



**Division of Local
Government Services**

Transfer of Development Rights

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TRANSFER OF DEVELOPMENT RIGHTS

Transfer of development rights (TDR) is an innovative and complex growth management technique. TDR is often used to ensure that the municipality's open space planning goals are met without causing a financial burden on landowners or the greater community. With a TDR system, landowners are able to retain legal title to their land, but sell its development rights for use on other properties. Stated differently, TDR allows the owner to disconnect the right to develop the property from the property itself and sell or transfer it for use on a different parcel of land in the community.

TDR is based on the concept that ownership of land gives the owner a “bundle of rights,” each of which may be separated from the rest. One of the “bundle of rights” is the right to develop the land. A transferred development right is a development right that has been moved (transferred) from its parent parcel to another. The development potential is removed from the parent (sending) parcel and legally transferred to the receiving parcel whereby additional incremental development is allowed. The buyer of the development rights is then permitted to exceed the maximum height or density restrictions set forth in the local zoning regulations when using the transferred rights.

TDR has often been applied to preservation of farmland in New York. Under typical TDR systems, farmers are able to keep their land for agricultural production and sell the property's development rights, which are then used on non-agricultural land.

Legal Authority for TDR Program

Local governments can use their traditional zoning authority or a State statute to create a transfer of development rights program. In 1916, New York City's first zoning ordinance authorized a simple TDR mechanism which allowed owners of adjacent lots to combine their air rights to erect a tower exceeding the height restrictions established in the zoning regulations. Since that time, courts have upheld the TDR concept as an exercise of a municipality's basic zoning power. In 1989, the State Legislature enacted statutes authorizing the use of the TDR technique for local governments (General City Law § 20-f, Town Law ' 261-a and Village Law ' 7-701). It must be remembered that, at root, TDR is a zoning technique and as such, must be implemented in accordance with a municipality's comprehensive plan.

Reasons for TDR

In a remarkable law review commentary, Joseph Stinson explained:

Transfer of Development Rights is a direct response to changing priorities. There are three concerns that have been primarily responsible for the development of TDR. First, many historical landmarks do not fully utilize the density allocation permitted by zoning. As a result, there is enormous economic incentive for the owner to take down the landmark and construct a new building capable of exploiting the economic potential of the site. Unless landmark preservation is made a priority, architectural treasures risk oblivion. Second, the congestion of metropolitan and suburban areas has created a demand for open space. Third, there are economic incentives to develop in ecologically sensitive areas. Until land use regulation is employed to protect these vulnerable areas, clean air, clean water, and farm land have to compete against land uses that provide higher short-term yields for the property owner. Transfer of Development Rights goes to the heart of the problem by restructuring the economic incentives in land use. Development is funneled into areas where it will have the least deleterious effects, and away from properties whose high social and/or biological value might otherwise be overcome by the pressure to develop.

Transfer of Development Rights diverts economic incentive away from critical areas through the use of “sending” and “receiving” districts. The sending district is the area being protected. The receiving district is the area that has been determined to be suitable for development. By designating these districts, the governing authority is performing the traditional use restriction aspect of zoning. Density restrictions in the receiving district are relaxed to accommodate the development being transferred from the sending district.

Joseph D. Stinson, *Transferring Development Rights: Purpose, Problems, and Prospects in New York*, 17 Pace L. Rev. 319 (1996)

How Does TDR Work?

TDR programs are workable in specific situations. Under the State statutes, when a municipality has through the planning process identified areas in need of preservation (e.g., farm land or historic buildings) or where development should be avoided (e.g., shorelines at risk from sea level rise, storm surge or flooding), these areas are established as “sending districts.” Owners of land in these sending districts may sell the rights to develop their lands; those development rights will be transferred to lands located in “receiving districts” or to a development rights bank. In short, the sending district is the area being protected. The receiving district is the area that has been determined to be suitable for denser development.

