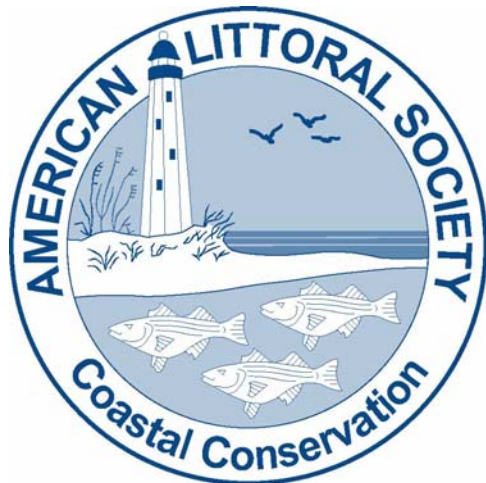


# The Ins and Outs of TDR

*The Transfer of Development Rights Act  
Making Growth and Open Space Work Together*



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### A Way to Make Growth Make Sense Again

Many Municipalities across the state increasingly strive to fend off costly sprawl. Unfortunately, many are finding that traditional zoning mechanisms and inadequate preservation dollars are not succeeding in sparing their best remaining open space and farmland from rapid over-development. Consequently, despite the millions being spent annually on land preservation, New Jersey is still losing about 18,000 acres of unprotected open space each year.

TDR is for municipalities that want to ensure that future growth within their boundaries does not come at the expense of quality of life—all those characteristics that make a community a desirable place to live. These characteristics include protected open space, working farms, uncongested roads, and continued affordability. TDR represents a fair and profitable planning tool that helps ensure that growth pays a larger share of costs that would otherwise be borne by local taxpayers. It makes growth more cost-effective by redirecting it to areas that can more easily sustain it, while discouraging it in those that cannot.

TDR represents a market-driven zoning approach that leverages private capital instead of limited public funds to finance land preservation. By implementing a customized TDR program, towns gain greater control in determining where growth should go and what it should look like. TDR can make land preservation and development not only more profitable, but also mutually supportive.

### A Profitable Way to Save Land

Since 2004, with the passage of the State Transfer of Development Rights Act, New Jersey municipalities have been empowered

to utilize this powerful smart-growth planning tool. TDR creates incentives within the real estate market that encourage developers and landowners alike to profit from balancing more cost-effective growth with open space preservation. TDR can be used to preserve large amounts of land, while keeping it privately owned. This makes good sense for farmers, as well as for local officials who get to retain ratables, while ensuring the land is both managed and preserved.

While state and local preservation dollars continually fall short of what is needed to realize larger preservation goals, TDR's use of willing private capital offers towns an inexpensive way to amass a windfall of preservation dollars that can impact land protection on a landscape scale. In addition, TDR strategically targets areas within a community identified as worthy of resource protection. These are our farming belts, forestlands, and other areas where development is not compatible with long-standing, land-use traditions. For example, by preserving large blocks of contiguous farmland, future land-use conflicts can be avoided, which helps to keep the industry vibrant and whole.

### How it Works

**The legislation provides municipalities the option of implementing local or inter-municipal TDR programs.** By incorporating TDR provisions into their land-use plans, municipalities give landowners within identified land preservation zones the option to sell and retire the building rights to their land while retaining ownership and use. When a transfer of development rights occurs, the landowner severs the right to develop that portion of land any further. The areas or districts a municipality wants preserved are designated as “**sending zones**”. When a

landowner within a *sending zone* sells his or her building rights for cash, the property's buildable lots are quantified into development credits that can then be purchased by developers, speculators, or the municipality itself. Development credits are assigned to tracts of land based on present zoning, environmental constraints, and other established goals and objectives of the program and the municipal Master Plan. The credits, or "rights to develop" are then, "*transferred*" out of sending zones and into the "**receiving zones**", where growth can be better accommodated.

## Benefits of TDR

When a landowner in the *sending zone* wants to sell building rights for a particular piece of property, he or she must first enter the land into a restrictive covenant that preserves it as open space for all time.

Purchasers of TDR credits are, in turn, permitted to build at a higher level of density than would otherwise be allowed by the underlying, base-zoning in the *receiving zone*. Thus, by purchasing development rights, developers can increase the number of allowable structures that can be built. Without these density bonus credits, developers must adhere to the *receiving zone's* standard lot size. To the developer, that means less profit because larger lot sizes per house equal fewer houses for any given development.

Developers also benefit because TDR stimulates growth and allows them to save time and money on both design and the local approval process. With a TDR program in place, zoning is less likely to change, making development less risky for investors.

Municipalities benefit because, under TDR, growth, however rapid, becomes predictable, while the equity of land value is more evenly spread across the community – something traditional zoning invariably fails to address. Towns like TDR because it provides them with a mechanism to manage growth in a manner that will better serve the community in both the short and long-term. In the face of this increased certainty and quantifiable benefits for all parties, the development

proposal process becomes less contentious, is streamlined and saves time and money for everyone. With TDR in place, build-out occurs in tandem with preservation.

