

TRANSFER OF DEVELOPMENT RIGHTS:
AN EFFECTIVE POLICY MECHANISM FOR HISTORIC
PRESERVATION

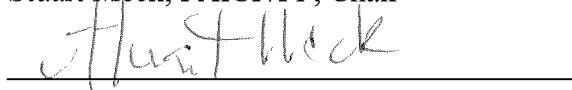
Ethan Earl Gormbley

Thesis submitted to the Faculty of Goucher College in partial
fulfillment of the requirements for the degree of
Master of Arts in Historic Preservation

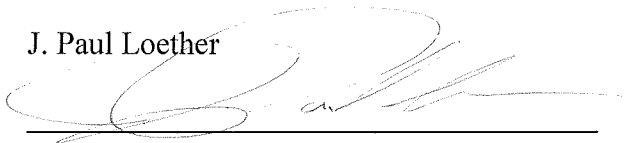
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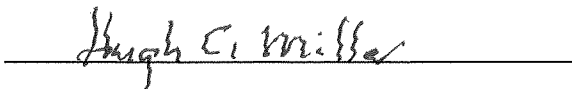
Stuart Meck, FAICP/PP, Chair



J. Paul Loether



Hugh C. Miller, FAIA



ABSTRACT

Title of Thesis: TRANSFER OF DEVELOPMENT RIGHTS: AN EFFECTIVE
POLICY MECHANISM FOR HISTORIC PRESERVATION

Degree Candidate: Ethan Earl Gormbley

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Thesis directed by: Stuart Meck, FAICP/PP

Welch Center for Graduate and Professional Studies

Goucher College

A transfer of development rights (TDR) program is a type of incentive zoning mechanism for land management. In its most basic form, a TDR program designates "sending areas," zones in which low-density development is encouraged, and "receiving areas," zones designated for denser development. This thesis research seeks to answer whether transfer of development rights programs effective tools for protecting historic resources in an urban context. The research is based on an extensive literature and the examination of five urban TDR programs located in: Washington, DC; San Francisco, CA; Atlanta, GA; New Orleans, LA; and New York, NY.

This thesis research finds that a TDR program can be an effective tool for protecting historic resources in an urban context provided certain locational conditions and program features are present. Factors concerning how a particular TDR program is run, such as appropriate market incentives, the existence of a TDR bank, a consistent

administration process, clear zoning regulations with little to no alternatives to TDR for bonus development, are key factors found in successful TDR programs. The foremost factor in a program's success is whether the targeted urban area has a competitive real estate market with a high demand for additional development. If this condition is not present, a TDR program is sure to fail regardless whether the program is focused on preserving historic properties, providing low-income housing, targeting specific areas for growth, or any other such intention.

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CHAPTER I: INTRODUCTION

Are transfer of development rights programs effective tools for protecting historic resources in an urban context? Transfer of development rights (TDRs) can be a powerful market tool for directing growth and conserving environmental and cultural resources. While many TDR programs operating in the United States are designed to protect rural land, a few programs deal with the conservation of historic resources. In brief, TDR is an incentive zoning mechanism for land management that seeks to maximize a property's development potential and redirect development to targeted areas by allowing unused development rights to be transferred to another property. TDR programs can be designed to direct development toward specific areas in need of development; redirect development away from natural, cultural, or historic resources; or provide incentives for the construction of low income housing or public use facilities.

This thesis research will explore the following questions concerning transfer of development rights and historic preservation oriented programs: Are TDR programs effective tools for protecting historic resources in an urban context? Would a revised TDR program within the District of Columbia be an effective tool for the protection of historic resources? What would such a revised TDR program look like? Would such a program effectively protect the important historic character of the capital while not ignoring the needs of current and future residents?

The following chapters establish the background for this discussion on transfer of development rights and includes a literature review and evaluator framework for historic preservation oriented TDR programs. A concluding chapter discusses the findings of this thesis research as well as suggests further areas for TDR program study. A definition of TDR, a brief history of historic preservation focused TDR programs, and the legal basis for TDR programs comprise the TDR background chapter. The literature review and evaluatory framework chapter includes case studies of five historic preservation oriented TDR programs that operate in an urban context. These programs are in New York City, NY; San Francisco, CA; Washington, DC; New Orleans, LA; and Atlanta, GA. A questionnaire, found in Appendix VII, was sent to administrators of these programs, but no response was obtained. The lack of response was expected, though to do a full evaluation of the programs, another attempt at this is necessary. Based on the literature review and the existing case studies, I will determine if TDR programs are effective urban policy mechanism for historic preservation.

CHAPTER II TDR PROGRAM BACKGROUND

Introduction

This chapter will discuss what transfer of development rights (TDRs) are and how they are used to protect historic landmarks. The chapter begins by defining TDR and the programs that use them. What follows is a history of TDR programs and ordinances and a discussion on the legal basis for TDR programs. The chapter concludes with a discussion on how District of Columbia could benefit from a new, historic preservation focused TDR program.

Transfer of Development Rights Programs: What They Are and How They Work

A transfer of development rights (TDR) program is a type of incentive zoning mechanism for land management. Incentive zoning can be particularly effective, because it "...recognizes that the value of a downtown parcel is largely a function of public (zoning) regulation."¹ In its most basic form, a TDR program designates "sending areas," zones in which low-density development is encouraged, and "receiving areas," zones designated for denser development. TDR programs have been particularly successful in rural areas where historic farmland is protected.² However, there are programs that operate in an urban context, such as New York City's program, which is considered one of the oldest in the United States.³ (The Supreme Court case *Penn Central Transportation*

Co. v. City of New York, a landmark court case concerning regulatory takings, is discussed in greater depth in the legal discussions of this chapter.)

A common example of a development right used in a TDR program is building height. In a city that does not have a uniform height restriction, the argument can be made that areas with lower height restrictions limit the economic potential of properties within these low height zones compared to the rest of the city. With a TDR program, this loss is mitigated by enabling a property owner within the “sending” zones to separate their unused development rights and shift them to properties within “receiving zones.”

Programs use a few different methods by which to transfer rights. One such method is the direct transfer of development rights from one property to another. Under this type of program, both the sender of the rights and the receiver are needed before the transfer can occur. The economic value of potential revenue to the property owner in a sending zone is transferred as a dollar amount to the receiving zone and then converted into allowable square feet.⁴ This gives developers an extra incentive to shift denser development from a sending zone to a receiving zone. Another method is to set up a TDR bank, where development rights are stored and resold at a later time to a developer in a receiving zone. In this instance, if a property owner wishes to sell unused development rights in a sending zone, they could sell them to the TDR bank without having a buyer (a property owner in the receiving zone) lined up.

A similar type of zoning incentive involving development rights is purchase of development rights (PDR). Unlike in a TDR, where the development rights are eventually transferred to another property owner (either directly through property owners or through a TDR bank), the development rights a PDR program are purchased by a government or

land trust and are retired.⁵ This type of program can be effective, but the government absorbs the cost of purchasing the development rights. A TDR program has the advantage of having the costs of purchasing the development rights—and thereby the costs of protecting the landmark or agricultural land—absorbed by another property owner.

History of Transfer of Development Rights Programs and Ordinances

Transfer of Development Rights is a fairly recent mechanism for land management. As of 2011, there are 239 TDR programs throughout the United States.⁶ New York City's Zoning Resolution of 1916, considered to be one of the first comprehensive zoning act in the United States, allowed for property owners to sell unused air rights to other owners of adjacent lots on the same block.^{7 8} This particular form of TDR is known as a zoning lot merger.⁹ Essentially, height restrictions were virtually eliminated for 25 percent of a building lot. For the purposes of the resolution, a building lot included lots combined by ownership, lease, or sale of air space rights.¹⁰ The Empire State Building, built in 1931, utilized this provision.

New York City's 1961 Zoning Resolution introduced floor to area ratio (FAR), which places restrictions on the total floor area per lot. Through FAR, developers and property owners are able to calculate TDR based on square feet of development. With the addition of FAR, development rights can be monetized and a dollar amount per development right can be determined. In 1968, New York City amended the 1961 Zoning Resolution to include Section 74-79. This section added a landmark transfers to the TDR program. Under this section, a CPC Special Permit enables historic landmark property owners to sell development rights to contiguous properties, properties that are across the

street from one another, or properties that share an intersection.¹¹ The landmark Supreme Court Case *Penn Central Transportation Co. v. City of New York* (which is discussed in greater depth below) arose out of conflict concerning this landmark provision of the 1961 Zoning Resolution.

While New York's program is set in an urban environment, other jurisdictions implemented TDR programs of their own, albeit for the purpose of protecting and preserving rural agricultural land. In Montgomery County, Maryland, new programs continued to be implemented throughout the 1990s and 2000s.

Legal Basis for Transfer of Development Rights Programs and Ordinances

A discussion of the background of TDR cannot be complete without looking at a few of the state and federal court cases that have impacted TDR program implementation. The legal issues concerning TDR programs addressed in these cases include spot zoning, takings, just compensation in the event of a taking, historic preservation as a valid state interest, and down-zoning.

While TDR in some form has existed in the United States since at least New York City's Zoning Resolution of 1916, it would nearly half a century before a court case dealt directly with transfer of development rights. The 1975 New York Supreme Court case *Fur-Lex Realty v. Lindsay*¹² was perhaps the first. This case specifically addressed the sale and lease of development rights. The Court found that transfer of rights does not necessarily constitute spot zoning and that air rights can be leased. "...[S]ince it was thus within the permissible scope of the city's comprehensive zoning plan, the transfer of air rights or floor area here in question may not, as plaintiff urges, be considered 'spot

zoning.”¹³ The Court further ruled that classification of property for zoning regulations does not mean that a regulation is not uniform in application. In the following year, *Dupont Circle Citizens Ass’n v. District of Columbia Zoning Comm’n*¹⁴ was brought before the District of Columbia Court of Appeals. This case also concerned a TDR program, though in this case there was a specific emphasis on historic preservation—specifically the use of TDR to preserve open space and protect a historic property. The zoning regulation in question made only parcels of land one acre and larger eligible for participation in the TDR program. The Court found that this minimum requirement did not “discriminate based on wealth, in violation of equal protection and due process...”¹⁵

The Court of Appeals of the State of New York heard a case relating to TDR and zoning amendments in 1976. In *Fred F. French Inv. Co. v. New York City*,¹⁶ the Court found that TDR must be considered when examining whether the economic value of a property has been destroyed by a regulation or ordinance, but that if the TDR aren’t assigned to a specific parcel of land, their value is ambiguous. “By compelling the owner to enter an unpredictable real estate market to find a suitable receiving lot for the rights, or a purchaser who would then share the same interest in using additional development rights, the amendment renders uncertain and thus severely impairs the value of the development rights before they were severed...”¹⁷

A landmark Supreme Court case, *Penn Central Transportation Co. v. City of New York*, was heard in 1978.¹⁸ This case concerned whether a city can place restrictions on development of historic landmarks and districts “without effecting a ‘taking’ requiring the payment of ‘just compensation.’” The Supreme Court found that a taking had not occurred because the property owners were not denied all reasonable value due to the

restrictions and because the existing use—as a train terminal—was allowed to continue. The Court makes note of the fact that even though the regulation in question was not prohibiting a nuisance and was prohibiting a non-injurious use, it was still a valid regulation. The Court gave three criteria for determining whether or not a taking has occurred: 1) The economic impact of the regulation on the property owner; (2) the "character of the governmental action;" and (3) whether or not the land-use restriction is related to the public interest.¹⁹

Aptos Seascape Corp. v. County of Santa Cruz,²⁰ a 1982 Court of Appeals of California case, addressed rezoning land and whether government action resulting in dividing contiguous property into separately zoned parcels with development being restricted in one of those parcels constitutes as an unconstitutional taking. The appeals court found that by allowing transfer of development rights, or other means of density compensation, a taking may be avoided.²¹ Heard the following year in the Florida Court of Appeals, *City of Hollywood v. Hollywood, Inc.* is similar to *Aptos Seascape Corp. v. the County of Santa Cruz*, and revolved around rezoning parcels of land and using TDR means of compensation. The City of Hollywood down-zoned a strip of undeveloped land that was initially zoned as a single subdivision by cutting the allowable multi-family units in the western section and classifying the majority of the eastern section as a single family section. Instead of building single family homes in the eastern portion of the property, the property owner, Hollywood, Inc., was given the option to transfer the development rights to the western portion of the land and increase their amount of multi-family units. In addition to ruling on the validity of density caps and down-zoning, one of the main assertions of the developer defendant was that TDR had "no basis in fact or

law.”²² The Court found that TDR provisions are ultimately no different than other forms of land management. “...[I]n this age of site plans impact studies, impact fees, PUDs, land use plans and required approvals, developers and government play carrot-and-stick with each other all the time. In other words, the game is the same, they have simply changed the name. Accordingly, we reverse the trial judge's holding that the [TDR] provision is unsupportable in fact or law.”²³ The United States Supreme Court denied to review this case.

In 1990, the Florida Court of Appeals heard *Glisson v. Alachua City*,²⁴ a case revolving around regulations to protect environmental and historic resources. The Court found that the regulation advanced state interests (specifically listing “preservation of historic areas” as one these interests). The Court further found that the regulations did not deny property owners all economically viable uses because it allowed for most existing uses, included a TDR component, and allowed for variances.²⁵

Neuzil v. Iowa City,²⁶ a 1990 Iowa Supreme Court case, addressed whether down-zoning of undeveloped property constituted a taking. The Iowa Court found that the downzoning was valid and not a taking, because the existing use of the property was not affected.²⁷ In 1991, a similar case was heard in the New Jersey Supreme Court. In *Gardner v. New Jersey Pinelands Comm’n*,²⁸ a regulation that limited residential development on environmentally sensitive land and required that all undeveloped acreage be limited to agricultural and related uses was challenged. The Court found that the regulation did not prevent the Plaintiff from using it for its existing purpose, and therefore the down-zoning was valid. Further, the Court discussed whether or not the requirement of, in this instance, agricultural land to be used for agricultural land in

perpetuity is enforceable. "In effect, it operates as a mandate that farmland property be used for farmland in perpetuity, even if the underlying zoning has changed. The Court expresses its concern about the enforceability of the restriction in the event of a zoning change."²⁹ These rulings on down-zoning are very similar to the logic used by the U.S. Supreme Court in *Penn Central v. NYC*.

The 1997 U.S. Supreme Court case *Suitum v. Tahoe Regional Planning Agency*³⁰ concerned TDR and their role in determining a taking or determining just compensation for a taking. The Court found that TDR has "no bearing upon whether there has been a 'final decision' concerning the extent to which the plaintiff's land use has been constrained." Further, the Court found that TDRs can provide partial compensation after a taking has occurred, but not full compensation. TDR can also be used to mitigate economic loss, but not "so substantially as to produce a compensable taking."³¹ Essentially, what this means is that the option to transfer development rights is not in and of itself enough to balance out a taking.