After selling the development rights, a landowner still retains title and all other rights to his or her land. Land devoid of development rights can still be used for farming, forestry, passive recreational uses, or other non-intensive uses. In addition, the owner may sell or exchange the title to the land just as if the development rights had not been transferred.

The development rights to be transferred usually take the form of units per acre, gross square footage of floor area, or an increase in building height. The rights, when transferred to land in the receiving zone, are used to exceed the maximum density or height limits established in the zoning regulations of the receiving district. Some municipalities establish incentives to use TDR including the provision for “by-right” or “shovel ready” permitting in receiving districts.

Receiving districts are those areas which the municipality has determined are appropriate for increased density or height based upon a study of the effects of such increases. Parcels within the receiving districts “receive” TDR credits, therefore allowing development to occur at a density greater than would normally be allowed, with a minimum of adverse consequences. For example, a town may determine that it is appropriate to preserve prime agricultural land, which it designates as a sending district. The town may also determine that its unincorporated hamlet area may be developed at a higher density, and designate it as a receiving district, where development rights can be used to increase density above what is ordinarily allowed. (See section on Valuing Development Rights)

In this manner, owners of land in sending districts are able to realize a level of economic return while the municipal goal of preserving the land is achieved. The TDR system will be successful, however, only where there is a demand to increase development in the receiving districts, and where the municipality does not undermine the incentive to purchase development rights by rezoning receiving districts to higher densities -- a move which of itself might satisfy market demand and thus defeat the incentive mechanism.

An example of how TDR operates is as follows: Land in a rural zoning district is zoned to permit one dwelling per acre. Land somewhere else in the municipality, such as a certain residential district, is zoned to permit one dwelling per quarter-acre. Under TDR, rights to develop 20 dwellings on 20 acres in the conservation district could be transferred to other land. (If it is, then, under the most common TDR model, the 20 acres in the conservation district could not be developed at all B its economic use value would have been realized by sale of the right to develop it.) The 20 dwelling unit density could be added to the density already allowable in a tract in the specified residential zone. In that district, a 15-acre parcel would permit, under the quarter-acre zoning, 60 dwellings. But with the added development rights acquired from the

conservation district (20 dwellings in this example), a total of 80 dwellings could be constructed on the parcel in the residential zone.

TDR can also give owners a way of realizing a greater economic return on property that is occupied by a historic or landmark structure. Compensating owners with transferable development rights is a way of furthering the preservation of historic landmarks and properties. In urban areas, the TDR method is a valuable landmark preservation tool.

Valuing Development Rights

TDR involves an exchange of development rights (or TDR credits) from a sending parcel to a receiving parcel or to a development rights bank (more on this later). A 1-to-1 exchange of TDR credits would be an equal exchange, so that purchasing 1 TDR credit would gain a developer the right to build 1 additional unit in a receiving district.

A 1-to-1 ratio may not always result in equivalent values for both areas. The market value of one dwelling unit on a 10-acre parcel in a rural area is often worth more than the value of one additional unit in an urban apartment building to a developer. Developers might be unwilling to pay the rural value for one right, and landowners might be unwilling to sell their rights at urban values. To correct the imbalance in value between development rights in sending and receiving districts, some communities include a multiplier that allows an increase in the density eligible for transfer to a receiving site and the value of the TDR credits. This also serves to induce developers to build in the receiving district. For instance, each TDR credit in the sending district could secure two or more additional units when applied to an eligible site in a receiving district. Once transferred, TDR credits may be used to construct more intense development within that receiving district. The multiplier can be used to advance other local planning objectives, such as creation of affordable housing.

TDR Distinguished from Cluster Development

As can be seen from the above discussion, TDR involves the transfer of the right to develop land from one parcel to another parcel. The parcels are usually not contiguous and actually could be separated by some distance. Most often they are under different ownership.