## Sending and Receiving Areas at a Glance

Generally *sending zones* represent the parts of a community a municipality has zoned for the continuance of such favorable land use practices as agriculture, forestry, recreation, or the protection of environmentally sensitive land. Environmental features worthy of preservation can include floodplains, mature forestlands, river corridors, wetlands, hills, or areas of high scenic value. *Sending zones* may also represent historic neighborhoods, or other vulnerable elements of a community's cultural heritage and character it wants to preserve.

*Receiving zones* represent those districts or areas of the community where servicing increased growth is more cost-effective to taxpayers. These are areas within the municipality that are generally already somewhat built-up and share convenient proximity to such pre-existing infrastructure as sewers, roads, transit, schools, and shopping. By steering future building to a centralized location and making development more compact, local infrastructure is utilized with greater efficiency and less waste. With fewer stoplights to buy, sewer pipes to put down, and miles for bussing children to school, TDR makes growth less of a burden on taxpayers.

Residents within the *receiving zone* also benefit because TDR increases the market value of land for both vacant and developed properties. The quality of life in the *receiving zone* can also be uplifted when the incoming developments are required to adhere to strong design standards. These can include such amenities and mixed uses as sidewalks, walkable shopping, shade trees, recreational facilities and parks.

## Planning for Prosperity

Prior to implementing a TDR program, municipalities may wish to undertake both a Build-Out and Carrying-Capacity Analysis. This groundwork provides a reality check for existing zoning and gives towns a firm grasp of what type and how much growth they can really sustain and why.

**Build-out Analysis**—One of the best ways to determine what long-term growth might look like in your town is to undertake a build-out analysis. A build-out analysis can help residents and local officials understand what their community, or a section of it such as a highway corridor, will look like if built to the capacity allowed in current zoning – that is if the total build-out potential was realized.

Such a study can also be used to look at how projected growth might impact economic, social, and environmental features of a community. For instance, towns may tie an economic analysis into the study to forecast future tax revenues and liabilities to finance new infrastructure for the expanded community, by factoring in the cost for schools, water, roadways, police and other services.

Based on a local build-out study's recommendations, a municipality may find it needs or wants to explore one particular type of smart growth tool or another to protect its natural resources, retain a stable tax base, and avoid the loss of a community's sense of place.

Conducting a "build-out analysis" will demonstrate future needs for roads, schools, recreation and other services. This informative tool can provide a legal basis for a municipalities' decision to only grow so much. While such justification may not be necessary for implementing TDR, it can provide local officials a means to ensure that growth is transferred to where it is most appropriate. It also can help identify changes needed in local land-use plans.

**Carrying-Capacity Analysis**—Once completed, planners move on to Carrying-Capacity Analysis that will examine whether existing natural resources like water supply are sufficient to serve the projected growth if left unchanged. Carrying

capacity analyses take the build-out study a step further by analyzing the capacity of the environmental and infrastructure systems. They ask:

- Is there enough water to supply the projected development?
- How will non-point source pollution generated by the new development affect local streams and lakes?
- Can existing roads and transit systems handle the increased traffic?

Again, these studies can reveal whether the projected growth reflects a community's best interest. They tell us whether the carrying capacity of a natural system will be exceeded or jeopardize the viability of agriculture or sustainability.

If projected growth is estimated to exceed any of these limits or if the projected growth's environmental costs will exceed the economic benefit, then a community can make and justify a decision to take steps to control it. This same kind of analysis can also be undertaken to estimate the value of local environmental resources and ecological features and the costs that would be borne by a community if these resources were degraded or lost.

This study can be used to determine whether the local water supply or aquifer has the capacity to sustain the amount of growth that would occur if the full build-out potential were realized as allowed under current zoning. A carrying-capacity analysis can provide towns with a means to determine how many houses it can add before crucial water supplies become stressed to the point at which water is withdrawn faster than it is replenished.

Carrying Capacity studies enable towns to ensure that their base zoning is grounded in reality. If results indicate they need to reduce growth to a building cap, they will have solid justification for doing so.

By undertaking both a build-out and carrying capacity analysis prior to implementing a TDR program, towns will be better able to ensure that future growth does not come at a cost greater than can be sustained by residents, available water supplies, and other resources. Finally, a

community's right to self-determination cannot be understated. Both build-out and carrying-capacity analyses provide local government with a means to say how much is enough; they can empower bold land-use decisions that put a community's quality of life first and keep costs down.

### Custom Fit for Your Town

Different municipalities have different planning needs and objectives. Some want to ensure the continued viability of agriculture in their community. Others want to check sprawl and runaway taxes by protecting the best remaining undeveloped land. Some want to attract infill and re-development. TDR can help realize these goals because it is designed to be both customized and controlled at the local level.