Four important observations concerning the legal basis for TDR programs are evident when these court cases are taken as a whole: 1) TDR programs have a basis in fact and law; 2) TDR programs should be included in comprehensive plans if they are to be implemented; 3) if a taking has occurred, TDR alone does not provide adequate compensation for it; and 4) any land-use restriction and corresponding TDR element should be sure to allow for some economic viability on part of the property owner. A solid legal foundation is of the utmost importance in crafting a successful TDR program. A TDR program that is not well grounded in law may be mired in legal challenges, which can be costly and could ultimately cause the program to cease operations. As can be seen

from the above discussion of cases, property restrictions have the potential for legal challenges in court.

Background on DC Area

What follows is a discussion of the District of Columbia's height restrictions and the District's existing TDR program. This section concludes with a discussion on why the current land management techniques should be revised in order to aid in the continued protection of historic resources within the District.

Washington, DC Height Restrictions

Designed by Thomas Franklin Schneider and constructed in 1894, the Cairo Building was the first steel-framed apartment building constructed in the District of Columbia. This building, located at 1615 O Street, N.W., helped spur debate in the District about height restrictions, a discussion that was occurring in cities across the nation due to the recent emergence of the skyscraper.³² This national discussion centered on quality-of-life and environmental concerns that were reflexive of new technologies that had not had the benefit of time to attest to their reliability, for better or worse. Emerging technologies from the structural, such as steel frames, reinforced concrete, and fire-proofing methods, to the operational, such as elevators, heating systems, and electric lighting, all came with a set of concerns. How would these towering buildings affect access to light? Would they amplify an already noisy urban street? How would they hold up to fire? Would contemporary fire-fighting equipment be able to handle such tall structures?^{33 34} The discussions and concerns centering on height restrictions within the District were along similar lines.³⁵

In 1894, the Commissioners of the District of Columbia passed a resolution restricting the height of buildings. This limited the height of a new building to the width of the street it fronted, not to exceed 90 feet in residential districts or 110 feet in business districts.³⁶ In 1899, the U.S. Congress passed the Height of Buildings Act, which served to affirm the 1894 regulations in the form of a Congressional Act.³⁷ In 1910, U.S. Congress amended the 1899 act. The 90-foot maximum for residential districts was reaffirmed and the business district limit was raised to 130. The amendment also made other changes to height-to-street ratios along with height limit exceptions for nonresidential structures.

These restrictions have not been meaningfully altered for nearly 100 years, although in May of 2014, President Obama signed into law a bill that amended the Height of Buildings Act of 1910.³⁸ This amendment made minor changes to the Act which mainly concerned rooftop penthouse occupancy, and did little to address the conflict between the economic benefit of raising building heights and the public, cultural benefit of maintaining a low skyline.

Former TDR program

The District of Columbia began its TDR program in 1989, the year the 1984 Downtown Plan was implemented. The District's first iteration of a TDR program was focused on increasing retail space downtown with TDR used an economic incentive for developers to include a higher ratio of retail space in their buildings. In 1991, the TDR program expanded in part to protect historic landmarks by allowing the unused development rights of historic properties to be transferred to other lots.³⁹ In September,

2016, the TDR program ceased operation and was replaced by a credit trading program. Washington, DC's TDR program and new credit trading program are discussed in depth in Chapter III.

Why a new program is necessary

Per the Urban Institute's 2015 Mapping America's Future, the District of Columbia's population will increase by 18 percent over the next 30 years.⁴⁰ While the federal government's workforce may shrink—particularly given the current political climate—the District of Columbia's population is not strictly limited to the federal workforce and includes a large portion of people who work as private contractors. The nearly 110,000 additional people will place an increasing strain on the District's housing stock. The District of Columbia's Office of Planning (DCOP) produced forecasts through 2040 relating to population, households, and jobs for the Metropolitan Washington Council of Governments' Round 8.1 Cooperative Forecast, published in 2012.⁴¹ DCOP projects that in order to meet the housing demand generated by an annual increase of approximately 5,296 people through 2040, between 87.84 million and 118.92 million gross square feet of residential space is needed.⁴² It is hard to argue against the thought that an increase in height limits and an increase in taller buildings would lead to more housing per lot. While an increase in density equates to higher cost per square foot – the single family house remains the cheapest housing per square foot,⁴³ single family homes in the District are expensive due to the high cost of individual lots. High-rise apartments are not necessarily more cost effective for the consumer, but they do provide an opportunity for more affordable housing in urban areas where land is at a premium.⁴⁴ However, in order to

provide affordable housing, other mechanisms—for example subsidies, low-income housing quotas, and FAR exceptions—are necessary beyond merely increasing the height limits.

These additional residents will also demand jobs. The same DCOP forecast mentioned above estimates that between 199,200 and 304,300 jobs will be needed and these jobs will require an additional 69.72 million to 106.505 million gross square feet of commercial space. From 2010 to 2040, a total of between 157.560 million and 317.105 million additional gross square feet of residential and commercial space will be needed to accommodate the anticipated increase in population.

One of the strongest arguments for an increase in height limits is the economic benefit it would bring. This benefit would redound to private developers as well as the District government. In brief, higher density allows for developers to reap greater profits per lot.⁴⁵ This means a greater potential for an increased tax base with greater density in a city where nonprofit and federal organizations make up a large portion of city industry by providing more space for residential and commercial enterprises that must pay taxes to the city.

In the 2012 fiscal year, \$83 billion of real property value in the District was tax exempt. 36 percent of the District's real property tax base was exempt from paying property taxes.⁴⁶ This includes property owned by religious organizations, charities, the federal and district governments, and foreign governments. The District government estimated that this resulted in \$1.47 billion in lost property tax revenue.⁴⁷ Payment In Lieu Of Taxes (PILOT) programs can help offset these tax exemptions, but they do not completely make up for the revenue that is lost, and according to the District of Columbia

Tax Revision Commission's 2013 report, nonprofits in the District do not make such payments. Simply raising the height limits will not be enough to ensure that the District will increase its tax base. As discussed above, the District has a large portion of real estate owned by tax exempt organizations. Without some sort of quota system in the receiving zones with higher building heights either limiting or completely restricting tax exempt organizations from occupying the new buildings, there is no guarantee that tax paying entities will occupy these buildings and help increase the city's property tax income.

Conclusion

Since New York City's Zoning Resolution of 1916, TDR programs have become more prevalent throughout the U.S. Through a series of court decisions, it has been determined that TDR programs do have a basis in fact and law, however there are limitations to how TDR programs can be implemented. As discussed in this chapter, TDR programs must be included in comprehensive plans if they are to be implemented and TDR alone does not provide adequate compensation for a taking if one has in fact occurred. Further, any land-use restriction and corresponding TDR element should be sure to allow for some economic viability on part of the property owner. This will help increase the likelihood of a TDR program withstanding a court challenge. The ensuing chapters will show that a program's success is depended on more than a solid legal foundation, though without this foundation the program is certainly doomed to fail.

CHAPTER III LITERATURE REVIEW AND EVALUATORY FRAMEWORK

Introduction

This chapter discusses TDR program success and factors prevalent in programs that have been deemed successes. This is based on an extensive literature review and an examination of five U.S. TDR programs in urban areas. The chapter begins with a discussion on the definition of success for TDR programs. This is followed by the identification of factors that may indicate success. These factors are demand for development; demand for bonus development; market incentives; TDR use guarantee; TDR bank; consistent administration process; clear zoning regulations and little to no alternatives to TDR for bonus development; social equity; and baseline zoning that encourages developers to seek ways to acquire additional development; and receiving areas that are tailored to reflect the needs of the community. The chapter concludes with an examination of TDR programs in Washington, DC, San Francisco, CA, Atlanta, GA, New Orleans, LA, and New York, NY, in the context of these nine factors.

Defining a Successful Transfer of Development Rights Program

A TDR program is generally considered successful based on how many acres of land are preserved.⁴⁸ One problem with this assessment is that programs that operate in an urban context will most likely have fewer acres preserved than a rural program mainly due to the size of lots in a city versus in a rural area. For instance, in Montgomery County,

Maryland, a 25-acre parcel is the standard unit for the TDR program.⁴⁹ A 25-acre parcel in an urban environment—particularly in the higher density areas that are more susceptible to seeing building raised to erect larger ones, virtually do not exist. The factors outlined below are based on the notion that while total acres saved is a strong indicator of success, a TDR program can be successful without saving a large number of acres. For example, New York City’s TDR program based in its South Street Seaport District was geographically constrained and did not save a large number of total acreage, but it can be considered successful because it achieved its goal of preserving the Seaport District.⁵⁰ In the context of an urban TDR program, the number of landmarks preserved is a better indicator of success given the total acreage per transaction is likely to be quite small when compared to that of rural programs in addition to how many transactions have taken place due to the program.

Indicators of Transfer of Development Rights Program Success

Through an extensive review of the available literature on TDR programs in the United States, nine factors are identified as being key to program success. These success factors are irrespective of whether the program is in an urban or suburban location. Pruetz and Standridge identify ten factors evident in successful TDR programs. Other authors have suggested additional factors (in some instances as many as 22), but as Pruetz and Standridge point out, it can be hard to determine which factors are actual indicators of success and which factors are merely coincidental.⁵¹ Their ten factors are: demand for bonus development; receiving areas that are tailored to reflect the needs of the community; clear, strict sending zone development regulations; limited or no alternatives

to TDR for additional development; appropriate market incentives (e.g. transfer ratios); guaranteeing that TDR can be used for additional development; strong public support for preservation; simplicity of the program; program promotion and outreach; and the existence of a TDR bank.⁵² Based on the discussion from other authors, these factors have been consolidated, added to, and re-organized to form nine key factors that a successful program must have: 1) Demand for development; 2) demand for bonus development; 3) market incentives; 4) TDR use guarantee (effectively guaranteeing that the transferred development rights can be used by whomever purchases them); 5) TDR bank; 6) consistent administration process; 7) clear zoning regulations and little to no alternatives to TDR for bonus development; 8) social equity (access to the TDR program and distribution of the costs and benefits of the program); and 9) receiving areas that are tailored to reflect the needs of the community.

Real Estate Market

The intent of a historic preservation focused TDR program is to use real estate market forces in order to preserve historic landmarks that would otherwise be destroyed due to economic pressure to fully develop the land upon which these landmarks sit. If there is low demand for development in the city in general, the development pressures that could threaten historic properties will be nearly nonexistent, and therefore a TDR program would serve no real purpose. This is perhaps the most important factor in whether or not a program will be successful or even necessary, the demand for development. A TDR program is a tool that is used as a remedy for pressure to develop land to its fullest extent. If this pressure does not exist, not only will a TDR program be

ineffectual, it will be superfluous. More specifically, this demand for development should include the areas that will function as receiving zones for TDR credits. If there is no demand for development in these receiving areas, there will not be any desire to transfer additional development rights to the area and the TDR program will not be used.

Demand for Bonus Development

In addition to the general demand for development in a receiving area, a successful program must also have the demand for additional development beyond what is allowed by right. Let us assume that there is a demand for development in a TDR program's receiving area. This alone does not mean there will be a demand for bonus development. If there is no demand for an increase in FAR, air rights, or other transferable development rights, the program will not be used. Without proper zoning, this desire for development may not necessarily lead to developers participating in any program to acquire additional rights. Baseline zoning, the development regulations before any bonus development is taken into account, is vitally important to a TDR program's success. Baseline zoning will largely determine whether or not there is a demand for bonus development.

In effect, the baseline zoning in the receiving areas must be low enough that developers want to acquire zoning exceptions.⁵³ This can be achieved through downzoning, however while downzoning has repeatedly been upheld through the courts, it remains unpopular with developers and property owners.⁵⁴ Another way to do this would be to target areas that already have low enough baseline zoning. In any case,

receiving areas must have the demand for additional development beyond that of what is allowed by right.

Market Incentives

In order to foster an active market for TDRs, the TDRs should be priced so that their purchase and addition to receiving area development sites results in a profit for the developers that are acquiring them. They should also be priced so that landmark property owners feel they are getting a good return on the sale of their development rights.⁵⁵ Market incentives are not just limited to sale price of TDR. Transfer ratios should be considered in any TDR program. It is certainly a possibility that the value of an additional floor in a receiving area will not equal the reduction in value as a result of not maximizing development at a sending area landmark.⁵⁶ One way to ensure that the dollar value increase per TDR in receiving areas equals or exceeds the dollar value lost by not maximizing development at a sending area landmark is by using transfer ratios. As an example, a fictional TDR program that seeks to transfer building height may employ a transfer ratio to balance out the dollar value of transfers. For every unused height unit at a sending area landmark, two height units could be added to a receiving area lot. Many existing programs do not use a transfer ratio beyond a one for one transfer.⁵⁷

Guaranteeing TDR Use

This factor relates very closely to how confident developers and property owners are in TDR programs. In the U.S. Supreme Court case *Suitum v. Tahoe Regional Planning Agency*,⁵⁸ Plaintiff Suitum's main complaint was that the TDRs she received through the TDR program had no clear, real value and therefore she felt that the loss of

the ability to develop her land constituted a taking and that she was not properly compensated for it.⁵⁹ While the Court did not rule on whether the TDR constituted just compensation, it is clear that the property owner's lack of confidence in the value and usefulness of the TDRs she received was a major barrier to willful participation in the program.

Potential participants in TDR programs should have confidence that they will actually receive bonus development in receiving sites after they have acquired TDR.⁶⁰ If this confidence exists in the TDR programs ability to provide bonus density, receiving site developers will be more likely to purchase them instead of the generally costlier measure of seeking zoning exceptions.⁶¹

Existence of a TDR bank

While a few TDR programs that have been labeled successes (Montgomery County, Maryland's program springs to mind) do not have a TDR bank component, a TDR bank is quite useful as a means to help stabilize the transfer market and build public confidence in the value of development rights. In programs without a TDR bank or other form of middleman, "mutually beneficial transactions can take place only if a seller and a buyer are simultaneously ready to sell and develop."⁶² The gap between a seller's desire to sell and a buyer's readiness to develop is known as the "critical timing gap." This gap can seriously impede an otherwise successful TDR program. A TDR bank eliminates this "timing gap" by enabling property owners to sell development rights without having a buyer available who is ready to develop. The TDR bank then can hold the TDRs until a buyer is found for them.