Cluster development, on the other hand, is a subdivision plat technique which involves the transfer of allowable development density within a single tract of land which is being developed, thus enabling structures to be clustered on a site in a manner that does not otherwise comply with lot size requirements of the applicable zoning law. The goal of clustering is to “increase

dwelling densities on specific locations of a development in order to leave other locations free of dwellings.” (Ahearn v Zoning Bd. of Appeals of Town of Shawangunk, 158 AD2d 801 Fn. 1 (3d Dept. 1990) lv denied 76 NY2d 706.) There is specific statutory authority for the use of the cluster development power by planning boards when approving subdivision plats in municipalities that have zoning regulations (Town Law § 278; Village Law § 7-738; General City Law § 37). These statutes empower the municipal governing body to authorize the planning board to allow (or to require) the use of the cluster technique by developers seeking approval of subdivision plats.

How can municipalities be sure that sending districts are not developed in the future?

The State zoning enabling statutes require that land from which development rights are transferred are subject to a conservation easement limiting the future development of the property. The statutes also require that the assessed valuation of properties be adjusted to reflect the change in development potential for real property tax purposes. TDR is a sophisticated land use management tool that requires a high degree of municipal staff experience and resources to initiate and maintain. It should be considered in that light, and only after a municipality has undertaken a thorough study of its implications.

TDR Prior to the Enactment of the TDR Statutes in 1989

Two Court of Appeals decisions, one decided in 1976, the other in 1977, provided a legal basis for TDR and gave some indication as to how the courts view its use. The 1976 case of Fred. F. French Inv. Co., Inc. v. City of New York, 39 N.Y.2d 587, appeal dismissed, 429 U.S. 990 (1976) will be discussed at length in the section on “Variations of TDR Programs.”

In 1977, the New York City Landmark Preservation Law became the first TDR legislation upheld by the courts. In Penn Central Transportation Company v. City of New York, 42 NY2d 324 (1977), affd., 438 US 104 (1978), the designation of Grand Central Terminal as a protected landmark was at issue. The Court of Appeals sustained the designation of the terminal over claims that the owners of the structure were deprived of a reasonable economic return because of the development restrictions applicable to the landmark. The specific issue involving TDR concerned a provision of the city regulation which granted to the owner of the landmark the right to transfer the development rights above the terminal to other parcels of land in the vicinity. The Court held that the value of these rights may be considered in determining whether the owners were able to receive a reasonable return on their investment.

The Court recognized that development rights, once transferred to other land, might not be worth as much as on the original site:

“But, that, alone does not mean that the substitution of rights amounts to a deprivation of property without due process of law. Land use regulation often diminishes the value of the property to the landowner. Constitutional standards, however, are offended only when that diminution leaves the owner with no reasonable use of the property.

The situation with transferable development rights is analogous. If the substitute rights received provide reasonable compensation for a landowner forced to relinquish development rights on a landmark site, there has been no deprivation of due process.”

The US Supreme Court upheld the constitutionality of New York City=s regulations.

The Court noted that the regulations permitted continued productive use of the property as a railroad terminal and permitted use of the development rights in a less contingent fashion: “These substitute rights are valuable, and provide significant, perhaps ‘fair,’ compensation for the loss of rights above the Terminal itself.”

The Penn Central case is significant both for its recognition of the concept of transferable development rights and for its utilization of their value in determining whether land use restrictions are valid.

Statutory Authority for TDR

The TDR statutes - General City Law ' 20-f, Town Law ' 261-a and Village Law ' 7-701 - provide a detailed procedure for local governments to follow in creating and implementing TDR programs. These statutes define TDR as “the process by which development rights are transferred from one lot, parcel, or area of land in a sending district to another lot, parcel, or area of land in one or more receiving districts.” The statutes provide that the municipal governing body, in adopting or amending TDR procedures, must follow the procedure for adopting and amending the zoning regulations. (General City Law § 20-f(3); Town Law § 261-a(3); Village Law § 7-701(3)). Thus, all procedures required for adoption or amendment, as the case may be, of a zoning ordinance or local law, should be scrupulously followed.

The specific enabling authority for TDR is examined here in some detail. In general, the statutes define key terms used in TDR and contain specific provisions in addition to those found in locally-adopted TDR regulations.