When used in conjunction with other smart-growth techniques and programs, TDR can help create the conditions that can transform outmoded and unproductive commercial districts into meccas for new investment and renewal. For instance, many towns have monotonous commercial strips of unimaginative chain stores, vacant lots, and abandoned buildings. Such places fall short of their potential to serve the community as centers of commerce, local identity and leisure. These are often our older, marginal suburbs and downtowns, long impoverished by the outward migration of sprawl.

With proper planning that actually redesigns the layout of commercial districts, TDR can be used to turn auto-oriented strips into vibrant, pedestrian-friendly centers that serve as true area destinations. Since TDR is market-driven, it can be used to steer strategic investment and growth back toward the edges or underutilized areas of the built landscape. In this way TDR can help those communities, long left behind, reclaim their former prosperity.

### Statutory Requirements at a Glance

Implementing a TDR program does require an involved planning initiative on the part of the participating municipality, as well as

some initial investment. The program is involved enough that the State TDR Act requires oversight and monitoring of municipal programs at the state and county level. This includes such pre-adoption requirements as review by the municipality's County Planning Board and County Agricultural Development Board. It also requires State Planning Commission approval of a petition for endorsement of a Master Plan, which adopts a TDR component. Finally, the applicable Planning Board and governing body must review the operation of the TDR ordinance at three years after program adoption and again at five years, so to ensure the program is fulfilling its statutory requirements.

Before any credits can transfer from landowner to developer, the State TDR Act requires several steps to be carried out at the local level. These planning and implementation documents are adopted as additions to the local development ordinance and Master Plan. They include:

- 1)** Development Transfer Plan Element, **2)** Utility Service Plan Element, **3)** Transfer Ordinance, **4)** Capital Improvement Plan, **5)** Real Estate Market Analysis, **6)** Plan Endorsement, and **7)** Periodic State Review.

### The Bank of TDR

To help promote the program, the State Transfer of Development Rights Act authorizes the State TDR Bank, which is managed by the state Office of Smart Growth, to provide municipalities with planning assistance grants up to \$40,000, with a 50% local match. The grants can be used to hire a professional consultant for the purposes of setting up the program and preparing the above-mentioned documents required by the legislation.

To facilitate the exchange of development rights into marketable credit, the TDR Act authorizes municipalities and counties to either create their own TDR bank or utilize the state bank. Local TDR banks may apply to the State Bank for matching funds to cover 80% of a given credit's value. The State Bank also has the authority to purchase credits outright. In implementing a local TDR bank,

municipalities can act as intermediaries and buy TDR credits for later sale This however cannot be done for the purposes of influencing credit values, but to ensure that landowners can sell credits at their leisure.

## **A Proven Smart Growth Tool**

TDR is not new and has a proven track record both in the state and across the country.

TDR first came to New Jersey in 1981 as part of the Comprehensive Management Plan for the Pine Barrens. The Pinelands program actually differs from local TDR programs in that it works on a regional level and sends development credits outside sending municipalities to designated “Regional Growth Areas” that border the region. Nonetheless, the Pinelands Development Credit Program represents one of the largest such programs in the country, with over 36,750 acres protected through 2002.

Currently the largest TDR program in the country resides in Montgomery County, Maryland, where over 50,000 acres have been protected since program inception in 1980. TDR first became available for New Jersey municipalities as a pilot program in Burlington County. Success in such townships as Chesterfield and Lumberton were enough to convince lawmakers that TDR should be made available to all the State’s 566 municipalities. Since being signed into law in March of 2004, an ever-increasing number of municipalities throughout the state are either exploring the feasibility of a TDR program in their communities or are already in some phase of its implementation.

## **Your Community’s Future is in Your Hands**

If, like most New Jerseyans, you value clean drinking water, parkland, and a viable agricultural industry that preserves the beauty of the pastoral countryside, then you should explore TDR in your community.

## **To Learn More**

Contact Matt Blake at the American Littoral Society, 609-294-3111, 291 Grant, 2<sup>nd</sup> Floor, Tuckerton, NJ.

## **Web Links**

[www.nj.gov/dca/osg](http://www.nj.gov/dca/osg)

[www.state.nj.us/agriculture/toolkit.htm](http://www.state.nj.us/agriculture/toolkit.htm)

[www.state.nj.us/agriculture/sadc/tdrbank.htm](http://www.state.nj.us/agriculture/sadc/tdrbank.htm)

[www.beyondtakingsandgivings.com](http://www.beyondtakingsandgivings.com)

[www.chesterfieldtp.com/smart%20growth/smartgrowthpage.htm](http://www.chesterfieldtp.com/smart%20growth/smartgrowthpage.htm)

<http://nifuture.org/Scripts/Search.pl>

## **About the American Littoral Society**

The American Littoral Society is a member-based, non-profit conservation group headquartered on Sandy Hook in Highlands, New Jersey. Since 1961, their mission has been to empower people to care for the coast through advocacy, education, and conservation.