

# Article XXII: Transferable Development Rights

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## SECTION 240-2200. PURPOSE

The primary purpose of establishing a program for transferable development rights (TDRs) is to permanently preserve prime farmland, woodlands, sensitive natural areas, and scenic open spaces, historic and other significant resources within designated sending areas of Kennett Township. In lieu of developing such lands, landowners shall be permitted to convey their development rights to parties who are thus granted incentives hereunder to further development in designated receiving areas of Kennett Township.

## SECTION 240-2201. BASIC CONCEPT, TERMINOLOGY, AND AUTHORIZATION

- A. Provisions of this Chapter which permit TDRs allow landowners in areas of Kennett Township proposed for conservation, called "sending areas," to voluntarily sever and sell or otherwise convey the right to develop all, or a portion of their land to parties for use for additional development in areas of Kennett Township proposed for growth, called "receiving areas". The creation of TDRs and the ability to sell and purchase them under this Article are authorized under the PA MPC, under the terms of which development rights are acknowledged to be severable and separately conveyable from a sending area to a receiving area.
1. When landowners in the sending area sever their right to develop all or a portion of their land, they shall restrict that portion of land from which TDRs are severed against any future development as provided in this Chapter, although the land from which the TDRs were severed may still be used for purposes of open space, conservation areas, principal or accessory agriculture, forestry, passive recreation, trails, yard areas, agritourism, heritage interpretation, conservation uses and areas, and similar uses, and uses customarily accessory thereto. When owners of sites in TDR receiving areas acquire TDRs which have been severed by landowners in sending areas, they receive the right to increase the density or extent of development as provided under this Article. Monetary value of TDRs is entirely determined between the seller and buyer.
  2. Conservation easements that shall be imposed on any lands in the sending area upon severance of TDRs shall not prohibit the landowner's sale of such lands after the TDRs have been severed, subject to the recorded easement(s). Any conservation easement(s) established on the lands from which TDRs have been severed, and any other concurrent easement(s) established for trails, open space, passive recreation, or other public purpose, shall benefit or run in favor of Kennett Township and/or another governmental entity and/or a conservation organization approved by the Township.
  3. Owners of lands in the sending area from which TDRs are severed, or any subsequent party to whom TDRs may be conveyed, may hold ("bank") TDRs, retire the TDRs, declare the TDRs for sale, or convey the TDRs to any other party. The only use that may be made of TDRs is their ultimate transfer for additional development in TDR receiving areas.

4. Notwithstanding anything to the contrary, Kennett Township shall have no obligation of any kind to hold, purchase, or own any TDRs which have been severed from any lands in the sending area.

B. In addition to terminology of Article II, the following terms and their definitions shall apply to this Article:

**APPROVED BUILDING SQUARE FOOTAGE:** The amount of building square footage that has previously been approved on a tract as a Final Land Development Plan and recorded at the Chester County Office of the Recorder of Deeds, including the square footage that may have been built and the square footage that has not yet been built.

**APPROVED SITE INFRASTRUCTURE:** The infrastructure consisting of improvements that have been approved as part of the Final Land Development Plan, such as traffic controls, public roads, parking areas, stormwater management facilities, water supply, sanitary sewers, lighting, and landscaping.

**TRANSFERABLE DEVELOPMENT RIGHTS (TDR) DEED:** A legal document duly recorded in the Chester County Office of the Recorder of Deeds that severs transferable development rights (TDRs) from the fee interest in the land for lot(s) or portions of lots located in designated sending areas per this Chapter, making TDRs available for transfer of ownership or otherwise for use in receiving areas per this Chapter.

**IMPROVED BUILDING SQUARE FOOTAGE:** The amount of building square footage that has been approved as a Final Land Development Plan and recorded at the Chester County Office of the Recorder of Deeds, and built or partially built, along with the approved site infrastructure and improved site infrastructure, such as traffic improvements, public roads, parking areas, stormwater management facilities, water supply, sanitary sewers, lighting, and landscaping.

**IMPROVED SITE INFRASTRUCTURE:** The infrastructure consisting of improvements that have been built or partially built, such as traffic controls, public roads, parking areas, stormwater management facilities, water supply, sanitary sewers, lighting, and landscaping, as shown on the Final Land Development Plan.