1. Purposes

“The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value, to protect lands at risk from sea level rise, storm surge or flooding and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.” (General City Law ' 20-f(2); Town Law ' 261-a(2); Village Law ' 7-701(2)).

This language is very broad. The planning objectives which TDR might be used to achieve can include preservation of open space, agricultural lands, or lands at risk due to sea-level rise, storm surge or flooding. In addition, these objectives might also call for protection of historic sites, districts or groupings of historic structures that are part of a community's cultural heritage.

2. “Development Rights”

The enabling statute defines the term “development rights” to mean the rights which are allocated to land and which may, under TDR, be transferred. A TDR program usually establishes some method of valuing the development rights that are to be transferred. Thus, for example, a local TDR provision may define development rights in units per acre, or in square feet of floor area, or in units of height of structures, among others. It may establish rights in terms of credits that may in turn be sold.

It is important for a local government to quantify an appropriate value for the development rights that are to be transferred in order to create a viable market for them in the districts that the local officials wish to be developed.

3. Designating “Sending Districts” and “Receiving Districts”

“Sending districts” are defined to mean one or more designated districts or areas of land in which development rights may be designated for use in one or more “receiving districts.” In short, they are the areas from which development rights may be transferred. Often, the zoning regulations applicable to the sending districts will be amended to reduce or eliminate further

development. The sending district must consist of “natural, scenic, recreational, agricultural, forest, or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected or lands at risk from sea level rise, storm surge or flooding” (General City Law ' 20-f(2)(a); Town Law ' 261-a(2)(a); Village Law ' 7-701(2)(a)).

There is also guidance in the statute concerning the designation of “receiving districts.” These are defined to mean one or more designated districts or areas of land to which development rights generated from sending districts may be transferred, and in which increased development is permitted to occur by reason of the transfer.

The receiving districts are the areas to which development rights are transferred, and great care must be taken with their designation for two reasons. First, there should be a market for development rights in the receiving district (this is a basic premise of the whole TDR system). Second, the transfer will necessarily result in an increase in the density or intensity of development in the receiving area, which means that municipal services must be available to support it; consequently, there must be an awareness of the potential impact of such development. The statute recognizes this, providing that:

“Every receiving district . . . shall have been found by the [municipal governing body], after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the [municipality] and by the federal, state and county agencies having jurisdiction to approve permissible development within the district.” (General City Law ' 20-f(2)(a); Town Law ' 261-a(2)(a); Village Law ' 7-701(2)(a)).

A great deal of careful forethought and planning is called for in designating sending and receiving districts. The sending and receiving districts must be designated and mapped with specificity (just like any other type of zoning district). They need not be coterminous with the underlying zoning district(s). They may be mapped as overlays, covering all or portions of existing zoning districts.

Finally, the statute requires the governing body, in considering the designation of sending and receiving districts, to evaluate the impact of TDR on the potential development of low or moderate income housing which would be lost in the sending districts and gained in receiving

districts. The governing body must find that there is “approximate equivalence” between lost opportunities for such housing in the sending district and gained opportunities in the receiving district, or that the municipality has taken or will take reasonable action to compensate for any negative impact on the availability or potential development of such housing caused by TDR (General City Law ' 20-f(2)(f); Town Law ' 261-a(2)(f); Village Law ' 7-701(2)(f)). Clearly, when land is designated as a sending district, the actual development that could otherwise occur on that land would be severely limited, and possibly even prohibited. On the other hand, development in the receiving district will likely occur at higher densities due to the development rights being transferred there. The result could be greater opportunities for affordable housing.

4. Land in the Sending District - Conservation Easements

Development rights assigned to land in the sending district may be transferred to land in the receiving district. When that happens, there is a need to have some indication, recorded in the chain of title, to notify prospective purchasers of the property that development rights have been transferred.

