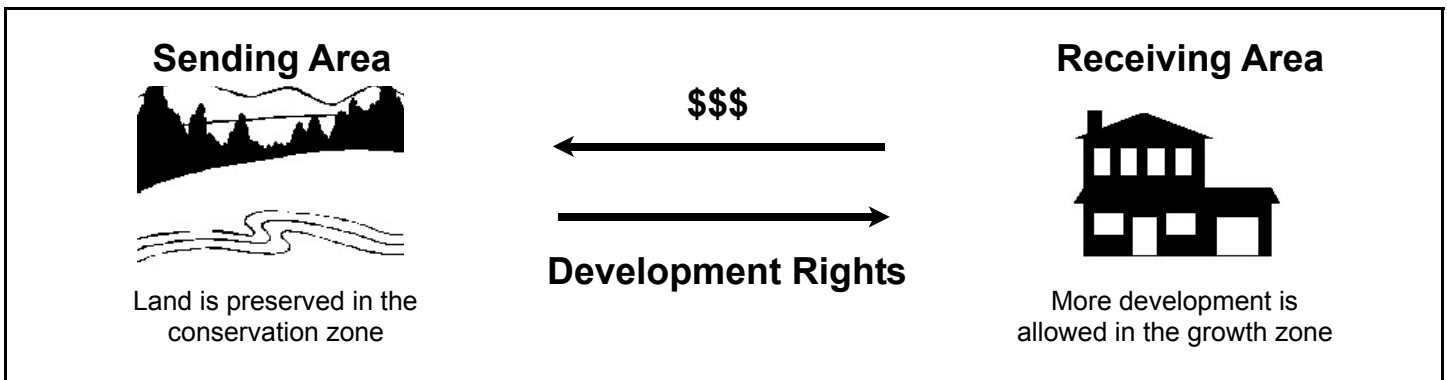
selling them later to developers who wish to undertake higher density developments in receiving areas. The bank’s capital acts as a revolving fund that is replenished as developers buy TDRs. TDR banks may be operated at the state, regional or local level.

In New Jersey, a 1993 statute (N.J.S.A. 4:1C-49 et seq.) established a statewide TDR bank, capitalized at \$20 million. The TDR bank provides:

- 1) funds to buy development rights in sending areas;
- 2) 50 percent matching grants to municipalities for planning expenses; and
- 3) technical assistance.

The marketability of rights is critical to TDR success. Towns must plan carefully to ensure receiving areas have the zoning and infrastructure to handle all rights transferable from the sending areas.

TDR is an extension of a concept already in use at the municipal level, known as “clustering.” Clustering recognizes that some places are more suitable for building than others. This simple idea may apply to a specific site, a town, or a region. In the commonly practiced planning strategy of cluster development, homes are placed in the more suitable locations on a specific site, while the



remainder is preserved as open space. Cluster development is authorized by the New Jersey Municipal Land Use Law. (However, the Municipal Land Use Law — N.J.S.A. 40:55D-1 et seq. — is not clear as to whether municipalities have the authority to require cluster development on certain properties. Some municipalities have interpreted the law as granting this power, others have not.)

Some municipalities have employed a newer statutory provision that allows for clustering of development on

non-contiguous lots (N.J.S.A. 40:55D-65(c)). While this practice is similar to TDR, municipalities using this provision do not have access to the state TDR bank, which would allow them to bank and draw on development rights as needed.

Increased use of clustering would move New Jersey closer to TDR. However, without the comprehensive level of municipal planning required by TDR programs, clustering would not achieve full smart growth benefits.

TDR Success Stories

Chesterfield Township, NJ

This township's master plan directs future growth to a new town center, sized and zoned to accommodate all of the township's remaining development capacity with a variety of housing (including affordable housing), shops, services, a school and other uses. Developers have strong incentives to purchase development rights from the owners of farmland surrounding the new planned village, preserving the township's rural character. (See map at right.)