A TDR bank also benefits prospective buyers. Through a TDR bank, buyers can acquire larger amounts of development rights in a single transaction instead of having to find multiple sellers and acquire the necessary TDRs through multiple transactions.⁶³ While some programs have used commercial banks as a TDR bank—as in the case of New York City's South Street Seaport District,⁶⁴ a government operated bank has its advantages. Seattle, Washington's TDR program utilizes a government operated TDR bank.⁶⁵ Seattle created the TDR bank in order to eliminate the “timing gap,” which had been identified as a major obstacle to program success.⁶⁶ A government operated bank can effectively notify itself of TDR transactions, which streamlines the process. This helps reduce transaction costs, the time it takes to process transfers, and improves overall efficiency of the program.⁶⁷ Further, any proceeds the bank gains from selling TDRs would help fund TDR program operating costs. The existence of a TDR bank helps meet some of the other factors discussed above, namely program simplicity, program outreach, and appropriate market incentives.

Consistent Administration Process

Strong program leadership and which agency administers the TDR program is of vital importance in how the program will be seen by the public and how effective it will be in coordinating and cooperating with other municipal departments.⁶⁸ A consistent administration process for zoning and building permits is also vital to a TDR program's success, just as it is to the building permit process in general and all government programs at large. Likewise, a consistent administration process for the TDR program is equally vital to its success. Participants in the program—and in the zoning and building

permit process as a whole—should know what to expect so that they will have confidence in the program’s effectiveness as ease-of-use.

As Professor John Costonis pointed out when discussing New York City's TDR program in the 1970s, a program that has too complicated a process will deter property owners from using it.⁶⁹ Instead, it is easier and more cost-effective to use legal means to demolish a landmark and build something larger and more profitable. The New York City program as it existed in its nascent years is particularly illustrative of this. If a historic landmark property owner wanted to transfer unused development rights to an adjacent lot in New York in 1971, they would have had to first submit the development plans for the receiving lot’s potential development. After approval, the owner would have to apply to the Planning Commission for approval of the development rights transfer. Once this is preliminary approval is obtained, the owner would then have to submit the proposal to the Board of Estimates, which had final approval of any transfers. Three separate agencies were involved in this process and all three had to approve of each transfer.⁷⁰

In order to ensure that a TDR program will be used, streamlining the process is key. Eliminating as much uncertainty as possible and shortening wait times for approvals make TDR programs more attractive to developers, for whom the long wait times to build can cost large amounts of money and sometimes ruin a project before ground is broken. A program must be simple enough so developers and property owners can understand how it works and participate in it without much difficulty. In the same respect, the program must be simple enough that the government agency tasked with implementing the program can administer it with little difficulty.⁷¹

Clear zoning regulations with limited or no alternative to TDR

For a TDR program to work, there should be few or no alternatives to bonus development within the receiving areas. If, for example, developers can petition successfully for zoning variances, why would they participate in a TDR program? Zoning exceptions should be consistent and difficult to obtain. If a developer wants to exceed what is allowed as a matter of right, that developer should have to obtain bonus development credits rather than a zoning exception. One particular form of alternative is additional development in exchange for “project features” such as park space, recreational facilities, or other amenities built on the site of the development.⁷² If the options for bonus development are to purchase TDRs or build on-site features that in many cases increase the value of the development project, the TDR program will not be successful.

Social Equity Factors

In order for a program to be successful, or even implemented in the first place, the community in which the program will take place must consider historic preservation an important civic priority. But beyond that, community stakeholders’ expectations should be met. Essentially, what is promised to the community through the TDR program should be met. If expectations are not reasonably met—expectations of both residents and property owners in receiving and sending areas, then the TDR program may not last long.

Due to the stakeholders involved in TDR programs, social equity is a determining factor in a TDR program's success and essentially ensures that stakeholders (e.g. property owners and residents in sending and receiving zone) have equal access and use of

development rights.⁷³ For the purposes of TDR programs, social equity can be defined succinctly as "...just distribution, justly arrived at."⁷⁴ Cohen and Preuss provide six criteria for evaluating social equity in rural land use programs: "intergenerational equity," "tenure equity for current landowners," "tenure equity for new farmers," "receiving area outcome equity," "development rights assignment equity," and "process equity."⁷⁵ While Cohen and Preuss discuss these criteria in the context of rural land preservation, the same criteria, with slight modification, can be applied to urban, historic preservation oriented programs. Toward that purpose, the criteria have been narrowed down to five.⁷⁶

As far as "intergenerational equity" is concerned, the land use policy in place should preserve long-term options for land use.⁷⁷ Essentially this means that future generations should be able to determine how their property is used. Any restriction on development in perpetuity severely limits future generations' ability to determine how land should be used. "In the long run, any given jurisdiction has a finite amount of land area and cannot guarantee that the land supply for residential development will not eventually be used up."⁷⁸

"Tenure equity for current landowners" essentially relates to current property owners' opportunity for a fair economic return on their land value.⁷⁹ "Tenure equity for new farmers" can be translated as "tenure equity for new residents/property owners." This criterion concerns the ability of new residents/property owners to live or acquire property in receiving zones.⁸⁰ By restricting residential development, housing prices can rise to the point of excluding lower income households from the jurisdiction. A land use policy should try to mitigate this as much as possible if social equity is to be achieved to some extent.

The criterion "receiving area outcome equity" looks at residents in receiving areas.⁸¹ Residents in receiving areas receive benefits in exchange for allowing higher densities than normally permitted. Finally, "process equity" concerns the expectations and promises set by public authorities in the minds of stakeholders.⁸² This particular criterion is very much interconnected to the preceding criteria, and is perhaps the most important in terms of maintaining public support for a TDR program.

Receiving Areas Tailored to Reflect the Community Needs

This factor is closely related to the social equity factors discussed above. The areas chosen to receive development rights must be as carefully selected as sending areas. These receiving areas also generally have existing communities. These areas need to physically be able to handle the additional development a TDR program would bring in terms of having the necessary infrastructure to be able to deal with the increase in need for utilities and the increase in traffic as a result of additional development.⁸³ More importantly, support from the residents and stakeholders in the receiving area is needed in order for a TDR program to have a chance at success.⁸⁴

Public outreach is a key component in this factor. In an urban setting, a receiving area will receive additional density. While this can bring benefits to the community in the form of increased access to amenities such as restaurants and stores, many residents may be hesitant to accept the additional density with concerns such as traffic problems. However, with the dissemination of information through public outreach and education, these concerns can be assuaged over the long-term.⁸⁵

TDR Program Examination

Five urban TDR programs are examined in the following section: Washington, DC; San Francisco, CA; Atlanta, GA; New Orleans, LA; and New York, NY. These five programs are based in urban areas and either have historic preservation as the focus of program or include it as a component of a larger program. Two questionnaires were created to send to program administrators and developers who have participated in a transaction through the TDR program. As of the writing of this chapter, in September 2016, no questionnaires have been returned in full and the forgoing data and the case studies were based on information gathered from municipal zoning ordinances, publicly available records, and existing literature.

Each program case study begins with a description of the TDR program's function and mechanisms. Particular attention is paid to the historic preservation component of the program. What follows is a look at the city's demand for development and an outlining of alternatives to the TDR program each city offers to acquire development bonuses. Each case study concludes with a discussion of why, or why not, the program is successful in protecting historic properties.

Washington, DC

The District of Columbia had a TDR program in effect which was established in 1989 as part of the city's Downtown Plan.⁸⁶ The details for the implementation and administration of the TDR program is found in Chapter 17 of the 1958 Zoning Code. The District of Columbia Municipal Regulation (DCMR) 11-1709 identifies the sending zone as the DD Overlay District. TDRs can be transferred to lots within the Overlay District or

within other districts specified in the section. TDRs are generated through historic preservation provisions, development of bonus uses provisions, subarea provisions, or residential development provisions. Qualifying historic properties must be listed on the DC Inventory of Historic Sites, located within the DD Overlay District, and also located on a lot listed in District of Columbia Municipal Regulation 11-1707.4. Qualifying properties can transfer unused FAR to qualifying properties within the designated sending zones. Buyers of TDR credits do not need to have a development project set and can resell the TDRs to another party. Approval of applications comes from the Zoning Administrator and the Director of the Office of Planning. In addition to the TDR program, developers have other options to obtain bonus development under the 1958 Zoning Code.

All of the designated landmarks within the receiving zones have been protected through the program. In short, the TDR component for the District's TDR program has been successful enough to warrant its cessation. Because the sending properties were so restricted geographically, there are no more eligible properties to participate in the historic preservation portion of the program. If eligible properties were expanded to include historic landmarks outside of the DD Overlay District, the program could begin again to protect historic resources that may be in danger of being altered or demolished. The entire program is set to be replaced in favor of a slightly different incentive system. In 2016, the District adopted a new zoning code, the 2016 Zoning Code. This code went into effect on September 6, 2016. Under this new code, the TDR program will be replaced with a credit trading system.⁸⁷ Under this new system, found in Chapter 8 and Chapter 9 of District of Columbia Municipal Regulation Title 11, Subtitle I, tradable credits can be generated by providing residential, arts, or preferred uses in new

developments.⁸⁸ Out of the six actions that generate credits, only one is specific to historic preservation.

Despite the name change, the mechanics of the program function in a similar fashion in that the credits generated by qualifying historic properties are based on the unused development rights in the form of gross floor area. What differs is how the credits are used, which have strong implications for the future of historic properties within the Downtown Core District. Section 900.1 lists the three options for utilizing the tradeable credits:

- (a) Reduce the amount of gross floor area of the residential use required in a building located in the D-4-R, D-5-R, or the D-6-R, or reduce the amount of gross floor area of Arts use in a building located in the Downtown Arts Sub-area regulated by Subtitle I § 607;
- (b) Construct non-residential gross floor area in excess of the maximum permitted non-residential density in the D-3 through D-8 zones either on site or within an allowed trade area, equivalent to the number of the credits transferred as evidence by one (1) or more credit certificate filed with the building permit application, up to the maximum permitted FAR of the zone; or
- (c) Allow for the termination of a covenant recorded pursuant to Subtitle I, Chapter 8 for the acknowledgment of credits in order to permit redevelopment of a site that reduces or eliminates the uses that originally generated the credits.

What these credits do is to enable developers to trade property uses rather than to add additional density to developments. More pertinent to the preservation of historic properties, however, is the third option, which functions as a method for property owners to terminate land covenants. Property owners could theoretically exchange credits to obtain permission to terminate the covenant protecting historic resources through use restrictions. An owner of a landmark property with a land covenant could theoretically

obtain credits by providing space for arts, then use the credits to terminate the covenant and redevelop the site. This credit system is too new to be able to say with any confidence whether it will have any negative lasting impact on the preservation of historic properties within the District, but it does not appear to be set up with preservation as a primary concern.

San Francisco, CA

San Francisco's historic preservation focused TDR program is found in Article 1.2, Section 128 of the San Francisco Planning Code.⁸⁹ The rules for eligibility of historic properties are found in Article 11, Section 1109 of the San Francisco Planning Code.⁹⁰ The program was implemented in 1985 through Ordinance 414-85 and is geographically constrained to San Francisco's C-3 District. The C-3 District's density limit was lowered through the same ordinance.⁹¹

Each building found in the C-3 District is defined under five categories, as described in Section 1102 of Article 11.⁹² Category I and Category II consist of significant buildings, Category III and Category IV consist of contributory buildings, and Category V consists of buildings neither significant nor contributory. Properties that are eligible as sending properties—referred to as “Transfer Lots” in the Planning Code—are Category I, Category II, Category III, and Category IV in addition to Category V properties that are located in Conservation Districts within the C-3 District.⁹³ Receiving properties—referred to as “Development Lots—must be located within the C-3 District, but there are no additional geographic constraints, allowing for some flexibility in which properties are able to use TDR credits.

In this program, the development right that can be transferred is gross floor area. A sending property may transfer the unused portion of gross floor area allowed to a receiving property. For example, if an eligible historic building is on a parcel zoned for 20,000 square feet, but the building itself uses only 15,000 square feet, 5,000 square feet may be transferable to an eligible receiving property. Each TDR unit is equal to one square foot of gross floor area.

A receiving property can acquire TDRs from a single sending property or can acquire TDRs from multiple sending properties. An owner of a Transfer Lot may sell TDRs to an owner of a Development Lot, or may sell TDRs to a third party who may then sell the TDRs to another holding party or to an owner of a Development Lot. The inclusion of third parties as intermediaries between Transfer Lots and Development Lots allows for property owners to sever unused development rights without having a Development Lot partner.

The Zoning Administrator handles the application process. An owner of a property seeking to be a Transfer Lot must apply for a Statement of Eligibility which states the property's eligibility and the amount of development rights the property has available to transfer. Again, it is worth noting that the property which will receive the severed development rights does not have to be identified or approved for a Statement of Eligibility to be issued. In order for a TDR transaction to take place, the interested party or parties submit a Certificate of Transfer, which is in effect a bill of sale to the Zoning Administrator. By centralizing the TDR application process under one authority, the application process becomes easier for parties to participate in it.

As discussed in the section above, limited alternatives for the acquisition of bonus development is a key component for TDR program success. San Francisco offers virtually no alternatives to acquire bonus development within the C-3 District.⁹⁴ Because of the high demand for bonus development within the C-3 District, and because of the lack of options to acquire bonus development, participation in San Francisco's TDR program is high. 5.3 million TDR units have been generated from 112 parcels as a result of the issuance of Certificates of Transfer since the program's implementation.⁹⁵

Atlanta, GA

Section 16-28.023 of Atlanta's Zoning Code sets up the framework for the city's TDR program. This program has existed since the early 1990s, with its first use in 1991. The property owner of Atlanta landmark, the Castle, located at 87 Fifteenth Street, N.E., Atlanta, GA, was able to transfer nearly 80,000 square feet of density rights to another property it owned on an adjacent site.⁹⁶ This program has three different types of sending zones: residential sending areas, historic properties, and greenspace donated to the city.⁹⁷

Eligible historic properties are defined as "any property designated as a landmark building or site or historic building or site pursuant to the City of Atlanta Historic Preservation Ordinance."⁹⁸ Other than being designated a historic site, landmark, or building, a historic sending site do not have to be located within any otherwise specific sending zone.⁹⁹ This flexibility allows for designated historic properties throughout the city to be eligible for participation in the TDR program. The receiving property for TDRs generated from a historic property is similarly broad in classification, limited only by whether or not it can accept the development rights being sent.¹⁰⁰

Sending properties can apply to sever or directly transfer unused density development rights. These rights are floor area ratio (FAR), total open space, and usable open space. The amount of a TDR credits an eligible historic site has is determined by the unused development rights on the sending property. For example, if a historic building does not maximize its FAR under its current zoning category, the unused portion may be transferred to a receiving property. Each property applying to be a sending property must explain why it is an eligible property and must provide a map and legal description of the property, an agreement signed by stakeholders in the property which consents to prohibitions against future use and other historic preservation easements that will be placed on the property as a result of the transfer, a calculation of the amount of transferable development, and a statement declaring whether the development rights will be directly transferred to another property or severed and held for future use. If a receiving property has already been identified, a joint application submitted by the owners of the sending and receiving property. If a receiving property has not been identified, then the severed development rights remain with the sending property owners until they find a buyer. Once development rights have been severed, they may be bought and sold by any person, not just a property owner with an approved receiving site. Under the TDR program, the City of Atlanta also has the ability to buy severed rights and either retire or resell them.