#### **SECTION 240-2202. TDR SENDING AREAS**

Owners of any lands that meet the following requirements may sever and hold, retire, sell, or convey their TDRs:

- A. Sending area qualifications.
  1. Sending area lot(s) from which TDRs are to be severed shall be located within the Sending Area on the TDR Sending & Receiving Areas Map. Said map may be amended from time to time by the Board of Supervisors and is incorporated herein by reference as if set forth herein in its entirety.
  2. Sending area lot(s) shall be restricted from future development per this Section.

B. Calculation of TDRs.

1. The total number of TDRs available for severance from an eligible sending area lot shall be determined by multiplying the net TDR area that is calculated in Subsection B.2 by the applicable multiplier as set forth below.

| Multipliers for calculation of TDRs |  |
|-------------------------------------|--|
| Sending Area Zoning District        | TDR Calculation Multiplier   |
| RA                                  | 0.35   |
| RR                                  | 0.57   |
| C                                   | For every 750 sf of approved and improved building square footage, with approved and improved site infrastructure, one (1) TDR shall be accrued. |
| C                                   | For every 1,500 sf of approved building square footage and site infrastructure, one (1) TDR shall be accrued.                                    |

2. The net TDR area shall be established as the lot area minus Features and Resources Present category, multiplied by the related Net Out Multiplier as set forth below:

| Calculation of Net TDR Area  |  |                    |                               |
|--|--|--------------------|-------------------------------|
| Features and Resources Present category  | Area of Features and Resources Present (acres) | Net out Multiplier | Area to be netted out (acres) |
| Existing street, utility, municipal, or stormwater rights-of-way or easements, other than those set forth for use by an individual lot                                       |  | X 1.00             | =                             |
| Common open space or any other lands restricted from further development by easement, covenant, or deed restriction  |  | X 1.00             | =                             |
| Waterbodies and waterways to the high water mark (may be based on interpretation of aerial photography rather than survey, subject to the approval of the Township Engineer) |  | X 1.00             | =                             |
| Any area within the Flood Hazard District and any area with wetlands   |  | X 0.50             | =                             |
| Soils in Very Steep Slopes   |  | X 0.50             | =                             |
| Hydric Soils   |  | X 0.25             | =                             |
| <b>Total Area to be netted out = Sum of the above</b>  |  |                    |                               |

3. Any area of a lot falling into more than one (1) Features and Resources Present category shall only be netted out once at the most restrictive applicable Net Out Multiplier.

4. Where calculation of available TDRs results in fractional numbers, a fraction of 0.5 or higher shall be rounded up to the next whole number and a fraction of less than 0.5 shall be rounded down to the next lower whole number.
- C. Board of Supervisors Endorsement of TDRs to be severed. Prior to recording a Transferable Development Rights Deed per § 240-2202.D, a landowner in a sending area proposing to sever available TDRs shall request and receive a written and signed endorsement from the Board of Supervisors as to the development rights to be severed from sending area land. Such endorsement shall not be unreasonably withheld after receipt by the Township of all information necessary for accurate determination of the validity of the proposed severance. Such landowner shall make written application on a form provided by the Township and shall additionally provide all of the following:
1. A metes and bounds description and a plot plan or survey of sending area lot(s) from which the TDRs may be severed, showing total acreage of the sending area lot(s); areas of the sending area lot(s) subject to easements in favor of governmental agencies, utilities, and nonprofit corporations; and any area of the sending area lot(s) restricted against development by covenant, easement, or deed restriction.
  2. Documentation of calculation of available TDRs per § 240-2202.B.
  3. Where a landowner requests endorsement of severance of less than all of the TDRs that may be attributable to sending area lot(s), the portion of sending area lot(s) from which severance of TDRs is intended shall be clearly identified on a plan of the entirety of the sending area lot(s), drawn to scale, the accuracy of which shall be satisfactory to the Township. Such plan shall also include a notation of (a) the number of TDRs attributable to the entirety of the sending area lot(s), (b) the number of TDRs attributable to the identified portion of the sending area lot(s) from which TDRs are to be severed, and (c) the number of TDRs which remain available to the remaining portion of the sending area lot(s). Further, identified portion(s) of sending area lot(s) from which TDRs are to be severed shall be clearly identified in the conservation easement documentation to be recorded per this Chapter. It shall be the burden of the landowner requesting endorsement of partial severance to demonstrate to the satisfaction of the Township that the portion of the property to be subject to conservation easement as a result of TDR severance shall meet Township objectives for conservation and other purposes.
  4. A title search of the sending area lot(s) from which the TDRs will be severed sufficient to determine all owners of the sending area lot(s) and all lienholders prepared by a title insurance company licensed in the Commonwealth of Pennsylvania, together with a commitment to insure title to the TDRs or prepared and certified by an attorney licensed by the Commonwealth of Pennsylvania.
  5. A copy of the proposed Transferable Development Rights Deed and a copy of the proposed declaration of restriction of development, per this Article.
- D. Transferable Development Rights Deed and Severance of TDRs.
1. Severance of TDRs shall be effected by duly recording a Transferable Development Rights Deed in the Chester County Office of the Recorder of Deeds. Such Deed shall specify lot(s) from which TDRs have been severed and parties who own the TDRs upon