Warwick, PA

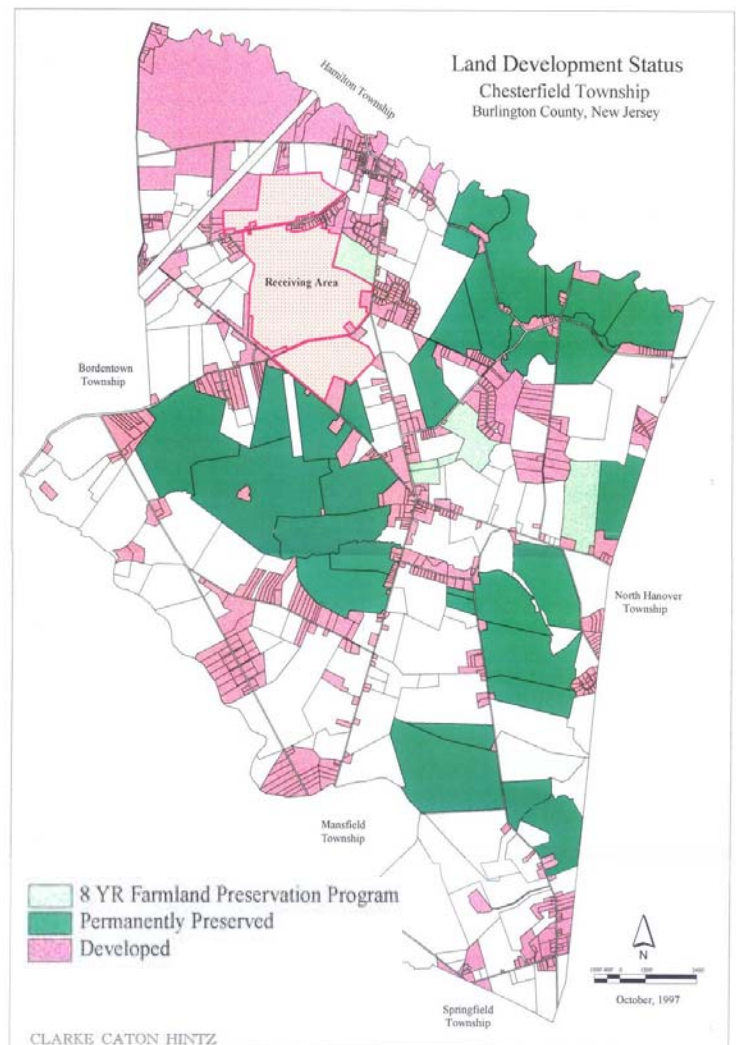
When this Lancaster County municipality buys farmland easements, it has the ability to sell them to developers who want to increase lot coverage in the township's industrial zone. To make the program work, the township put infrastructure in place in the receiving area. And it partnered with the Lancaster Farmland Trust and the county agricultural board, allowing it to act as broker (or TDR bank) for development rights.

Montgomery County, MD

The nation's largest TDR program has preserved more than 44,700 acres of farmland through private transactions in this affluent, largely suburban community northwest of Washington, D.C. The program was instituted to compensate landowners when a large (90,000 acre) agricultural reserve was created through down zoning. Property owners were assigned development rights based on their *prior* development potential. To accommodate future growth, 30,000 acres of rural land were set aside for development. A traditional PDR (Purchase of Development Rights) program complements the TDR program and offers land-owners an alternative source of compensation.

Chesterfield Township Burlington County, NJ

Planned Village Development & TDR Receiving Area



Chesterfield's TDR program is facilitating the creation of a new "village" (PVD 1, 2, and 3) and the preservation of its remaining farmland.

Recommendations for an Effective TDR Program

The State Transfer of Development Rights Act authorizes municipalities or groups of municipalities anywhere in New Jersey to set up a TDR program, provided that they have received approval from the State Planning Commission for their initial petition for Plan Endorsement. Plan Endorsement certifies local planning as consistent with the state's master plan for growth, the State Development and Redevelopment Plan. The TDR Act (C.40:55D-137 et seq.) can be found on the New Jersey Legislature website, under "Statutes" at: www.njleg.state.nj.us.