Property owners seeking to acquire severed or transferable development rights can either submit an application as a receiving property for already severed development rights, or they can submit a joint application with a sending property owner. The property owner of the receiving becomes the owner of the transferred development rights. Upon

completion of the transfer, the newly acquired development rights cannot be re-transferred or severed at a later date and must remain with the property unless the property becomes an eligible sending property at a future time. Receiving property owners must identify the source of their development rights and submit detailed plans of the proposed development to the Zoning Committee. The application is then ultimately approved by Atlanta City Council if it meets the criteria found in Chapter 27 of the City of Atlanta Code of Ordinances.¹⁰¹

Two factors concerning Atlanta's urban planning and property development affect how much use the TDR sees. The first factor is Atlanta's maximum amount of density allowed by right is fairly high.¹⁰² This density baseline is large enough that developers have little demand for additional density beyond what is allowed by right. If there is no need for density bonuses, a TDR-based historic preservation program will see little use.

If a developer does want to exceed the base maximum density—which in some instances has happened—the City of Atlanta offers other means of acquiring the desired development bonuses. The Land and Development Code codifies nineteen general districts. Fifteen of these districts offer FAR, gross floor area (GFA), or height bonuses for meeting requirements relating to LEED certification, usable open space, affordable housing, mixed use commercial-residential development, ground-level retail/restaurant development, structured parking, public art, cultural facilities, and public childcare facilities in addition to historic preservation.¹⁰³

As of 2016, a total of five historic landmarks have been protected as a result of this program.^{104 105} While the property owners had to impose preservation easements and restrictions on their participating landmark properties, the number of properties saved

hardly constitutes a resounding success even though the program is set up well. A great deal of geographic flexibility for historic sending and receiving properties, the lack of limitations on who can buy or sell severed development rights, and the fairly streamlined application process makes it seem the TDR program would see widespread use. As mentioned above however, this has not been the case due to Atlanta's zoning code. This is an instance of the TDR program not interacting well with the rest of Atlanta's zoning code.

New York City, NY

New York City's current iteration of its TDR program is found in its zoning code, called the Zoning Resolution. The component that pertains to historic preservation is found in Zoning Resolution § 74-79.¹⁰⁶ Under this section, some historic landmarks designated Landmarks Preservation Commission (LPC) are eligible as sending properties. These landmarks must be located outside a historic district and in an area zoned for mid-to-high density development. The development rights may be transferred to any neighboring lot, which includes adjacent lots as well as lots across the street or sharing a corner with the sending property. In order for a landmark property to qualify as a sending property, the City Planning Commission must approve the transfer permit. Approval requires the support of the LPC as well as completion of the Uniform Land Use Review Procedure (ULURP) and City Environmental Review Process (CERP).^{107 108} The ULURP and CERP are required for most planning and development applications and are not specific to participation in the TDR program.

In addition to TDR through Section 74-79, development rights can be transferred through other means. Zoning lot merger transfers and Special Purpose District transfers are two other methods for transferring development rights in New York City.¹⁰⁹ Through a zoning lot merger, property owners of adjacent lots can combine their properties into one lot, allowing the transfer of unused development rights between lots. The geographic restriction here is very limiting, allowing only for connecting properties to transfer rights. Special Purpose Districts help expand the location in which development rights can be transferred. Essentially, an approved sending property within a Special Purpose District can transfer its unused development rights to another property within the same district, regardless of being an adjacent property or not.

Since its inception, a total of ten transfers have taken place using Zoning Resolution § 74-79, meaning ten landmarks have been protected utilizing this provision.¹¹⁰ However, additional landmarks have been involved in development rights transfers outside of the scope of Zoning Resolution § 74-79 utilizing either the Special Purpose District or lot merger methods. For example, between 2003 and 2011, only two landmarks participated in Zoning Resolution § 74-79 transfers, although nineteen landmarks participated in lot merger transfers.¹¹¹ In either case, the numbers pale in comparison to the 402 other transfers that occurred over the same time span. There is a market for TDR in New York City, though in part as a result of the restrictions placed on receiving properties and the limits on how much additional development eligible properties may use, many landmarks have not been able to transfer their unused development rights.^{112 113}

New Orleans, LA

The City of New Orleans included a TDR program in its zoning ordinances in 1995. This program remained in effect until the city's current Comprehensive Zoning Ordinance went into effect on August 15, 2015.¹¹⁴ Section 16.8 of the former Comprehensive Zoning Code laid out the TDR program, which was centered on historic preservation.¹¹⁵ Properties that are eligible as sending properties must be “worthy of preservation and having special historical, community or aesthetic interest...” and must be located in any Central Business District (CBD) or specifically in CBD-8. The receiving properties must be located in CBD-1, CBD-2, or CBD-2B. If the sending property is in CBD-8, then the receiving property can be located in CBD-9. Unlike other programs such as Atlanta's, New Orleans' program was fairly geographically restrictive. Floor area was the only development right that could be severed. In order for a transfer to occur, both a buyer and a seller have to be identified and must submit the following to the Executive Director of the City Planning Commission: A transfer site plan for the proposed development, a conditional use permit application for the receiving site, a program for the ongoing maintenance of the historic sending property, a report from the CBD Historic District Landmarks Commission on the proposed transfer, and any additional information required by the City Council or the City Planning Commission. The Commission then makes a recommendation to the City Council, which then conducts a public hearing and approves, requests modification, or denies the application.

Two major factors specific to New Orleans have influenced this TDR program's effectiveness and survival. The first being that due to Hurricane Katrina in 2004, New Orleans' population shrunk considerably and a large portion of the city's existing housing

stock was damaged or destroyed.¹¹⁶ While New Orleans' population has rebounded since the hurricane, it has not reached the pre-hurricane population level. The U.S. Census Bureau estimated that New Orleans' population was 389,617 in 2015, still short of its 2000 population of 484,674.¹¹⁷

The second factor contributing to the lack of use of the TDR program is that developers can acquire development bonuses through means other than the historic preservation TDR program. The former Comprehensive Zoning Ordinance offered a few options for acquiring development bonuses in addition to the TDR program.¹¹⁸ The City of New Orleans' current Comprehensive Zoning Ordinance, which went into effect on August 12, 2015, allows for development bonuses in terms of additional FAR or height for meeting certain requirements, most of which are geared towards providing affordable housing.¹¹⁹ The Comprehensive Zoning Ordinance enumerates eleven zoning types. Eight of these zones allow for density bonuses. If the density bonuses are desired, they can be acquired through a variety of methods.

Again, we see that in order for a TDR program to be effective there needs to be a demand for development beyond what is already allowed by a municipality's zoning code. As a result of the devastation of the built environment as well as the mass exodus of the city's population, New Orleans has been rebuilding itself to its pre-Katrina population level and the zoning code allows for that density and more. New Orleans does not have demand for development that outpaces its capacity to supply the space to meet the demand. As a result of the above, there is no record of this program being used, and no historic landmark in New Orleans was protected as a result of it. Therefore, it can be safe

to conclude that this particular TDR program was a failure, though not due to any structural problems with the program itself.

Conclusion

Based on a review of the available literature relating to TDR programs, there are ten factors that contribute to a TDR program's success: demand for bonus development; receiving areas that are tailored to reflect the needs of the community; clear, strict sending zone development regulations; limited or no alternatives to TDR for additional development; appropriate market incentives (e.g. transfer ratios) guaranteeing that TDR can be used for additional development; strong public support for preservation; simplicity of the program; program promotion and outreach; the existence of a TDR bank; and social equity. According to Stevenson, valuation and marketability are the two "most significant obstacles facing TDR programs."¹²⁰ These two obstructions are mitigated by the above factors.

The city with the most successful program, San Francisco, has the key factors of a desirable, thriving housing market that has increased the desire for additional development that exceeds current zoning code; a lack of alternatives for bonus development within the receiving areas designated by the TDR programs; and strong civic support for historic preservation. TDR programs in New York, the District of Columbia, New Orleans, and Atlanta all share some of these factors, but other factors have held the programs back.

In New York City, while bonus demand is high, particularly in Manhattan, where many TDR transactions have taken place, the program has not seen widespread use due

to the plethora of alternative methods for obtaining bonus demand. As discussed in the New York case study above, a few properties that were eligible for TDR credits elected to transfer development rights through other means. Additionally, the TDR program's geographic restrictions as to where rights can be transferred, restrictions on how many rights can be accepted by a receiving lot, and an additional permitting process handled by multiple city agencies have served to undermine the program.

Atlanta's TDR program has had similar failures, albeit for differing reasons. While Atlanta, like New York City, offers a variety of bonus development options, what appears to really be preventing developers from using the program is that the baseline density and development restrictions are high enough to weaken the demand for bonus development. If Atlanta wanted to increase TDR use, the zoning code should be amended to lower the maximum density allowed by right within the city. It can be assumed that this would not be a popular change to Atlanta's zoning ordinance, however. As such, a TDR program may not be an effective policy mechanism in this particular city. New Orleans similarly has a weaker demand for bonus development, though this has to do with external circumstance rather than a circumstance created by city zoning code. One wonders how the program might have fared if the city did not experience destruction of the built environment and a massive decrease in the population as a result of Hurricane Katrina. However, the program did not have any use prior to Katrina, and it is hard to argue that a program with potential for success could be nearly a decade old and not have one recorded transfer on record.

It is important to note that New York's successful neighborhood-specific program was discontinued after all the resources were protected, and the District of Columbia's

historic preservation component of its TDR program was also eliminated due to all of the properties within the sending zones were protected. The programs that appear to work the best are geographically focused and have definitive ends. While the District of Columbia has met its historic preservation goals for its TDR program, it does not mean that the historic preservation component should not be reinstated. The credit trading program of the 2016 Zoning Ordinance does allow for owners of landmark properties to obtain something of potential value for unused density, but since the program has yet to be implemented, it remains to be seen if there will be a robust market for the credits.

CHAPTER IV

CONCLUSION: RESEARCH FINDINGS AND FURTHER DIRECTIONS

Introduction

This chapter discusses the conclusions that can be drawn from asking whether TDR programs are effective tools for protecting historic resources in an urban context. Three main points have been observed that help answer this question: 1) A TDR program will not be effective if development pressure in program's city are not such that property developers seek higher FARs than what is allowed by right; 2) TDR programs are alone not necessarily the most effective urban policy mechanism in cities for historic preservation; and 3) TDR programs are underused for historic preservation, particularly in an urban context. It can be easy to conclude that because TDR programs are not the most effective policy mechanism for historic preservation, they would necessarily be underused, however a historic preservation focused TDR program can be highly effective in conjunction with a city's other preservation policy mechanisms.

What follows is a discussion on the development pressure conditions that portend an environment ripe for TDR success, what the alternative preservation policy mechanisms are, and why TDR programs can help compliment these policy mechanisms if a city demonstrates the appropriate demand for development. After this discussion, suggestions for further research are laid out, namely thorough case studies of existing urban TDR programs in combination with an in-depth study of each urban area's

alternative historic preservation programs. This chapter concludes with a discussion of the following questions: Are TDR programs effective tools for protecting historic resources in an urban context? Would a revised TDR program within the District of Columbia be an effective tool for the protection of historic resources? What would such a revised TDR program look like? Would such a program effectively protect the important historic character of the capital while not ignore the needs of current and future residents?

Development Pressures and the Appropriateness of a TDR program

A TDR program will not be effective if development pressure in program's city are not such that property developers seek higher FARs than what is allowed by right. As discussed in Chapter III, the real estate market is the single biggest factor in whether a TDR program is suitable for historic preservation in an urban area. This demand for development can be measured in two parts: 1) The general climate for development and 2) whether or not that development pressure exceeds an urban area's potential for development as allowed by the baseline zoning.

The first part, the general climate for development, is perhaps best illustrated by cities such as New Orleans, which serves as a strong example of an urban area lacking the appropriate development climate for a TDR program. As discussed in the case study in Chapter III, New Orleans' population levels have still not reached its pre-Hurricane Katrina levels. One can conclude, then, that there is still room to develop the city and accommodate a greater population without needing additional density. There are other U.S. cities that are similarly not ripe for a TDR program, or any program that might seek to increase density in order to accommodate heavy, increased population growth. Detroit,

MI, comes to mind as another example. The City of Atlanta serves as a strong example of part two of this measurement. Atlanta is increasing in population and has the demand for development, but it deals with this demand by having baseline zoning that accommodates this desire for development.

Policy Alternatives to Transfer of Development Rights Programs for Preservation

TDR programs are not the only mechanism a city government can, and does, use to protect historic resources. Monetary aid in the form of grants are often available from city, state, and federal governments, as well as from private non-profit groups. Federal, state, and cities also provide tax incentives for the protection of historic resources. This can take the form of tax abatements in exchange for historically appropriate renovations or easements. This section will look at the alternatives to TDR programs for historic preservation and will look at how effective they are at preserving historic resources and how cost-effective they are in terms of public expenditure.

Grant Programs

Historic preservation grant programs are generally administered by a government agency or a private entity, such as a non-profit organization or a business. The following section is a general discussion of grant programs administered by the government or a private entity in a local, state, and national context.

At the national level, the federal government, through the National Park Service, administers a series of grants with the intention of protecting historic and cultural resources. The NPS administers nine such programs: State Historic Preservation Office HPF Grants, Tribal Historic Preservation Office Grants, Tribal Heritage Grants, Disaster

Recovery Grants, Underrepresented Community Grants, Save America's Treasures Grants (Authorized But Not Currently Funded), Preserve America Grant Program (Authorized But Not Currently Funded), Japanese American Confinement Sites Grants, and Historically Black Colleges & Universities Grants. Two of these grants, Save America's Treasures Grants and Preserve America Grant Program, are not funded as of 2016.¹²¹ According to the National Park Service's Budget Justifications and Performance Information Fiscal Year 2017, the Historic Preservation Fund (HPF), which funds the above listed grants, spent \$56,410 million in 2015.¹²²

On a local level, the District of Columbia offers the Historic Homeowner Grant Program and the D.C. Community Heritage Project. The Targeted Historic Preservation Assistance Amendment Act of 2006 authorized the Historic Homeowner Grant Program, which provides grants to low and moderate income homeowners living in specific historic districts within the District of Columbia. These grants help cover the costs of rehabilitations, exterior repairs, and structural work. This program only applies to twelve existing historic districts. These grants are for \$25,000 or \$35,000, depending on the historic district.¹²³

The DC Preservation League Grant Program is an example of a grant program offered by a non-profit at the local level. These particular grants are awarded for four project types: Research, Preservation Planning, Bricks and Mortar, and Outreach and Education. While three of the four types require the building or site to designated historic properties or contributing properties within historic districts, the Research category relates to research based on historic sites or properties. The Preservation Planning project type relates to projects concerning preservation strategies for historic sites or buildings.