- their severance, whether retained by the owner(s) of the lands from which the rights have been severed, retired, or sold or conveyed to any other party for use or holding.
2. Simultaneously with the recording of any Transferable Development Rights Deed, or prior thereto, conservation easement(s), which shall permanently restrict development of sending area lands per § 240-2202.E, also shall be recorded in the Chester County Office of the Recorder of Deeds. Subsequent sale or conveyance of any recorded Transferable Development Rights Deed shall clearly indicate the deed record of the pertinent conservation easement(s) and shall be in form and substance satisfactory to the Township Solicitor.
  3. The Township shall have no duty to recognize any Transferable Development Rights Deed and shall not credit, enhance, or increase density or development capability of any land within designated TDR receiving areas based on any such Deed that does not contain the signed endorsement of the Township of § 240-2202.C. The Township may, in its discretion, request an update of the title search required by § 240-2202.C.4 if there has been a delay in presentation of the Deed for recordation after prior Township endorsement under § 240-2202.C.
  4. Subsequent sale or conveyance of any recorded Transferable Development Rights Deed, or portion thereof, shall clearly indicate the deed record of the original Transferable Development Rights Deed effecting the severance of the TDRs and any intervening sale, retiring, holding, or conveyance of the TDRs.
- E. Sending area conservation easement(s). Any sending area lands from which TDRs have been severed shall be permanently restricted from future development by conservation easement(s), which meet the following:
1. Conservation easement(s) shall permanently restrict lands from future development for any purpose other than principal or accessory agricultural uses, passive recreation, trails, agritourism, heritage interpretation, yard areas, open space, conservation uses and areas, and similar uses, as well as uses customarily accessory thereto. Structures associated with these uses shall be permitted per the applicable zoning district and, if applicable, in conformance with any pre-existing restrictive covenant(s), deed restrictions, or easement(s).
  2. Conservation easement(s) shall be approved by Kennett Township, in consultation with the Township Solicitor.
  3. Conservation easement(s) shall designate Kennett Township, and/or a bona fide conservation organization or governmental agency acceptable to the Township as the beneficiary/grantee.
  4. Conservation easement(s) shall apply to the lot(s) from which TDRs are severed (sending area lands) and the acreage that is restricted.
  5. All owners of any legal or beneficial interest in the lands from which TDRs are severed shall execute the conservation easement(s). All lienholders of the lands from which TDRs are severed shall execute a joinder and/or consent to the conservation easement(s).

**SECTION 240-2203. TDR RECEIVING AREAS**

TDRs may be utilized to enhance development opportunities in TDR receiving areas per this Article. Permitted uses, design standards, development approval procedures, and other applicable provisions shall meet the applicable zoning district, except as otherwise provided herein.