TDR legislation allows towns flexibility in crafting a TDR program. The process starts with three additions to the municipal master plan:

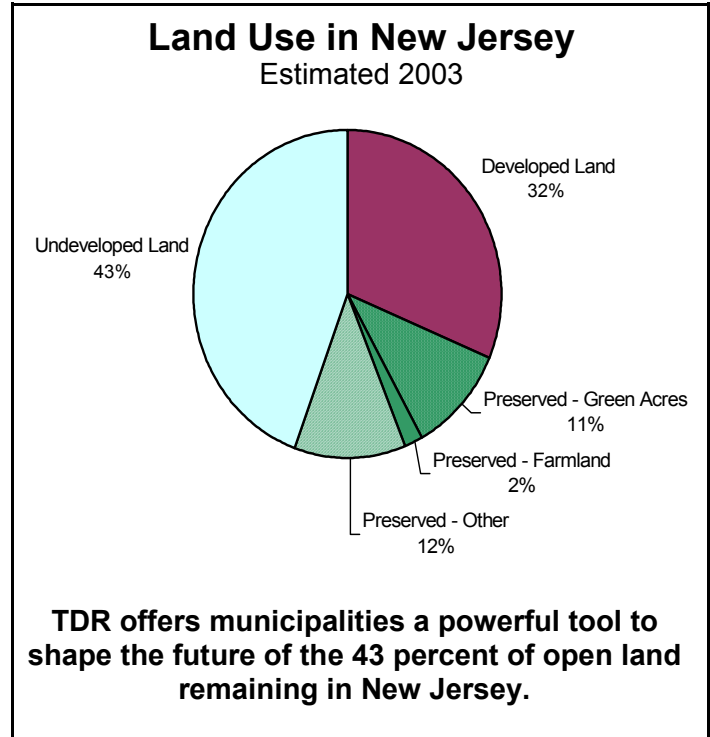
- √ A "development transfer plan" element, which lays the groundwork for the program by identifying sending and receiving areas, analyzing how expected growth will be accommodated, and describing a vision for development in the receiving zone.
- √ A capital improvement program for infrastructure in the receiving zone; and
- √ A utility service plan element for the receiving zone.

Also required is a real estate market analysis conducted by a certified consultant, which is basically a "reality check" to examine whether the development rights expected to be generated in the sending zone are likely to be in demand by developers who want to build in the receiving zone. Regulations regarding the real estate market analysis are due from the Department of Communities Affairs at the end of September 2004.

Once these items are in place, a municipality is ready to draft the development transfer ordinance that will implement the program. Before the ordinance may be adopted, the county planning board must review and approve it, as workable and appropriate from a regional perspective.

Options for a TDR Bank

To facilitate the exchange of development rights, the law allows municipalities and counties to create their own TDR bank, or to utilize the state bank. Local government



banks may apply to the state TDR bank or the state farmland preservation program for matching funds to purchase development rights.

Planning Grants and Other Assistance

Assistance for local governments interested in TDR is available:

- √ Matching grants for TDR planning expenses, up to \$40,000, are available through the State Agriculture Development Committee in the Department of Agriculture. Contact: Courtenay Mercer (609) 984-2504.
- √ Smart Future Planning Grants are available from the Office of Smart Growth, Department of Community Affairs. Contact: Charles Latini, (609) 683-7734.
- √ For assistance with the Plan Endorsement process, contact your Area Planner at the Office of Smart Growth, or Paul Drake, Planning Manager, (609) 292-3730.
- √ Your County Planning Board may offer technical assistance.

Issue Coordinator: Chris Sturm

csturm@njfuture.org ■ (609) 393-0008 ext. 114 ■ 137 West Hanover Street ■ Trenton, NJ 08618