The Bricks and Mortar category is for exterior work done on historic sites or buildings. Outreach & Education category is for programing and materials for the education and engagement of the public. Each grant is for between \$5,000 and \$50,000 with a percentage of matching funding required between twenty-five to one hundred percent.¹²⁴

The grant amounts for D.C. show generally that they are useful for smaller projects, such as single home renovations, or useful in combination with other forms of preservation aid in funding larger preservation projects. It can be argued that an urban TDR program only assists in the preservation of large, costly historic resources. However, the grants that are generally available for preservation are not large enough to be of importance to larger scale projects, such as the preservation of a downtown city office building or historic district. This is where a TDR program is the most useful, for larger-scale, costly projects.

Tax Incentives

The Federal government offers income tax credits for rehabilitation of historic properties and tax benefits for preservation easements. There are two types of federal tax credits available for income generating properties: a 20 percent credit and a 10 percent credit.¹²⁵ In order to qualify for the 20 percent credit, the property must be listed in the National Register of Historic Places or be a contributing resource in a designated Historic District and must be an income generating property. This includes both commercial properties such as an office building or restaurant, as well as multi-unit residential properties such as apartment buildings and condominiums. In order to qualify for the 10 percent credit, the property does not have to be listed on the National Register, but it must

have been placed into service before 1936. Eligible properties must also be income generating, and they cannot be residential properties. In addition to the federal tax incentives, there are thirty-three states that offer tax incentives for historic preservation.¹²⁶

In terms of public cost for these tax credits, the program has been quite efficient. Per the National Park Service's "Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2014," the Federal Historic Tax Credit program has cost \$22.6 billion over the life of the program (1978 through 2014 as of the report).¹²⁷ This cost is the amount of tax revenue the federal government could have collected if it did not offer these tax credits for preservation. However, the Historic Tax Credit generated \$28.6 billion in federal taxes over the same time span.¹²⁸ This \$28.6 billion in federal taxes was generated due to preservation related costs for the repair and maintenance of the historic properties that received the Historic Tax Credit.

Preservation Easements

A preservation easement is a legal agreement generally part of a deed or contract that places restrictions on a historic property in order to protect it.¹²⁹ For example, an easement may restrict additions and alterations to the exterior of a historic building, ensuring that only changes compatible with the historic character are allowed. If a property owner decides to place a historic preservation easement on a property, the owner may qualify for a federal income tax deduction equal to the value of the easement. In other words, the use value of the property is taxed rather than the development value of the property, which means the owner is not taxed for the potential value of the property.

It is possible, and recommended, that historic preservation oriented TDR programs incorporated preservation easements into their process. In exchange for the severance of development rights, the historic sending property owner should be required to place an easement on the participating property to ensure that the historic landmark is protected in the long-term.

TDR Program Use and Underuse for Historic Preservation

As discussed in Chapter III, there are approximately 28 historic preservation TDR programs within the United States.¹³⁰ There is no singular, all-encompassing historic preservation policy mechanism that will prevent historic resources from being destroyed. The historic preservation projects that are feasible as a result of preservation grants would not be feasible if TDR was the only source of financial support available for projects. Likewise, preservation grants may not be enough of a financial incentive for developers to not demolish a historic resource without a mechanism like TDR to mitigate the potential economic loss of not fully developing a property.

While the other policy mechanisms discussed above are effective, the majority of the cost is borne by the government. Money for government grants generally come from tax generated funds. The cost of historic preservation tax incentives should also be considered a publicly borne financial cost as an incentive for historic preservation. Through a tax incentive program, the public, through government, bears the cost of the policy mechanism for historic preservation. The advantage of properly set up and administered TDR programs is that the private sector, through development companies, bears the majority of the cost of policy mechanism. In terms of public money spent, if set

up correctly, the major cost is the initial administrative setup of the program. These costs are related to the review of transaction applications, marketing to ensure the public is aware of the program, and the operation of a TDR bank if one is to be set up. The costs involved in administering a TDR program can vary greatly. A program expecting a large number of transactions per year may have to set up its own administration, whereas a smaller program anticipating a few transactions per year could be rolled into an existing agency, therefore keeping the costs to a minimum. If a TDR program is successful, the sale of development rights will most likely be a profitable endeavor. If a public TDR bank is used for the facilitation of transfers, the TDR program could eventually earn enough money through sales of development rights to support itself. As discussed in the preceding chapter, market incentives, a TDR bank, a consistent administration process, and clear zoning regulations will help promote confidence in the TDR program. TDR programs have the potential, if managed appropriately, to be highly cost-effective.

Much like the Federal Historic Tax Credit program, a TDR program could generate more revenue than it costs to set up and maintain. As a policy mechanism that can be used in conjunction with the tax credits, it can be a powerful tool to protect historic resources. It is tempting to say that if a properly set up TDR program is a powerful tool, every city in the U.S. should start the process of building a TDR program. The problem with this thinking is that not every urban area in the U.S. is experiencing the same development pressure as cities like New York, San Francisco, or Washington, D.C. A TDR program will only be successful in an urban location if the real estate market is favorable—if there is enough demand for increased development and demand for a higher FAR than what the baseline zoning allows.

Further Directions for Research

In order to do a full assessment of how effective historic preservation focused urban TDR programs are and can be, additional research is necessary. A two-part survey as well as an expanded number of case studies would greatly benefit the discussion of urban TDR programs and their use for historic preservation. The two-part survey would be answered by TDR program administrators and TDR program participants, and the case study field would be expanded to include a total of eighteen programs.

Two-part Survey

What is lacking from this study is a comprehensive survey of both TDR program administrators and participants in the TDR transactions from multiple historic preservation focused TDR programs.¹³¹ Chapter III discusses five urban TDR programs, and each case study would benefit greatly from a two-part survey, one part directed toward program administrators and the other part directed toward program participants (developers, property owners, etc.).

The part of the survey directed toward program administrators would seek information focused on three main categories: Program history, program mechanics, and program effectiveness. The history of a program would include what its original intended purpose was, how long the program has been in operation, what the program's organizational structure is, and what the annual cost to maintain the program is. Program mechanics is concerned with what type of development right is transferrable, what the transfer ratio is, whether or not the program utilizes a TDR bank, and whether or not the program includes long-term conservation easements or other means to ensure long-term

protection of historic resources. Program effectiveness includes the number of transfers the program has facilitated, the number of development rights transferred, the number of participants in the program, whether or not any participating properties have been demolished or significantly altered as to lose their historic designation status, and whether or not the program agency believes the program has been effective in fulfilling its original stated purpose. A questionnaire template for part one of this survey has been attached in the Appendix.

The part of the survey directed toward program participants would be much shorter in length, and would address mainly whether or not the responding participant found the program to be worth participating in. This part of the survey would find out how many times participants used the TDR program, what do they thought the original purpose of the TDR program was, how easy to the program is to use, and how effective the program has been in meeting their needs. A questionnaire template for part two of this survey has been attached in the Appendix.

Expanded Case Studies

In addition, the number of programs studied should be expanded to include all historic preservation focused TDR programs located in urban areas. This would add 13 case studies, which in addition to the five previously discussed programs totals 18 TDR programs.¹³² The other programs include: Nashville, TN; Vancouver, WA; San Diego, CA; West Hollywood, CA; Los Angeles, CA; Dallas, TX; Denver, CO; Minneapolis, MN; Delray Beach, FL; Scottsdale, AZ; Palo Alto, CA; West Palm Beach, FL; and Pittsburgh,

PA. A comprehensive look at all of these programs would give a clearer picture of TDR effectiveness for the protection of historic resources.

TDR Use for Small Properties

As mentioned in Chapter III, TDR programs tend to be focused on large development projects. Small projects, particularly individual residential properties, are noticeably left out of program participation. It is possible that a TDR program could be designed that would target these smaller projects rather than the large, multimillion dollar development projects, however more research is needed to determine if this would be a viable option.

Conclusion

Are TDR programs effective tools for protecting historic resources in an urban context? A TDR program can be effective tools for protecting historic resources if the program is set up properly in the right economic climate. As discussed above, the foremost factor in a program's success is whether the targeted urban area has a competitive real estate market with a high demand for additional development. If this condition is not present, a TDR program is sure to fail regardless whether the program is focused on preserving historic properties, providing low-income housing, targeting specific areas for growth, or any other such intention.

Washington, DC—a city that certainly meets the requirement of an urban area with a high demand for development—had a TDR program up until September, 2016. It is my contention that a revised TDR program within the District of Columbia would be an effective tool for the protection of historic resources given the real estate market and

the geographic and political restrictions the District has concerning its development. The new credit system discussed in Chapter III does not adequately address the preservation of historic properties, particularly outside of the small geographic area that the program focuses on.

What would such a revised TDR program look like and would such a program effectively protect the important historic character of the capital while not ignore the needs of current and future residents? A new program for the District of Columbia would necessarily be complex and would surely face both political and legal opposition due to the District of Columbia's unique status as a federal district. However, this does not mean a new program could not be designed and implemented to the satisfaction of most, if not all, of the District and nation-wide community stakeholders. An expanded program that allows for historic properties throughout the District to sever development rights would be ideal. The severed rights could then be used in specific sending areas located away from the city core.

APPENDIX I
CITY OF ATLANTA CODE OF ORDINANCES, PART III LAND
DEVELOPMENT CODE, § 16-28.023

The following text is taken from The City of Atlanta Code of Ordinances, which was last updated on October 31, 2016. Section 16 relates to Land Development, and the excerpted portion outlines the transfer of development rights program in Atlanta. The complete text can be found online at:

https://www.municode.com/library/ga/atlanta/codes/code_of_ordinances?nodeId=PTIII

COORANDECO_PT16ZO_CH28GESURE_S16-28.023TRDERI.

Sec. 16-28.023. Transfer of development rights.

(1) *Intent.* For the purposes of conserving and promoting the public health, safety and general welfare and preserving natural, environmental, historical and cultural resources, this ordinance allows and controls the severance of development rights from a sending property and the *transfer* of development rights to a receiving property.

(2) *Definitions.*

(a) *Development rights:* Calculated units of development factors that would be allowed on the buildable area of the sending property under its present zoning category disregarding any variance or non-conformity that may presently allow a greater number of development units. Where a zoning category does not require calculation of development rights, no development rights are available for *transfer*.

(b) *Development factors:* Quantified units of *transferable* development rights that may be severed from a sending property or directly *transferred* to a receiving property. Density as expressed by floor area ratio; total open space; and usable open space, available to the sending property but which remains unused at the time that the sending property will be dedicated are the only development factors that may be severed from a sending property or *transferred* to a receiving property.

(c) *Sending area:* An area consisting of one or more parcels or lots which can qualify to be a sending property. A sending area may be:

(1) An area consisting of one or more than one parcel or lot, if contiguous, which is zoned in any category R-1 through R-5 on one portion of the parcel(s) or lot(s) and also zoned RG on another portion of the same parcel(s) or lot(s), provided however that such property must be used for single-family or two family residential purposes and no other use is allowed by any special permit. Such areas may also be referred to as residential sending areas;

(2) The boundaries of any property designated as a landmark building or site or historic building or site pursuant to the City of Atlanta Historic Preservation Ordinance;

(3) One or more lots or parcels that are suitable to be donated to and accepted by the city, and will be dedicated for use as greenspace by an instrument to be recorded in the office of county clerk in which the property is located or property that will be purchased by the city for use as greenspace.

(d) *Sending property*: A parcel or lot in a sending area or a parcel or lot with special characteristics including but not limited to: woodland; flood plain; natural habitats; wetlands; groundwater recharge area; marsh hammocks; recreation areas or parkland, including golf course areas; or land that has unique aesthetic, architectural, or historic value that is found by the governing body to be deserving of protection from future development and which will be dedicated to that use when the development rights are severed or directly *transferred* to a sending property.

(e) *Receiving area*: Any area zoned with a classification that allows multi-family residential uses or mixed use, provided that such mixed use has a residential component of at least 50 percent.

(f) *Receiving property*: A specific parcel or lot where development rights may be increased through the issuance of a special permit allowing the receipt of the calculated units of development factors defined in this subsection. The governing body shall determine appropriateness and suitability of a receiving property based on its determination that there are no substantially adverse, environmental, economic or social impact on the receiving property or on neighboring properties pursuant to the procedures set forth in this section. A receiving property shall be appropriate and suitable for the increased development allowed by the receipt of the additional development rights to be *transferred* and no receiving property may be developed in variance from the zoning district regulations in order to accommodate the use of *transferable* development rights, unless such variance is specifically shown on the site plan submitted with the special permit application.

(g) *Transfer of development rights*: The process by which development rights are severed from a sending property and affixed to one or more receiving properties.

(h) *Special permit for transferred development rights:* A special permit issued by the governing body after approval of an application as set forth in this section. A special permit application made pursuant to this section shall, in addition to the requirements set forth herein, meet the requirements for special permits set forth in section 16-25.002(3).

(3) *Sending areas and properties.*

(a) *Residential sending areas.* The designation of a parcel or lot as a part of a residential sending area is not a declaration that the development rights are automatically severable or *transferable*. In order for any development rights to be severed or *transferred*, the applicant must show that the future use to be made of the part of the sending property from which the development rights are severed or *transferred* meets the requirements of this section and section 16-25.002(3). The calculation of the development factors to be *transferred* shall use only the square footage of that portion of the lot which is zoned RG and such calculation shall not use the entire square footage of the lot. The entire lot, including the RG portion, may in the future be used in any manner allowed by the particular R-1 through R-5 zoning on the remaining parcel. A residential sending area may only send development rights to another residential use. Individual contiguous properties in a sending area as defined in this section may apply under one special permit for the *transfer* of development rights.