- A. Use of TDRs for multifamily residential development, congregate care community, personal care facility, nursing home, or retirement community option in receiving areas. Subject to conditional use approval, such uses may occur at enhanced density per the following:
  - 1. A minimum of five (5) TDRs shall be received as a qualifying condition to use this development option.
  - 2. TDRs may be used to earn increased density, building coverage, impervious coverage, or building height, as applicable.
  - 3. Public sewer service and public water supply shall be provided to support the enhanced density available under this option.
  - 4. In addition to the maximum number of dwellings or units that could be developed under the applicable zoning district, one (1) TDR shall be received for each three (3) additional multifamily dwellings or units, or portion thereof, where age restricted, or one (1) TDR shall be received for each two (2) additional multifamily dwellings or units, or portion thereof, where not age restricted, up to a maximum of two (2) times the total number of dwellings or units otherwise permitted in the applicable zoning district. In each case an additional dwelling or unit will be permitted when renewable energy is used. Such TDRs may be applied to the five (5) TDR qualifying condition of § 240-2203.A.1.
  - 5. In order to accommodate increased density, otherwise applicable area and bulk standards in the applicable zoning district may be modified by a maximum of fifty percent (50%) (up or down, as applicable).
  - 6. TDR receipt requirements in Subsection B shall be in addition to TDRs used for density increases in this Subsection but may be applied to the five (5) TDR qualifying condition of § 240-2203.A.1.
  - 7. Where applicable, reduction in minimum required open space shall be permitted where one (1) TDR is received for each one percentage (1%) point reduction below the applicable open space percentage requirement. The maximum reduction shall be ten percentage (10%) points. None of the five (5) TDRs meeting the qualifying condition § 240-2203.A.1. may also be applied to reduction in open space.
  - 8. All other design standards otherwise applicable in the subject zoning district shall apply.
  
- B. Use of TDRs to permit increased building coverage, lot coverage, and building height that effectively serve to create increased density for permitted applicable zoning district uses in receiving areas.
  - 1. Each TDR received may be used for incremental increases in permitted building coverage, lot coverage, and building height.
  - 2. One received (1) TDR shall be permitted for up to any one (1) of the following. In each case, TDRs received are exclusive to the express purpose (e.g. TDRs received for building

coverage may not also be used for increased height, or and TDRs received for an initial height increase may not also be used for additional height increases).

- a. Up to one-thousand (1,000) square feet of additional building coverage above the applicable zoning district permitted building coverage, and up to three-thousand (3,000) square feet of additional building coverage above the applicable zoning district permitted building coverage when renewable energy is used;
  - b. Up to two-thousand (2,000) square feet of additional lot coverage above the applicable zoning district permitted lot coverage, and up to five-thousand (5,000) square feet of additional lot coverage above the applicable zoning district permitted lot coverage when renewable energy is used;
  - c. Up to one-thousand (1,000) square feet of any portion of the building footprint that exceeds the applicable zoning district permitted height limit up to a height of not more than fifty (50) feet, and up to three-thousand (3,000) square feet of any portion of the building footprint that exceeds the applicable zoning district permitted height limit up to a height of not more than fifty (50) feet when renewable energy is used. However, in either case, any portion of the building footprint that exceeds a height of fifty (50) feet up to heights permitted in the table below, shall meet the following:
    - 1) Applicable building setbacks adjacent to a residential district, or to a residential use other than multifamily, shall increase two (2) feet for every one (1) foot in height above fifty (50) feet;
    - 2) Such increased setbacks shall be applied only to the portion(s) of the building(s) exceeding fifty (50) feet in height;
    - 3) At the discretion of the Township, a visual assessment may be required of the applicant to assess impacts to views from off-site, as well as potential sun-shadow impacts onto neighboring properties and streets. Architectural treatment or introduced landscaping may be required to mitigate impacts, as a condition of approval.
  - d. Additional square footage in increments less than square footage stipulated in this Subsection, as applicable, shall require one (1) received TDR.
  - e. Additional receipt TDRs may be used to reduce parking requirements at a rate of one (1) additional received TDR for one (1) parking space.
3. The following table indicates zoning districts building coverage, lot coverage, or height permitted and the maximums permitted with receipt of TDRs. Any building coverage, lot coverage, or height increases above that permitted in the applicable zoning district shall be justified through receipt of an appropriate number of TDRs.

| <b>Maximum Lot Coverage, Building Coverage, and Height with Receipt of TDRs</b> |                              |                         |                     |                              |                         |                     |
|---|------------------------------|-------------------------|---------------------|------------------------------|-------------------------|---------------------|
| <b>Zoning District/Use</b>  | <b>Zoning District</b>       |                         |                     | <b>Maximums with TDRs</b>    |                         |                     |
|   | <b>Building Coverage (%)</b> | <b>Lot Coverage (%)</b> | <b>Height (ft.)</b> | <b>Building Coverage (%)</b> | <b>Lot Coverage (%)</b> | <b>Height (ft.)</b> |
| C all uses  | 50                           | 65                      | 45                  | 55                           | 70                      | 75                  |
| LI all uses   | 50                           | 70                      | 35                  | 55                           | 75                      | 60                  |

- C. Final Plan approval for any land development or, where applicable, any permit(s) shall be conditioned upon demonstration of receipt of sufficient TDRs recorded in a Transferable Development Rights Deed pursuant to this Chapter.

