



Transfer of Development Rights

Smart Growth Recommendations from New Jersey Future

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Why we need TDR

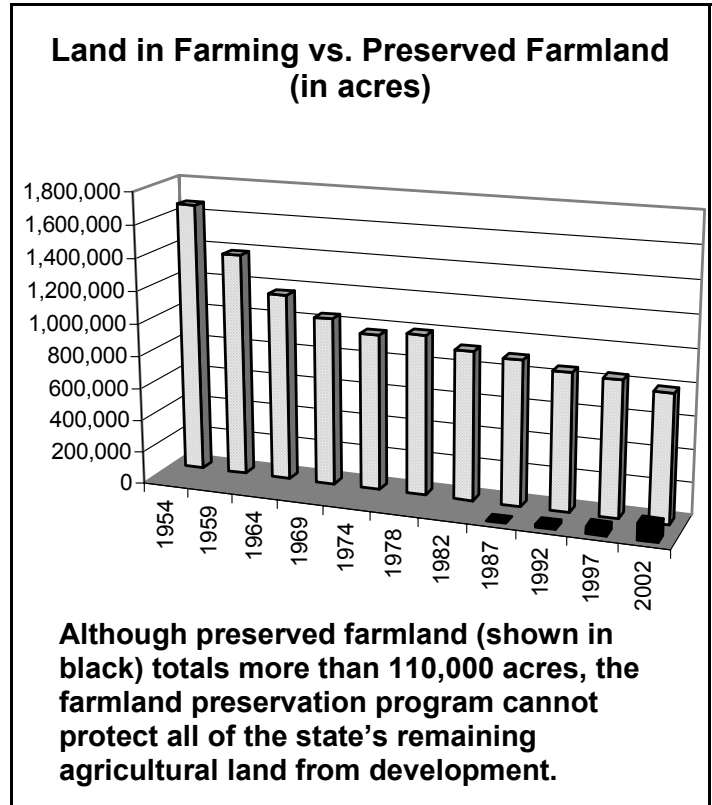
There is not enough money from government or private sources to buy all the natural, agricultural and park land that needs protection in New Jersey. At the same time, the price of the land we are buying is rising sharply, and the available parcels are shrinking in size.

The average per-acre cost of land preserved as open space under the state's Green Acres program rose 79 percent between 1998 and 2002. The average per-acre cost of land protected under the state's farmland preservation programs rose 54 percent in the same period. These purchases are funded by state taxpayer dollars.

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

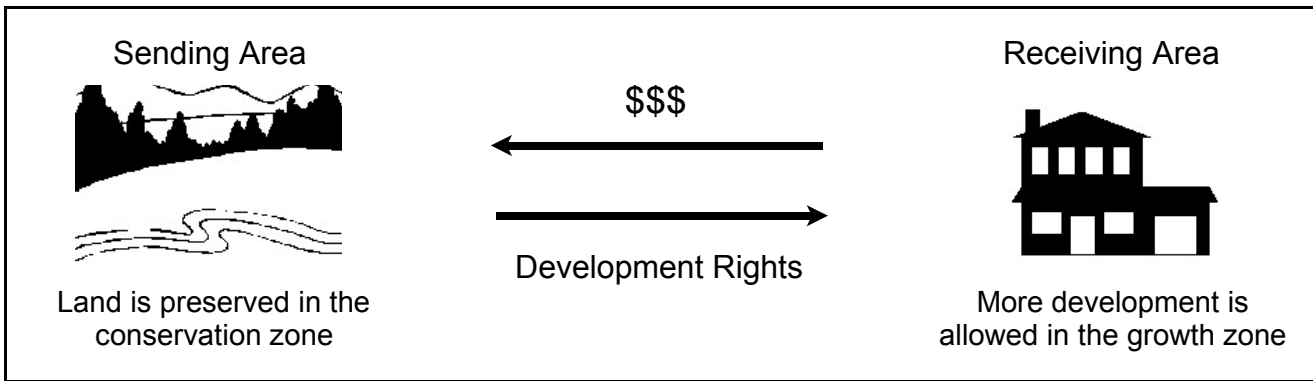
In addition to purchasing land, it is possible to save land and manage sprawl by engaging incentives in the real estate market. Transfer of Development Rights, or TDR, gives us exactly such a tool. By incorporating TDR provisions in their land-use regulations, municipalities can allow the transfer of 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 numerous regions



and towns in other states. But under present law, towns elsewhere in New Jersey are not authorized to employ this important smart growth tool to its full potential.

New Jersey Future calls on the Legislature and the Governor to craft a workable TDR program – available to all municipalities. The program would promote development in centers, and help conserve farmland, historic sites and natural areas, consistent with the State Development and Redevelopment Plan. (For details, see Recommendations and Checklist for Effective TDR Legislation on page 4).



How TDR works

TDR 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. TDR programs may be regional or may be operated by a single municipality.