(b) *Historic preservation designation for individual sending properties.* Any property designated as a landmark building or site or historic building or site may, apply to sever or *transfer* the development rights not utilized by the present development of the historic property. The historic nomination or designation is not a declaration that the development rights are automatically severable or *transferable*. In order for any development rights to be severed or *transferred*, the applicant must show that the future use of the property from which the development rights are severed or *transferred* meets the requirements of this section and section 16-25.002(3). Approval of the severance or *transfer* of development rights shall not be a condition of approval of the historic designation, but no development rights shall be *transferred* until after the property is designated as a landmark building or site or historic building or site. Rights *transferred* from a designated building or site may be applied to any permitted use, which would be allowed on the designated property. Any redevelopment of the designated property from which the rights have been *transferred* or severed must be based on the remaining development rights and on the conditions under which the special permit was granted. No part of this section is intended to waive, alter, lessen or otherwise change the application of the City of Atlanta Historic Preservation Ordinance on future redevelopment of the designated property.

(c) *Greenspace sending areas or properties.* Before property in a greenspace sending area may sever or *transfer* development rights, such *transfer* must be approved either in the same transaction as the purchase or dedication by approval of the application by the governing body or by separate application filed no later than 90 days after the *transfer* of the property to the city. In order to become a greenspace sending property, a

parcel or lot must be the type of property, which would meet the definition set forth in O.C.G.A. § 36-22-2(3) (as amended). Any property purchased by the city for use as greenspace need not be acquired with funds made available from the community greenspace trust fund to be eligible as a greenspace sending property but in all purchases made by the city, the purchase price of the property must be reduced by the appraised value of any development rights which are severed or *transferred*.

(4) *Receiving areas and properties.*

(a) *Receiving areas.* The designation of a parcel or lot as a part of a receiving area is not a declaration that development rights may be received by such parcel or lot. In order for any development rights to be received by a parcel or lot, the applicant must show that the future use to be made of the receiving property is in compliance with the terms of this section and section 16-25.002(3). Contiguous individual parcels or lots which are being developed under common ownership may apply to receive development rights under a single application but shall indicate the manner in which the rights to be received are being allocated among the parcels.

(b) *Residential receiving properties.* A specific parcel in a receiving area, which is proposed for a multi-family use, or a parcel which is proposed for a mixed use with a residential component comprising more than 50 percent of the floor area of the development, is eligible to apply to become a receiving property.

(c) *Receiving properties for development rights from historic designation.* Rights *transferred* from a landmark building or site or historic building or site may be applied to any permitted use, which would be allowed on the property from which the rights were *transferred*. The fact that such rights were *transferred* by a historic designation is not a declaration that the development rights may be received by a property. In order for any development rights to be received by a property, the applicant must show that the future use of the property meets the requirements of this section. No part of this section is intended to waive, alter, lessen or otherwise change the application of the City of Atlanta Historic Preservation Ordinance on redevelopment of any designated property through the use of *transferred* development rights.

(5) *Application for TDR special permit.*

(a) *Sending area or property:* Owners of properties in sending areas or properties with special characteristics that are to be designated, developed or used in a manner consistent with the stated intent of this ordinance may apply to the governing body for the severance or direct *transfer* of development rights in accord with the procedures listed in this section. Each such application shall contain the following:

(i) A description of the special characteristics of the property and an explanation of the manner in which those special characteristics advance and promote the intent of this ordinance.

(ii) A map and a legal description of the property from which the *transfer* is proposed.

(iii) An original and fully executed instrument to be recorded in the office of county clerk in which the property is located which states that current landowner and any person with an interest in the property, including without limitation any lienholders, consent to the prohibitions against future use of the property except in accordance with the conditions stated as the basis for the *transfer* of the development rights. Such instrument shall also state that such prohibitions shall be binding on the landowner or any other person with an interest in the property as of the date that the instrument is recorded and that this instrument shall bind every successor in interest to the landowner or any other person with an interest in the property.

(iv) A calculation of the amount of quantified development factors that are proposed to be severed or *transferred*.

(v) A statement specifying whether the development rights are to be *transferred* to a receiving property or are to be held for future use. If the development rights are to be *transferred* to a receiving property under the same ordinance authorizing the severance of the development rights, the application shall be in the form of a joint application, which shall be considered by the governing body under the procedures set forth in this section referring to joint applications. If the development rights are to be severed and held by the owner of the sending property, the application shall include the form of a deed of *transferable* development rights which shall after approval of the *transfer* vest in the owner of the property and be deemed appurtenant to the sending body until the *transferable* development right is registered as a distinct interest in real property with the appropriate tax assessor or the *transferable* development right is used at a receiving property and becomes appurtenant thereto.

(b) *Receiving area or property:* Owners of properties, in a receiving area or property eligible to receive development rights from designated historic properties, that seek to develop such property in a manner which requires density expressed as floor area ratio, total open space, or usable open space above that resulting from the calculations applied to the property sought to be developed under its present zoning, may apply to increase amount of such factors which may be applied to the property by application for special permit for the receipt of *transferred* development rights. Each application shall contain the following:

(i) An affidavit from the property owner consenting to the use of the *transferred* development rights and stating that all such rights sought to be utilized pursuant to the application are fully and unconditionally owned by the property owner. Such affidavit shall also acknowledge that the use of the *transferable* development rights necessary to complete the project shall, upon approval of the application, remain with the property for the life of the development and cannot be severed from the property or

otherwise *transferred* without the property being declared a sending property pursuant to subsequent application.

(ii) A map and a legal description of the property to receive the *transferred* development rights.

(iii) A statement in the form of an affidavit from the property owner identifying the source of the *transferable* development rights to be used by the receiving property. Said statement shall detail the ownership of the *transferable* development rights to be used back to the transaction(s) that created such development rights and shall specify the amount that are to be applied to the receiving property.

(iv) A section which explains how the project meets the requirements for special permits set forth in section 16-25.002(3) and assures future protection of public interest and achievement of public objectives to the same or a higher degree than would application of the zoning district regulations without approval of the application for receipt of the *transferred* development rights.

(v) A plan showing exact lot size, location and size of the buildings, structure or improvements to be placed on site; the specific use of each building, structure, property, or part thereof; detailed arrangement of required parking spaces, location and means of ingress and egress; and, unless waived by the director, bureau of planning, topographic information. The same detailed information shall be required where existing structures are to be used or retained under the terms of this chapter. Plans shall be prepared, signed and sealed by a registered architect, engineer, landscape architect, registered with the State of Georgia, or planners who hold membership in the American Planning Association, competent in the preparation of detailed and accurate plans, drawn to scale. Said persons shall indicate on their plan their state registration number and shall certify that they are familiar with the City of Atlanta Zoning Ordinance, including revisions, and that to the best of their ability, these plans are accurate and comply with the general and district regulations of the zoning ordinance if the application for receipt of the *transferred* development rights were approved.

(c) *Joint application by sending and receiving property:* The owners of sending or receiving properties or properties in sending and receiving areas may apply jointly to have the severance of development rights in a sending property and the *transfer* to a receiving property approved in the same action of the governing body. The joint application shall contain all of the information required by both types of applications and shall be acted on as one application.

(d) *Withdrawal or denial of applications:* An application concerning a TDR special permit, including any applications for amendments, may not be withdrawn after advertisement for the public hearing at which it was to be considered. No fee refunds shall be given for the withdrawal of any application. Substantially the same application shall not be considered within 24 months from the date of withdrawal or denial.

(e) *No transferable development rights affected by withdrawal or denial of an application.* If an application for the severance, *transfer* or receipt of development rights is withdrawn or denied, the development rights at issue in the permit retain the characteristics, which they had prior to the withdrawal or denial of the application.

(6) *Processing of the application.* The council, after conformance with the requirements established in this section and in conformance with the procedures and requirements so established in Chapter 27, "Amendments," may authorize the severance or *transfer* of development rights and the receipt of development rights under the special permits authorized in this section. Where a special permit for the receipt of development rights increases the development of a parcel in a manner that would otherwise be prohibited by the zoning district regulations, such development shall be allowed after approval of a special permit by the governing authority but only to the extent made necessary by the receipt of the development rights and in the manner specified in the special permit.

(7) *Tracking of ownership of development rights.* The bureau of planning is authorized and directed to develop a system for monitoring the severance, ownership, assignment and *transfer* of development rights. The records maintained by the bureau of planning shall be an official record of the City of Atlanta for purposes of the analysis of applications for the *transfer* of development rights.

(8) *Purchase and resale of development rights.* Development rights may be bought or sold by any person. It shall be the responsibility of private parties to such transaction to register the change in ownership with the Bureau of Planning within 30 days of the purchase. The failure of private entities to register the change in ownership resulting in applications, which differ from the records of the city shall be cause for denial of the application.

(9) *Purchase of development rights by the city.* The city is authorized to purchase development rights in the same manner as any other interest in real property and may hold the development rights for conservation purposes or for resale.

(10) *Transferred development rights to remain with the receiving property; severance of unused TDR's after completion of development.* After the use of *transferred* development rights are approved for a receiving property by a TDR special permit, the *transferred* development rights are appurtenant to the property and may be *transferred* as a part of any future sale of the property without further approval of the city, provided however that neither the use nor site plan approved as part of the TDR special permit allowing receipt of the *transferable* development rights may be substantially modified without amendment of the permit by the governing authority.

(a) *Transferred* development rights, not used on the property for which their receipt was authorized, cannot be severed or *transferred* without further action of the governing authority. After the issuance of a certificate of occupancy for all structures on

the site plan approved as a part of the special permit, the development rights *transferred* to a property and not utilized in the manner described in the special permit may be severed or *transferred* from the receiving property by amendment of the special permit by the governing authority.

(b) Upon a written finding by the zoning administrator that the development of the receiving property in the manner provided by the amendment could or did occur without the use of all *transferred* development rights specified in the original special permit, the governing authority may, at the time of approval of an amendment to the special permit, provide that the amount of any *transferred* development rights not utilized, be severed from the receiving property. The governing authority shall make a finding as whether the development actually undertaken on the property has had no substantially adverse, environmental, economic or social impact that would not be present if the development had been completed as contemplated in the special permit and shall determine if the partial development of the property through the use of only some of the *transferred* development rights has allowed the development of structures which are at variance with the zoning district regulations such that the remaining property should be made available for development at the increased density allowed by the remaining *transferred* development rights.

(11) *Expiration of transferable development rights special permits.* If initial development of a property to which development rights have been *transferred* is not begun within 12 months, or a certificate of occupancy issued for all structures on the site plan within 24 months, after the issuance of the TDR special permit, the permit will automatically expire. The terms of a TDR special permit may extend these time limits but, any extensions not specifically stated must be approved by the governing authority. For the purposes of this section, the issuance of a building permit and construction activity with a cost of more than \$5,000.00 are considered to constitute initial development. If for a period of 12 consecutive months, after the issuance of the first certificate of occupancy for the site, the property for which the receipt of development rights was permitted is used in a manner not specifically described in the permit, the special permit will automatically expire and conversion back to the use for which the special permit was issued will require renewal of the permit.

(a) A determination as to whether the "automatic expiration" of a permit has occurred shall be made by the zoning administrator, who shall notify the applicant of the decision in writing. The zoning administrator shall also notify the director of the bureau of buildings, that the permit has expired. The decision shall be reviewable in the same manner as other administrative decisions.

(b) *Transferable* development rights, which attached to a property prior to their expiration, cannot be revived for use on that same property except when authorized by a renewal of the special permit. If the application for the renewal of the special permit is denied prior to the initial development of any structures on the site, the development rights *transferred* to the property are severed without the need to show that the property

would otherwise qualify as a sending property. As a part of any denial of the application for renewal at any other stage of development on the site prior to the issuance of the certificate of occupancy, the governing authority shall make a finding as whether the development actually undertaken on the property has had no substantially adverse, environmental, economic or social impact that would not be present if the development had been completed as contemplated in the special permit and shall determine if the partial development of the property through the use of only some of the *transferred* development rights has allowed the development of structures which are at variance with the zoning district regulations such that the remaining property should be made available for development at the increased density allowed by the remaining *transferred* development rights.

(c) No building permit for structures requiring the use of *transferred* development rights may be issued or allowed to remain in effect where the TDR special permit has expired.

(12) *Future rezonings*. Where any property containing a sending property is rezoned after development rights have been severed or *transferred*, the rezoning shall not act to restore any of the severed or *transferred* development rights.

(Code 1977, § 16-28.023; Ord. No. 2003-95, § 1, 10-14-03; Ord. No. 2004-54, § 1, 8-2-04)

APPENDIX II
THE CITY OF NEW YORK ZONING RESOLUTION, CHAPTER 4 § 74-
79

The following text is taken from The City of New York Zoning, which was last updated on October 27, 2016. The excerpted portion concerns transfer of development rights and landmark sites in New York City. The complete text can be found online at: <http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art07c04.pdf?r=071416>.

74-79 Transfer of Development Rights from Landmark Sites

In all districts except R1, R2, R3, R4 or R5 Districts or C1 or C2 Districts mapped within such districts, for developments or enlargements, the City Planning Commission may permit development rights to be transferred to adjacent lots from lots occupied by landmark buildings or other structures, may permit the maximum permitted floor area on such adjacent lot to be increased on the basis of such transfer of development rights, may permit, in the case of developments or enlargements containing residences, the minimum required open space or the density requirements to be reduced on the basis of such transfer of development rights, may permit variations in the front height and setback regulations and the regulations governing the size of required loading berths, and minor variations in public plaza, arcade and yard regulations, for the purpose of providing a harmonious architectural relationship between the development or enlargement and the landmark building or other structure.

Where a zoning lot occupied by a landmark building or other structure is located in a Residence District, the Commission may modify the applicable regulation of primary business entrances, show windows, signs and entrances and exits to accessory offstreet loading berths on the "adjacent lot" in a Commercial District provided that such modifications will not adversely affect the harmonious relationship between the building on the "adjacent lot" and landmark building or other structure.

For the purposes of this Section, the term "adjacent lot" shall mean a lot that is contiguous to the lot occupied by the landmark building or other structure or one that is

across a street and opposite to the lot occupied by the landmark building or other structure, or, in the case of a corner lot, one that fronts on the same street intersection as the lot occupied by the landmark building or other structure. It shall also mean, in the case of lots located in C5-3, C5-5, C6-6, C6-7 or C6-9 Districts, a lot contiguous or one that is across a street and opposite to another lot or lots that except for the intervention of streets or street intersections, form a series extending to the lot occupied by the landmark building or other structure. All such lots shall be in the same ownership (fee ownership or ownership as defined under zoning lot in Section 12-10 (DEFINITIONS)).

A "landmark building or other structure" shall include any structure designated as a landmark by the Landmarks Preservation Commission and the Board of Estimate pursuant to Chapter 8-A of the New York City Charter and Chapter 8-A of the New York City Administrative Code, but shall not include those portions of zoning lots used for cemetery purposes, statues, monuments and bridges. No transfer of development rights is permitted pursuant to this Section from those portions of zoning lots used for cemetery purposes, any structures within historic districts, statues, monuments or bridges.