The TDR statute provides that when development rights have been transferred from property in the sending district, the grantor of those rights must execute a conservation easement. Environmental Conservation Law, Article 49, Title 3 provides for conservation easements. Conservation easements are interests in land which limit the use or development of the land. They are recorded in the chain of title so that subsequent purchasers will be aware of the development restriction (Environmental Conservation Law ' 49-0305(4)). Such easements are enforceable by the municipality under the terms of the TDR statute (General City Law ' 20-f(2)(c); Town Law ' 261-a(2)(c); Village Law ' 7-701(2)(c)) and may be enforceable by other entities if the instrument creating the particular conservation easement so provides (*see* Environmental Conservation Law ' 49-0305(3)(a) and (5)).

The municipality must adopt regulations establishing minimum uniform standards for instruments creating conservation easements within a sending district. The statute requires this to be done at the time the sending district is created. In addition, the program must provide for the reassessment, within one year, of the property tax value of any parcel whose development rights have been transferred.

5. Land in the Receiving District

Before development rights can be transferred to land in a receiving district, the local government must do some important planning work. The reason is that development in the receiving district

will occur at a greater density than otherwise would be allowed by the zoning, with the increase attributable to the development rights which were transferred from the sending districts.

First, it is essential that receiving districts are carefully and thoughtfully designated so that the land included in them can withstand the increased density. The statute also provides procedures to be used when specific development occurs in the receiving district.

Second, the TDR statutes require that a generic environmental impact statement be prepared prior to the designation of the receiving district. (General City Law ' 20-f(2)(b); Town Law ' 261-a(2)(b); Village Law ' 7-701(2)(b)). This means that a substantial review of the environmental impact of future proposed projects must occur at the time when the receiving districts are originally designated and general requirements that will apply to development projects using transferred development rights are established. These requirements usually cover such matters as the amount of density to be allowed using transferred development rights, setbacks, height limitations, and parking. When a specific project using TDR is later proposed, the scope of review of its environmental impact will be narrower, looking only at those concerns not addressed when the generic environmental impact statement was done.

6. Variations of TDR Programs

There are several approaches to the TDR idea. TDR can be a voluntary technique conducted between landowners in the sending and receiving district. TDR can also be made mandatory but only if there is a guaranteed market for the development credits in the receiving district or in a development rights bank.

In “voluntary” TDR programs, the owner of the land in the sending district may proceed with development on her land in accordance with allowed zoning or she may elect to transfer development rights to eligible land that she owns in the receiving district or sell the rights to an owner or developer there or even to a development rights bank (discussed below). The municipality does not, necessarily, have to restrict development or allowable density within the sending districts. A purely voluntary TDR program may leave existing zoning within the sending district in place but allow owners the option of detaching development rights from their land and selling or transferring them. Developers in the receiving district may want to buy additional rights for more dense development, and owners in sending districts may be willing to sell their rights and accept a conservation easement on their property.

In mandatory TDR schemes, the land in the sending district desired by the municipality to be kept “undeveloped” is prohibited from utilizing the development rights that it has been assigned

under the zoning. To legally sustain such a scheme, TDR programs must financially compensate landowners for not developing their land. There must be a market ready to purchase those development rights, such as a development rights bank.

In Fred. F. French Inv. Co., Inc. v. City of New York, 39 N.Y.2d 587, appeal dismissed, 429 U.S. 990 (1976), the New York Court of Appeals invalidated a mandatory TDR scheme designed to prevent development of two private parks in the Tudor City apartment complex. When the owners of Tudor City announced plans to develop their private parkland, the city responded by amending its Zoning Resolution to establish a special park district and rezoned the parcels in the residential complex to public parks, effectively eliminating their development potential.

The zoning amendment allowed the owners to transfer their development rights from the parks to a receiving zone on the East Side of Manhattan, but they did not attach to specific parcels. The owners instead challenged the rezoning. The Court of Appeals found for the owners and held the amendment violative of due process of law. Chief Judge Breitel, writing for a unanimous court, found that the city had

“despite the severance of above-surface development rights, by rezoning private parks exclusively as parks open to the public, deprived the owners of the reasonable income productive or other private use of their property. The attempted severance of the development rights with uncertain and contingent market value did not adequately preserve those rights.” 39 N.Y.2d at 591.