TDR 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 allows owners of land targeted for conservation to sell their right to build on the "sending parcel" to a developer in the growth zone. When the rights are transferred from the sending parcel, the land is restricted from development with a conservation easement. By buying rights, a growth-zone developer may build at a density higher than that permitted by the base zoning.

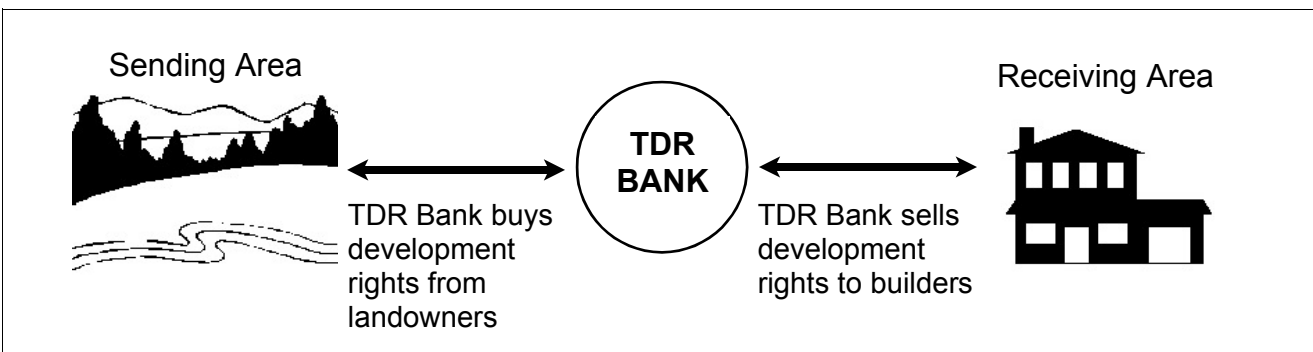
TDR programs enable private market transactions where landowners and/or developers buy and sell development rights. A TDR "bank" can help create a market for development rights by buying rights from willing sellers in preservation areas, then selling them later to developers who wish to undertake higher 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, which provides: 1) funds to buy development rights in sending areas; 2) 50 percent matching grants to municipalities for up to \$10,000 for planning expenses; and 3) technical assistance. At present, access to these resources is restricted to Burlington County, where a 1989 statute established a pilot TDR program.

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 New Jersey's Municipal Law.¹

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 today do not have access to the state TDR bank, which would allow them to bank and draw on development rights as needed. Municipalities could gain bank access by amending the statute that established the statewide TDR bank (N.J.S.A. 4:1c-49 et seq.).

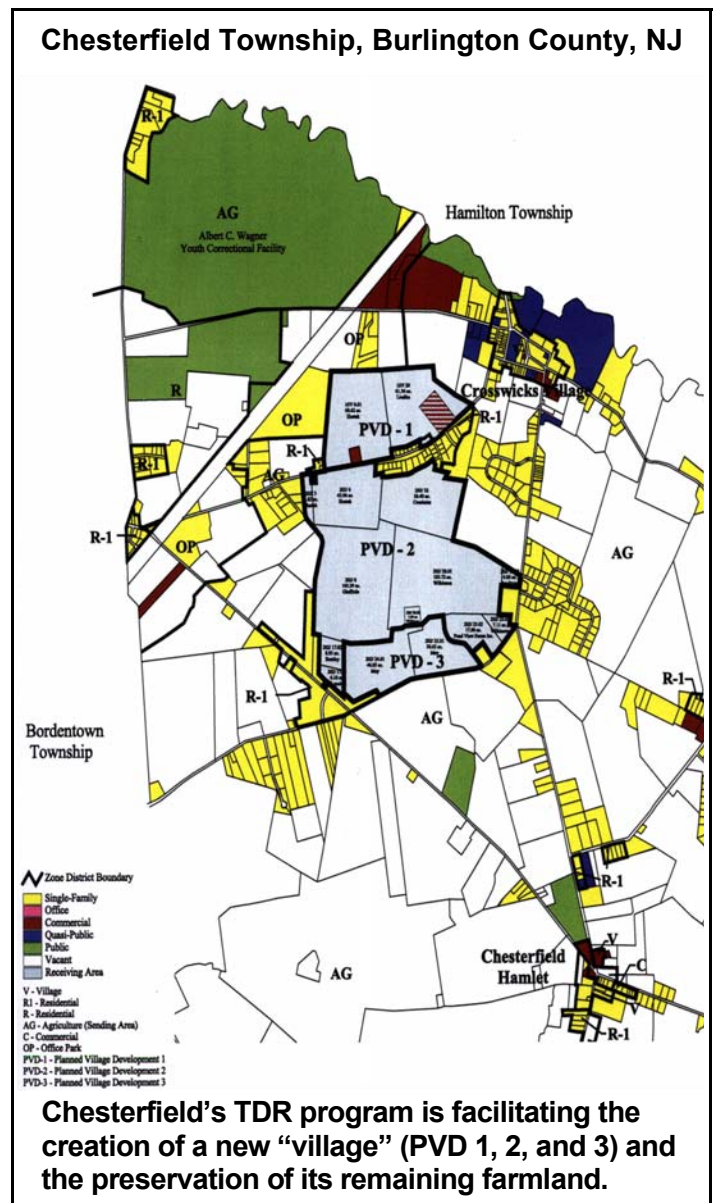
Increased use of clustering would move New Jersey closer to TDR. However, without the comprehensive level of municipal planning required by TDR programs, and the other elements of our "Checklist for Effective TDR Legislation" (page 4), clustering would not achieve the program's full smart growth benefits.