The grant of any special permit authorizing the transfer and use of such development rights shall be in accordance with all the regulations set forth in Sections 74-791 (Requirements for application), 74-792 (Conditions and limitations) and 74-793 (Transfer instruments and notice of restrictions).

(2/2/11)

74-791 Requirements for application

An application to the City Planning Commission for a grant of a special permit to allow a transfer of development rights and construction based thereon shall be made by the owners of the respective zoning lots and shall include: a site plan of the landmark lot and the adjacent lot, including plans for all developments or enlargements on the adjacent lot; a program for the continuing maintenance of the landmark; and such other information as may be required by the City Planning Commission. The application shall be accompanied by a report from the Landmarks Preservation Commission.

A separate application shall be filed for each independent "adjacent lot" to which development rights are being transferred under this Section.

(2/2/11)

74-792 Conditions and limitations

(a) For the purposes of this Section, except in C5-3, C5-5, C6-6, C6-7 or C6-9 Districts, the basic maximum allowable floor area for a zoning lot occupied by a landmark shall be the maximum floor area allowed by the applicable district regulations on maximum floor area ratio or minimum required open space ratio and shall not include

any additional floor area allowed for public plazas, arcades or any other form of bonus whether by right or special permit.

(b) The maximum amount of floor area that may be transferred from any zoning lot occupied by a landmark building shall be computed in the following manner:

(1) the maximum allowable floor area that could be built for buildings other than community facility buildings under existing district regulations on the same zoning lot if it were undeveloped;

(2) less the total floor area of all buildings on the landmark lot;

(3) the figure computed from paragraphs (a) and (b) of this Section, inclusive, shall be the maximum amount that may be transferred to any one or number of adjacent lots; and

(4) unutilized floor area may be transferred from one or any number of zoning lots occupied by a landmark building to one or any number of zoning lots adjacent to the landmark lot so as to increase the basic maximum allowable floor area that may be utilized on such adjacent zoning lots. For each such adjacent zoning lot, the increase in floor area allowed under the provisions of this Section shall in no event exceed the basic maximum floor area allowable on such adjacent zoning lot by more than 20 percent.

(c) When adjacent lots are located in C5-3, C5-5, C6-6, C6-7 or C6-9 Districts and are to be developed or enlarged with commercial buildings, the following conditions and limitations shall apply:

(1) the maximum amount of floor area that may be transferred from any zoning lot occupied by a landmark building shall be the maximum floor area allowed by Section 33-12 for commercial buildings on said landmark zoning lot, as if it were undeveloped, less the total floor area of all existing buildings on the landmark zoning lot;

(2) for each such adjacent zoning lot, the increase in floor area allowed by the transfer pursuant to this Section shall be over and above the maximum floor area allowed by the applicable district regulations; and

(3) the City Planning Commission may require, where appropriate, that the design of the development or enlargement include provisions for public amenities such as, but not limited to, open public spaces, subsurface pedestrian passageways leading to public transportation facilities, public plazas and arcades.

(d) In any and all districts, the transfer once completed shall irrevocably reduce the amount of floor area that can be utilized upon the lot occupied by a landmark by the amount of floor area transferred. In the event that the landmark's designation is removed or if the landmark building is destroyed, or if for any reason the landmark building is

enlarged or the landmark lot is redeveloped, the lot occupied by a landmark can only be developed or enlarged up to the amount of permitted floor area as reduced by the transfer.

(e) As a condition of permitting such transfers of development rights, the Commission shall make the following findings:

(1) that the permitted transfer of floor area or variations in the front height and setback regulations will not unduly increase the bulk of any development or enlargement, density of population or intensity of use in any block to the detriment of the occupants of buildings on the block or nearby blocks, and that any disadvantages to the surrounding area caused by reduced access of light and air will be more than offset by the advantages of the landmark's preservation to the local community and the City as a whole;

(2) that the program for continuing maintenance will result in the preservation of the landmark; and

(3) that in the case of landmark sites owned by the City, State or Federal Government, transfer of development rights shall be contingent upon provision by the applicant of a major improvement of the public pedestrian circulation or transportation system in the area. The Commission shall give due consideration to the relationship between the landmark building and any buildings developed or enlarged on the adjacent lot regarding materials, design, scale and location of bulk. The Commission may prescribe appropriate conditions and safeguards to minimize adverse effects on the character of the surrounding area.

(2/2/11)

74-793 Transfer instruments and notice of restrictions

The owners of the landmark lot and the adjacent lot shall submit to the City Planning Commission a copy of the transfer instrument legally sufficient in both form and content to effect such a transfer. Notice of the restrictions upon further development or enlargement on the lot occupied by the landmark and the adjacent lot shall be filed by the owners of the respective lots in the place and county designated by law for the filing of deeds and restrictions on real property, a certified copy of which shall be submitted to the Commission. Both the instrument of transfer and the notice of restrictions shall specify the total amount of floor area to be transferred, and shall specify, by lot and block numbers, the lots from which and the lots to which, such transfer is made.

APPENDIX III
SAN FRANCISCO PLANNING CODE § 1.2.128

The following text is taken from The San Francisco Planning Code. The excerpted portion concerns transfer of development rights in C-3 Districts, and was last amended on March 22, 2015. The complete text can be found online at:

[http://library.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1).

ARTICLE 1.2 SEC. 128. TRANSFER OF DEVELOPMENT RIGHTS IN C-3 DISTRICTS.

(a) Definitions.

(1) "Development Lot." A lot to which TDR may be transferred to increase the allowable gross floor area of development thereon beyond that otherwise permitted by the Zoning Control Table for the district in which the lot is located.

(2) "Owner of Record." The owner or owners of record in fee.

(3) "Preservation Lot." A parcel of land on which is either (A) a Significant or Contributory building (as designated pursuant to Article 11); or (B) a Category V Building that has complied with the eligibility requirement for transfer of TDR as set forth in Section 1109(c); or (C) a structure designated an individual landmark pursuant to Article 10 of this Code. The boundaries of the Preservation Lot shall be the boundaries of the Assessor's lot on which the building is located at the time the ordinance or, as to Section 1109(c), resolution, making the designation is adopted, unless boundaries are otherwise specified in the ordinance.

(4) "Transfer Lot." A Preservation Lot located in a C-3 District from which TDR may be transferred. A lot zoned P (public) may in no event be a Transfer Lot unless a building on that lot is (A) owned by the City and County of San Francisco; and (B) located in a P District adjacent to a C-3 District; and (C) designated as an individual landmark pursuant to Article 10 of this Code, designated as a Category I Significant Building pursuant to Article 11 of this Code, or listed on the National Register of Historic Places; and (D) the TDR proceeds are used to finance, in whole or in part, a project to

rehabilitate and restore the building in accordance with the Secretary of Interior standards. For the purposes of Section 128(b), a lot zoned P that satisfies the criteria of this Subsection (4) to qualify as a "Transfer Lot" shall be deemed to have an allowable gross floor area of 7.5:1 under Section 124.

(5) "Transferable Development Rights (TDR)." Units of gross floor area that may be transferred, pursuant to the provisions of this Section and Article 11 of this Code, from a Transfer Lot to increase the allowable gross floor area of a development on a Development Lot.

(6) "Unit of TDR." One unit of TDR is one square foot of gross floor area.

(b) Amount of TDR Available for Transfer. The maximum TDR available for transfer from a Transfer Lot consists of the difference between (1) the allowable Gross Floor Area permitted on the Transfer Lot by the Zoning Control Table for the district in which the lot is located; and (2) the Gross Floor Area of the development located on the Transfer Lot.

(c) Eligibility of Development Lots and Limitation on Use of TDR on Development Lots. TDR may be used to increase the allowable gross floor area of a development on a Development Lot if the following requirements and restrictions are satisfied:

(1) Transfer of Development Rights shall be limited to the following:

(A) The Transfer Lot and the Development Lot are located in a C-3 Zoning District; or

(B) the Transfer Lot contains a Significant building and is located in the South of Market Extended Preservation District, as set forth in Section 819, and the Development Lot is located in a C-3 District; or

(C) the Transfer Lot is in a P District adjacent to a C-3 District and meets the requirements established in subsection (a)(4) above and the Development Lot is located in a C-3 District; or

(D) the Transfer Lot is located in any C-3 District and contains an individual landmark designated pursuant to Article 10 and the Development Lot is located in any C-3 District.

(2) TDR may not be transferred for use on any lot on which is or has been located a Significant or Contributory building; provided that this restriction shall not apply if the designation of a building is changed to Unrated; nor shall it apply if the Historic Preservation Commission finds that the additional space resulting from the transfer of TDR is essential to make economically feasible the reinforcement of a Significant or Contributory building to meet the standards for seismic loads and forces of the Building Code, in which case TDR may be transferred for that purpose subject to the limitations of

this Section and Article 11, including Section 1111.6. Any alteration shall be governed by the requirements of Sections 1111 to 1111.6.

(3) Notwithstanding any other provision of this Section, development on a Development Lot is limited by the provisions of this Code, other than those on floor area ratio, governing the approval of projects, including the requirements relating to height, bulk, setback, sunlight access, and separation between towers, and any limitations imposed pursuant to Section 309 review applicable to the Development Lot. The total allowable gross floor area of a development on a Development Lot may not exceed the limitation imposed by Section 123(c).

(d) Effect of Transfer of TDR. Transfer of TDR from a Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of the TDR transferred, except as provided in Section 124(f). In addition, transfer of TDR from a Preservation Lot containing a Contributory building or an individual landmark designated pursuant to Article 10 causes such building to become subject to the same restrictions on demolition and alteration, and the same penalties and enforcement remedies, that are applicable to Significant Buildings Category I, as provided in Article 11.

(e) Procedure for Determining TDR Eligibility.

(1) In order to obtain a determination of whether a lot is a Transfer Lot and, if it is, of the amount of TDR available for transfer, the owner of record of the lot may file an application with the Zoning Administrator for a Statement of Eligibility. The application for a Statement of Eligibility shall contain or be accompanied by plans and drawings and other information which the Zoning Administrator determines is necessary in order to determine whether a Statement of Eligibility can be issued. Any person who applies for a Statement of Eligibility prior to expiration of the time for request of reconsideration of designation authorized in Section 1106 shall submit in writing a waiver of the right to seek such reconsideration.

(2) The Zoning Administrator shall, upon the filing of an application for a Statement of Eligibility and the submission of all required information, issue either a proposed Statement of Eligibility or a written determination that no TDR are available for transfer and shall mail that document to the applicant and to any other person who has filed with the Zoning Administrator a written request for a copy, and shall post the proposed Statement of Eligibility or written determination on the Planning Department website. Any appeal of the proposed Statement of Eligibility or determination of noneligibility shall be filed with the Board of Appeals within 20 days of the date of issuance of the document. If not appealed, the proposed Statement of Eligibility or the determination of noneligibility shall become final on the 21st day after the date of issuance. The Statement of Eligibility shall contain at least the following information:

(A) the name of the owner of record of the Transfer Lot;

(B) the address, legal description and Assessor's Block and Lot of the Transfer Lot;

(C) the C-3 use district within which the Transfer Lot is located;

(D) whether the Transfer Lot contains a Significant or Contributory building, a Category V building, or an Article 10 individually designated landmark;

(E) the amount of TDR available for transfer; and

(F) the date of issuance.

(3) Once the proposed Statement of Eligibility becomes final, whether through lack of appeal or after appeal, the Zoning Administrator shall record the Statement of Eligibility in the Office of the County Recorder. The County Recorder shall be instructed to mail the original of the recorded document to the owner of record of the Transfer Lot and a conformed copy to the Zoning Administrator.

(f) Cancellation of Eligibility.

(1) If reasonable grounds should at any time exist for determining that a building on a Preservation Lot may have been altered or demolished in violation of Articles 10 or 11, including Sections 1110 and 1111 thereof, the Zoning Administrator may issue and record with the County Recorder a Notice of Suspension of Eligibility for the affected lot and, in cases of demolition of a Significant or Contributory building, a notice that the restriction on the floor area ratio of a replacement building may be applicable and shall mail a copy of such notice to the owner of record of the lot. The notice shall provide that the property owner shall have 20 days from the date of the notice in which to request a hearing before the Zoning Administrator in order to dispute this initial determination. If no hearing is requested, the initial determination of the Zoning Administrator is deemed final on the twenty-first day after the date of the notice, unless the Zoning Administrator has determined that the initial determination was in error.

(2) If a hearing is requested, the Zoning Administrator shall notify the property owner of the time and place of hearing, which shall be scheduled within 21 days of the request, shall conduct the hearing, and shall render a written determination within 15 days after the close of the hearing. If the Zoning Administrator shall determine that the initial determination was in error, that officer shall issue and record a Notice of Revocation of Suspension of Eligibility. Any appeal of the determination of the Zoning Administrator shall be filed with the Board of Appeals within 20 days of the date of the written determination following a hearing or, if no hearing has been requested, within 20 days after the initial determination becomes final.

(3) If after an appeal to the Board of Appeals it is determined that an unlawful alteration or demolition has occurred, or if no appeal is taken of the determination by the

Zoning Administrator of such a violation, the Zoning Administrator shall record in the Office of the County Recorder a Notice of Cancellation of Eligibility for the lot, and shall mail to the property owner a conformed copy of the recorded Notice. In the case of demolition of a Significant or Contributory Building, the Zoning Administrator shall record a Notice of Special Restriction noting the restriction on the floor area ratio of the Preservation Lot, and shall mail to the owner of record a certified copy of the Notice. If after an appeal to the Board of Appeals it is determined that no unlawful alteration or demolition has occurred, the Zoning Administrator shall issue and record a Notice of Revocation of Suspension of Eligibility and, if applicable, a Notice of Revocation of the Notice of Special Restriction, and shall mail conformed copies of the recorded notices to the owner of record.

(4) No notice recorded under this Section 128(f) shall affect the validity of TDR that have been transferred from the affected Transfer Lot in compliance with the provisions of this Section prior to the date of recordation of such notice, whether or not such TDR have been used.

(g) Procedure for Transfer of TDR.

(1) TDR from a single Transfer Lot may be transferred as a group to a single transferee or in separate increments to several transferees. TDR may be transferred either directly from the original owner of the TDR to the owner of a Development Lot or to persons, firms or entities who acquire the TDR from the original owner of the TDR and hold them for subsequent transfer to other persons, firms, entities or to the owners of a Development Lot or Lots.