The Court was troubled that the city’s mandatory scheme left an uncertain market for the development rights in the receiving zone. It characterized these rights as “floating development rights, utterly unusable until they could be attached to some accommodating real property, available by happenstance of prior ownership, or by grant, purchase, or devise, and subject to contingent approvals of administrative agencies.” 39 N.Y.2d, at 597-598. Because of the uncertainty of future realization of these rights, the Court rejected the contention that the amendment did not deprive the property owner of all rights in his property.

A silver lining for TDR was embodied in the court’s opinion because it provided strong support for and outlined a workable structure for both voluntary and mandatory TDR programs. The Court recognized that land ownership and development rights are severable, development rights are a “transferable commodity” and can be transferred to other parcels in private ownership. 39 N.Y.2d at 597. For mandatory TDR schemes, a “development rights bank” can provide a ready market for development rights and eliminate uncertainty. 39 N.Y.2d at 598-99. In short, well-

structured TDR programs can be a proper exercise of the zoning power and thereby comport with the due process clause.

7. Development Rights Bank

To be effective, TDR depends upon the existence of a ready market for the development rights that are to be transferred. If no market exists in the receiving districts for the development rights, their transfer from the sending districts will not occur. To remedy this situation, the TDR enabling legislation added a very important feature to the TDR concept in New York: development rights banks.

The fully-funded development rights bank ensures that a ready market for development rights will exist at all times. It involves the establishment by the municipality of a “bank” or “account” that acquires and retains development rights when they are sought to be transferred by owners in the sending district. The municipality would purchase or acquire through donation or bequest the development rights and hold them until such time as demand develops for their use in the receiving district. At that time, the municipality may sell the development rights for use on land in the receiving district. Property owners in the receiving districts are eligible to apply for these development rights to increase the densities at which their lands may be developed, and accordingly, may purchase them from the development rights bank. Receipts from the sale must be deposited in a special municipal account “to be applied against expenditures necessitated by the municipal development rights program.” (General City Law ' 20-f (2)(e); Town Law ' 261-a (2)(e); Village Law ' 7-701(2)(e)).

In addition, there is a procedure to place on record the fact that development rights have been acquired. The statute provides that where development rights have been transferred, the municipality is to issue a “certificate of development right” to the transferee or recipient. The certificate must be in a form suitable for recording in the chain of title to particular property (General City Law § 20-f(2)(c); Town Law § 261-a(2)(c); Village Law § 7-701(2)(c)).

Examples of TDR in Use

Town of Eden, New York - The town of Eden, located in western New York State, is primarily an agricultural community. In 1977, before the enactment of the TDR statute, the town board adopted a TDR provision in its zoning code which featured three sending districts - Conservation (C), Agricultural (A) and Agricultural Preservation overlay - designed to preserve rural land uses from development. The land within these three zones represented almost half of the total acreage in the town and served as the sending districts for its TDR program. Property

owners could transfer the right to develop from land in these sending areas to land in three residential zones, Rural Residential (RR), Suburban Residential (SR) and Hamlet Residential (HR). Land in these three receiving districts constituted roughly half of the total area of the town.

To encourage the owners of property in these three sending zones to permanently preserve their land, Eden's TDR provisions allow transfers to occur at the rate of one TDR credit per three acres of land in the Conservation zone and one TDR per two acres of land in the Agricultural zone. The owners of land in the receiving zones can use TDR credits by applying for an Optional Density Permit. Along with the Optional Density Permit application, the applicant must provide a document which grants an open space easement on sending site land to the town. After the easement is recorded, the town planning board must issue an Optional Density Permit; the planning board has no discretion to deny the application if the open space easement is properly recorded. Despite the fact that the use of TDR is not subject to discretionary approval, the Eden TDR program has been used infrequently. According to a former town supervisor, the lack of development pressure in Eden reduces interest in TDR.