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 42,000 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 downzoning. 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.

¹ 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.

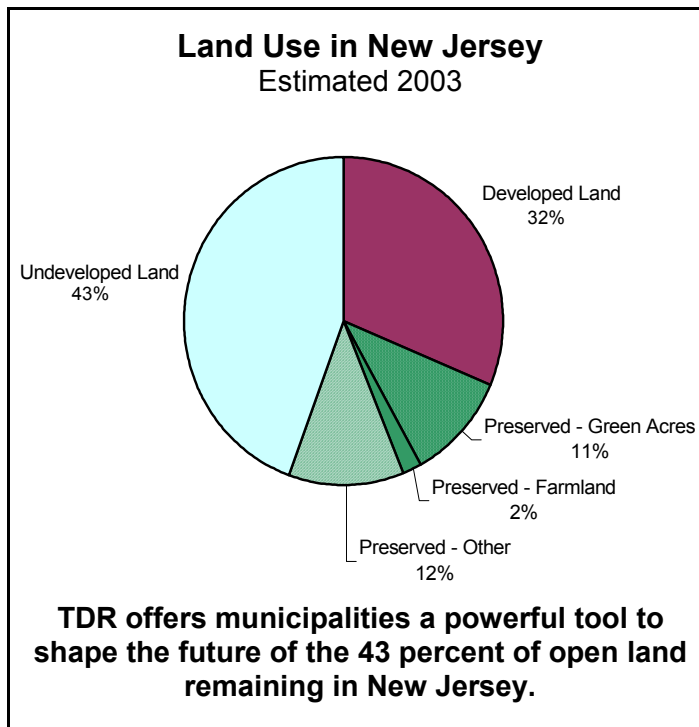
Recommendations and Checklist for Effective TDR Legislation

The effectiveness of TDR as a smart growth tool depends on the provisions of the enabling legislation. Legislation must require sound planning to ensure viable receiving districts and thus a healthy market for development rights. Yet TDR legislation can neither constrain municipalities nor make such demands on tight budget resources that municipalities will simply walk away from TDR as a Smart Growth tool.

New Jersey Future calls on the Legislature and the Governor to craft a workable TDR program – available to all municipalities. The program would promote development in centers, and help conserve farmland, historic sites, and natural areas, consistent with the State Development and Redevelopment Plan.

To achieve smarter growth, TDR legislation must pass the following critical tests:

- ✓ **Local Flexibility.** TDR is technically complex. Goals may differ: historic preservation, resource conservation, farmland preservation. Legislation should not constrain towns in their efforts to achieve differing goals, with differing professional resources.
- ✓ **Zoning.** TDR legislation must not constrain local government's traditional power to plan and zone land, even for very low densities. "Downzoning" should not be restricted.²
- ✓ **Capital Facilities Planning.** To create a viable TDR market, towns must adopt a capital improvement plan for growth areas to show that roads, sewers and other infrastructure will be available.
- ✓ **Technical Assistance.** Planning grants and technical assistance are needed. The TDR bank legislation (N.J.S.A. 4:1C-51) must be amended to increase planning grants to \$20,000.
- ✓ **TDR Banks.** TDR banks provide a market during slow economic periods, guaranteeing



landowners a base price. Legislation should authorize the creation of TDR banks by individual municipalities, groups of municipalities or counties. There should be few constraints regarding the price at which TDR banks can buy and sell rights.

- ✓ **Regional Options.** TDR legislation must authorize groups of municipalities as well as individual municipalities throughout New Jersey to adopt TDR programs.
- ✓ **Consistency with Regional/State Plans.** The benefits of TDR should be offered to those municipalities having master plans endorsed as consistent with the State Development and Redevelopment Plan, and to municipalities in the process of seeking such endorsement.

² In Holding Our Ground (Island Press, 1997), national experts Tom Daniels and Deborah Bowers assert, "Landowners in sending areas may face a choice: either develop the land according to the existing zoning or sell TDRs. To influence their decision in favor of selling TDRs, the zoning in the sending area should be of low density." Note that the value of development *rights* may be set above the value based on zoning.

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