**SECTION 240-2204. PLAN SUBMITTAL PROCESS FOR TDR RECEIVING DEVELOPMENT**

- A. All applicants using receipt TDRs shall submit applicable subdivision/land development plans and/or zoning, building, or other permit applications as required by the Township for the proposed use for which TDR receipt is being sought. Any and all plans and proposals for the use of TDR receipt shall, in addition to meeting all other applicable provisions, include submission of the following:
  - 1. Density and TDRs. There shall be note(s) on plan or permit submissions indicating:
    - a. Total density in number of dwellings or units, and total square footage of building coverage and lot coverage, permitted without receipt of TDRs
    - b. Total density in number of dwellings or units, and total square footage of building coverage and lot coverage, proposed with receipt of TDRs
    - c. Incremental difference in each applicable case between the values in Subsections 1.a and 1.b
    - d. Where applicable, total square footage of any portion of a proposed building footprint where the building(s) exceed the applicable permitted zoning height
    - e. Number and types of principal and accessory uses, and
    - f. Total number of TDRs required to be received for the uses proposed
  - 2. Transferable Development Rights Deed or an agreement of sale for TDRs proposed to be purchased from sending areas. The applicant shall prove proof of ownership or equitable ownership of the appropriate number of TDRs to justify the proposed density, building coverage, lot coverage, or building height, as applicable.
  - 3. A title search sufficient to determine the validity of the Transferable Development Rights Deed or that the lot(s) from which TDRs will be transferred are eligible to sever the TDRs proposed and to determine all owners of the sending area lot(s) and all lienholders per § 240-2202.C.4 and if any other owners or lienholders may have an interest in the TDRs, as prepared by a title insurance company licensed in the Commonwealth of Pennsylvania, together with a commitment to insure title to the TDRs or prepared and certified by an attorney licensed by the Commonwealth of Pennsylvania.

- B. In order to receive final plan approval, the applicant shall demonstrate all necessary permits have been obtained and ownership of sufficient TDRs and provide documentation that appropriate conservation easement(s) have been or are simultaneously being recorded for all sending area lands from which TDRs have been or are simultaneously being severed and recorded in a Transferable Development Rights Deed and being used by the applicant. Any such conservation easements shall meet all requirements of this Chapter.

**SECTION 240-2205. EXTINGUISHING TDRS**

As a condition of final plan approval for any plan using receipt TDRs, the Transferable Development Rights Deed for the TDRs that have been used will be extinguished where all TDRs have been utilized or, where less than the entirety of available TDRs have been utilized, the Transferable Development Rights Deed shall be amended and re-recorded to specify the number of TDRs which have been extinguished and the number of TDRs which remain available for future use.

**SECTION 240-2206. PUBLIC ACQUISITION OF TDRS**

The Township may purchase TDRs or accept ownership of TDRs through conveyance by gift. All such TDRs may be held, resold, conveyed, or retired by the Township. Any such purchase or gift shall be accompanied by conservation easement(s) per § 240-2202.E.

**SECTION 240-2207. CONVEYANCE OF TDRS TO CONSERVATION ORGANIZATIONS**

TDRs may be conveyed to an organization that possesses a tax exempt status under Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. Section 501(c)(3)] and that has as its primary purpose the conservation of land for historic, scenic, agricultural, or open space purposes, or to the Chester County Agricultural Preservation Board. If such organization acquires TDRs, the organization shall be entitled to resell such TDRs only if the proceeds from the sale of the TDRs are used to purchase TDRs from other lands in the Township.

**SECTION 240-2208. AMENDMENT AND/OR TERMINATION**

The Township reserves the right to modify, amend, and/or repeal any of the provisions of this Article . The Township expressly reserves the right to modify the manner in which the number of TDRs shall be calculated in the sending area and the manner in which TDRs may be conveyed and used in applicable TDR receiving areas. The Township further expressly reserves the right to terminate its TDR program at any time. No landowner or owner of TDRs shall have any claim against the Township for damages resulting from a change in this Chapter relating to the regulations governing the calculation, conveyance, and use of TDRs or the termination of the TDR program.