Town of Riverhead - Municipalities in Suffolk County, New York have been pioneers in adopting and using TDR programs. Among the most active has been the town of the Riverhead's TDR program, which focuses on the transfer of development rights of farmland properties in the town's Agricultural Protection Zone (APZ) to 10 designated residential and commercial zoning districts. Riverhead's TDR program is voluntary and development rights are removed from a farmland property and immediately transferred to a designated receiving site. Riverhead's designated sending area, the APZ, encompasses approximately 12,500 acres. As of 2014, 121 development rights credits were transferred from the town of Riverhead's designated sending area, effectively protecting 121 acres of farmland from development. (See Suffolk County Transfer of Development Rights Study – 2014; https://www.suffolkcountyny.gov/portals/0/formsdocs/planning/Publications/HUD_TASKN1_A_LL03032014r.pdf).

Purchase of Development Rights (PDR)

The use of public money to purchase development rights to private land has become increasingly popular as a way to preserve agricultural land and open space. The General Municipal Law authorizes municipalities to use public funds to acquire interests or property rights for the preservation of open space or agricultural land (General Municipal Law ' 247). The Agriculture and Markets Law provides for a State grant program to help municipalities with approved farmland protection programs to purchase development rights on farmland

(Agriculture and Markets Law ' 325). Increasing numbers of municipalities have created such protection programs to purchase the development rights of lands used in agricultural production or open space from property owners who voluntarily choose to offer them for sale. The fund from which these purchases are made is locally financed by bonds in an amount authorized by the voters in referenda at regular elections.

Purchase of development rights (PDR) involves acquiring the development rights associated with a particular parcel of land. The purchase price is usually determined by appraisal. The price is often the difference between the agricultural or open space value and the development value. For example, if the value of farmland is \$8,000 per acre and a developer would pay \$20,000 to buy the property for development, the value of the development right would be \$12,000 per acre. After a governmental agency or land trust acquires the development rights to a particular property, the development rights are then “retired” through deed restriction.

Town of Southold: Beginning in 1983, the voters of the town of Southold in Suffolk County approved bond issues to finance the purchase of development rights to farmland, as well as open space. The value of the early bonds was \$1.75 million. Every few years thereafter, the voters of Southold approved similar bond resolutions. Southold financed its acquisitions of development rights through two mechanisms: (1) bond issues and (2) the Community Preservation Fund, authorized by State legislation that involves imposing a 2% transfer tax on real property conveyances. From 1983 to 2018, Southold Town has protected a total of 3,351 acres through purchases of development rights.

State funding is also available for purchasing development rights to farmland. Through programs of the NY Department of Agriculture and Markets, the State offers grants to fund county and municipal purchase of development rights programs on agricultural lands. According to Department’s website. “[t]he Farmland Protection Implementation Grants (FPIG) Program provides financial assistance to counties, municipalities, soil and water conservation districts, and land trusts to enable them to implement farmland protection activities consistent with local agricultural and farmland protection plans, including those created through the Farmland Protection Planning Grants Program. *The most frequently funded activity is the purchase of development rights (PDR) on individual farms.*”

Conclusion

Unbridled development can destroy irreplaceable resources in our man-made and natural environments. TDR is one technique which can prevent that from happening. There are four primary benefits of TDR: it permits preservation of lands where further development is undesirable; it does so without loss of new development to the community; it does so without

depriving landowners of a reasonable economic return on their property; and importantly, it involves minimal expense to the municipality.

A TDR program demands a greater degree of administrative attention than most other zoning tools. TDR must be administered so that the status of development rights on all parcels in sending and receiving districts is known at all times. If a development rights bank is used, the status of rights in the bank and the proceeds from their sale must be kept track of. Since the assessed value of real property in sending and receiving districts must reflect any transfer, the assessor must keep track of transactions.

As a zoning technique, TDR must be based on sound planning. Planning for the implementation of TDR programs is vital if disruption of the real estate market is to be avoided and if public acceptance is to be achieved. Properly done, these ends can be achieved.