(2) When TDR are transferred, they shall be identified in each Certificate of Transfer by a number. A single unit of TDR transferred from a Transfer Lot shall be identified by the number "1." Multiple units of TDR transferred as a group for the first time from a Transfer Lot shall be numbered consecutively from "1" through the number of units transferred. If a fraction of a unit of TDR is transferred, it shall retain its numerical identification. (For example, if 5,000-1/2 TDR are transferred in the initial transfer from the Transfer Lot, they would be numbered "1 through 5,000 and one-half of 5,001.") TDR subsequently transferred from the Transfer Lot shall be identified by numbers taken in sequence following the last number previously transferred. (For example if the first units of gross floor area transferred from a Transfer Lot are numbered 1 through 10,000, the next unit transferred would be number 10,001.) If multiple units transferred from a Transfer Lot are subsequently transferred separately in portions, the seller shall identify the TDR sold by numbers which correspond to the numbers by which they were identified at the time of their transfer from the Transfer Lot. (For example, TDR numbered 1 through 10,000 when transferred separately from the Transfer Lot in two equal portions would be identified in the two Certificates of Transfer as numbers 1 through 5,000 and 5,001 through 10,000.) Once assigned numbers, TDR retain such numbers for the purpose of identification through the process of transferring and using

TDR. The phrase "numerical identification," as used in this section, shall mean the identification of TDR by numbers as described in this Subsection.

(3) Transfer of TDR from the Transfer Lot shall not be valid unless (A) a Statement of Eligibility has been recorded in the Office of the County Recorder prior to the date of recordation of the Certificate of Transfer evidencing such transfer and (B) a Notice of Suspension of Eligibility or Notice of Cancellation of Eligibility has not been recorded prior to such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice of Revocation or a new Statement of Eligibility has been thereafter recorded.

(4) Transfer of TDR, whether by initial transfer from a Transfer Lot or by a subsequent transfer, shall not be valid unless a Certificate of Transfer evidencing such transfer has been prepared and recorded. The Zoning Administrator shall prepare a form of Certificate of Transfer and all transfers shall be evidenced by documents that are substantially the same as the Certificate of Transfer form prepared by the Zoning Administrator, which form shall contain at least the following:

(A) For transfers from the Transfer Lot only:

(i) Execution and acknowledgement by the original owner of TDR as the transferor(s) of the TDR; and

(ii) Execution and acknowledgment by the Zoning Administrator; and

(iii) A notice, prominently placed and in all capital letters, preceded by the underlined heading "Notice of Restriction," stating that the transfer of TDR from the Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR transferred, with reference to the provisions of this Section.

(B) For all transfers:

(i) The address, legal description, Assessor's Block and Lot, and C-3 use district of the Transfer Lot from which the TDR originates; and

(ii) The amount and sale price of TDR transferred; and

(iii) Numerical identification of the TDR being transferred; and

(iv) The names and mailing addresses of the transferors and transferees of the TDR; and

(v) Execution and acknowledgment by the transferors and transferees of the TDR; and

(vi) A reference to the Statement of Eligibility, including its recorded instrument number and date of recordation, and a recital of all previous transfers of the TDR, including the names of the transferors and transferees involved in each transfer and the recorded instrument number and date of recordation of each Certificate of Transfer involving the TDR, including the transfer from the Transfer Lot which generated the TDR.

(5) When a Certificate of Transfer for the transfer of TDR from a Transfer Lot is presented to the Zoning Administrator for execution, that officer shall not execute the document if a transfer of the TDR would be prohibited by any provision of this Section or any other provision of this Code. The Zoning Administrator shall, within five business days from the date that the Certificate of Transfer is submitted for execution, either execute the Certificate of Transfer or issue a written determination of the grounds requiring a refusal to execute the Certificate.

6) Each duly executed and acknowledged Certificate of Transfer containing the information required herein shall be presented for recordation in the Office of the County Recorder and shall be recorded by the County Recorder. The County Recorder shall be instructed to mail the original Certificate of Transfer to the person and address designated thereon and shall be given a copy of the Certificate of Transfer and instructed to conform the copy and mail it to the Zoning Administrator.

(h) Certificate of Transfer of TDR for a Project on a Development Lot.

(1) When the use of TDR is necessary for the approval of a building permit for a project on a Development Lot, the Director of the Department of Building Inspection shall not approve issuance of the permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR. When the transfer of TDR is necessary for the approval of a site permit for a project on a Development Lot, the Zoning Administrator shall impose as a condition of approval of the site permit the requirement that the Director of the Department of Building Inspection shall not issue the first addendum to the site permit unless the Zoning Administrator has issued a written certification that the owner of the Development Lot owns the required number of TDR.

(2) In order to obtain certification as required in Section 128(h)(1), the permit applicant shall present to the Zoning Administrator:

(A) Information necessary to enable the Zoning Administrator to prepare the Notice of Use of TDR, which information shall be at least the following:

(i) The address, legal description, Assessor's Block and Lot, and zoning classification of the Development Lot;

(ii) The name and address of the owner of record of the Development Lot;

(iii) Amount and numerical identification of the TDR being used;

(iv) A certified copy of each Certificate of Transfer evidencing transfer to the owner of the Development Lot of the TDR being used; and

(B) A report from a title insurance company showing the holder of record of the TDR to be used, all Certificate of Transfer of the TDR, and all other matters of record affecting such TDR. In addition to showing all such information, the report shall guarantee that the report is accurate and complete and the report shall provide that in the event that its guarantee or any information shown in the report is incorrect, the title company shall be liable to the City for the fair market value of the TDR at the time of the report. The liability amount shall be not less than \$10,000 and no more than \$1,000,000, the appropriate amount to be determined by the Zoning Administrator based on the number of TDR being used.

(C) An agreement whereby the owner of the Development Lot shall indemnify the City against any and all loss, cost, harm or damage, including attorneys' fees, arising out of or related in any way to the assertion of any adverse claim to the TDR, including any loss, cost, harm or damage occasioned by the passive negligence of the City and excepting only that caused by the City's sole and active negligence. The indemnity agreement shall be secured by a financial balance sheet certified by an auditor or a corporate officer showing that the owner has assets equal to or greater than the value of the TDR, or other security satisfactory to Planning Department and the City Attorney.

(3) If the Zoning Administrator determines that the project applicant has complied with the provisions of Subsection (h)(2) and all other applicable provisions of this Section, and that the applicant is the owner of the TDR, that officer shall transmit to the Director of the Department of Building Inspection, with a copy to the project applicant, written certification that the owner of the Development Lot owns the TDR. Prior to transmitting such certification, the Zoning Administrator shall prepare a document entitled Notice of Use of TDR stating that the TDR have been used and may not be further transferred, shall obtain the execution and acknowledgment on the Notice of the owner of record of the Development Lot, shall execute and acknowledge the Notice, shall record it in the Office of the County Recorder, and shall mail to the owner of record of the Development Lot a conformed copy of the recorded Notice. If the Zoning Administrator determines that the project applicant is not the owner of the TDR, or has not complied with all applicable provisions of this Section, that determination shall be set forth in writing along with the reasons therefore. The Zoning Administrator shall either transmit certification or provide a written determination that certification is inappropriate within 10 business days after the receipt of all information required pursuant to Subsection (h)(2).

(i) Cancellation of Notice of Use; Transfer from Development Lot.

(1) The owner of a Development Lot for which a Notice of Use of TDR has been recorded may apply for a Cancellation of Notice of Use if (A) the building permit or site permit for which the Notice of Use was issued expires or was revoked or cancelled prior to completion of the work for which such permit was issued and the work may not be carried out; or (B) any administrative or court decision is issued or any ordinance or initiative or law is adopted which does not allow the applicant to make use of the permit; or (C) a portion or all of such TDR are not used.

(2) If the Zoning Administrator determines that the TDR have not been and will not be used on the Development Lot based on the reasons set forth in subsection (i)(1), the Zoning Administrator shall prepare the Cancellation of Notice of Use of TDR. If only a portion of the TDR which had been acquired are not being used, the applicant may identify which TDR will not be used and the Cancellation of Notice of Use of TDR shall apply only to those TDR. The Zoning Administrator shall obtain on the Cancellation of Notice of Use of TDR the signature and acknowledgment of the owner of record of the Development Lot as to which the Notice of Use of TDR was recorded, shall execute and acknowledge the document, and shall record it in the office of the County Recorder.

(3) Once a Cancellation of Notice of Use of TDR has been recorded, the owner of the Development Lot may apply for a Statement of Eligibility in order to transfer the TDR identified in that document. The procedures and requirements set forth in this Section governing the transfer of TDR shall apply to the transfer of TDR from the owner of a Development Lot after a Notice of Use has been filed, except for the provisions of this Section permanently restricting the development potential of a Transfer Lot upon the transfer of TDR; provided, however, that the district or districts to which the TDR may be transferred shall be the same district or districts to which TDR could have been transferred from the Transfer Lot that generated the TDR.

(j) Erroneous Notice of Use; Revocation of Permit. If the Zoning Administrator determines that a Notice of Use of TDR was issued or recorded in error, that officer may direct the Director of the Department of Building Inspection to suspend any permit issued for a project using such TDR, in which case the Director of the Department of Building Inspection shall comply with that directive. The Zoning Administrator shall thereafter conduct a noticed hearing in order to determine whether the Notice of Use of TDR was issued or recorded in error. If it is determined that the Notice of Use of TDR was issued or recorded in error, the Director of the Department of Building Inspection shall revoke the permit; provided, however, that no permit authorizing such project shall be revoked if the right to proceed thereunder has vested under California law. If it is determined that the Notice of Use of TDR was not issued or recorded in error, the permit shall be reinstated.

(k) Effect of Repeal or Amendment. TDR shall convey the rights granted herein only so long and to the extent as authorized by the provisions of this Code. Upon repeal of such legislative authorization, TDR shall thereafter convey no rights or privileges. Upon amendment of such legislative authorization, TDR shall thereafter convey only such

rights and privileges as are permitted under the amendment. No Statement of Eligibility shall convey any right to use, transfer or otherwise utilize TDR if the maximum floor area ratio for the Transfer Lot is reduced after the Statement of Eligibility is issued.

(l) Preservation Rehabilitation, and Maintenance Requirements for Preservation Lots.

(1) In addition to the material required to be submitted with an application for a Certificate of Transfer for initial transfer from the Transfer Lot set forth in subsection 128(g), the owner of the Transfer Lot shall:

(A) Demonstrate that any and all outstanding Notices of Violation have been abated; and

(B) Submit for approval by the Department a Preservation, Rehabilitation, and Maintenance Plan that describes any proposed preservation and rehabilitation work and that guarantees the maintenance and upkeep of the Transfer Lot. This Plan shall include:

(i) a plan for the ongoing maintenance of the Transfer Lot;

(ii) information regarding the nature and cost of any rehabilitation, restoration or preservation work to be conducted on the Transfer Lot, including information about any required seismic, life safety, or disability access work;

(iii) a construction schedule; and

(iv) any other such information as the Department may require to determine compliance of this subsection 128(l).

All such work, shall comply with the Secretary of the Interior's Standards for the Treatment of Historic Properties. The requirements of the approved Plan shall be recorded along with the final Certificate of Transfer in the Office of the County Recorder.

Notwithstanding the foregoing, the owner of the Transfer Lot may apply to the Department for a hardship exemption from the requirements of subsection (i). Such hardship exemption shall demonstrate to the satisfaction of the Department that sale of TDR is necessary to fund the work required to cure the outstanding Notice(s) of Violation on the Transfer Lot.

(2) Approval of the Certificate of Transfer for initial transfer from the Transfer Lot shall be conditioned on execution of the requirements described in subsection (l)(1). Once any TDR is transferred from the Transfer Lot, the Certificate of Transfer and conditions may not be withdrawn.

(3) Within one year of the issuance of the Certificate of Transfer for initial transfer from the Transfer Lot, the owner of the Transfer Lot shall submit a status report

to the Department detailing how the requirements of subsection (l)(1) have been completed and describing ongoing maintenance activities. Such report shall include: (A) information detailing the work completed; (B) copies of all permits obtained for the work, including any Certificates of Appropriateness or Permits to Alter; (C) any inspection reports or other documentation from the Department of Building Inspection showing completion of the work; (D) itemized receipts of payment for work performed; and (E) any such other documentation as the Department may require to determine compliance with the requirements of this subsection 128(l). The deadline for completion of the work and submittal of this report may be extended at the discretion of the Department upon application of the owner of the Transfer Lot and only upon a showing that the owner has diligently pursued all required permits and completion of the work.

(4) Failure to comply with the requirements of this subsection (l), including all reporting requirements, shall be grounds for enforcement under this Code, including but not limited to under Sections 176 and 176.1. Penalties for failure to comply may include, but shall not be limited to, a lien on the Transfer Lot equal to the sale price of the TDR sold.

(Added by Ord. 414-85, App. 9/17/85; amended by Ord. 115-90, App. 4/6/90; Ord. 21-03, File No. 020328, App. 2/21/2003; Ord. 77-04, File No. 031930, App. 5/6/2004; Ord. 87-07, File No. 061688, App. 4/27/2007; Ord. 246-10, File No. 100851, App. 10/14/2010; Ord. 256-10, File No. 101200, App. 11/5/2010; Ord. 68-13, File No. 120474, App. 4/23/2013, Eff. 5/23/2013; Ord. 22-15, File No. 141253, App. 2/20/2015, Eff. 3/22/2015)

Amendment History

References to officials and bodies updated and/or corrected throughout; internal subdivisions redesignated consistently throughout; in division (c)(1), former subdivisions (i) and (iii) amended and redesignated as (A) and (B), former subdivisions (v) and (vi) redesignated as (C) and (D), and former subdivisions (ii) and (iv) deleted; divisions (f)(1), (f)(3), and (l)(1) through (4) amended; Ord. 68-13, Eff. 5/23/2013. Divisions (a)(1) and (b) amended; Ord. 22-15, Eff. 3/22/2015.

APPENDIX IV SAN FRANCISCO PLANNING CODE § 11.1109

The following text is taken from The San Francisco Planning Code. Article 11 relates to the preservation of historic buildings. The excerpted portion concerns historic property eligibility for transfer of development rights in San Francisco, and was last amended on June 20, 2012. The complete text can be found online at:

[http://library.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://library.amlegal.com/nxt/gateway.dll/California/planning/planningcode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1).

Article 11, Section 1109: Eligibility for Transfer of Development Rights

Lots on which are located Significant or Contributory Buildings or Category V Buildings in those certain Conservation Districts and portions thereof as indicated in Section 8 of the Appendix relating to that District are eligible preservation lots as provided in Section 128 of this Code for the purposes of Transferable Development Rights ("TDR"), as provided in this Section:

(a) **Significant Buildings.** Lots on which are located buildings designated as Significant Buildings - Category I or Category II - are eligible to transfer the difference between the allowable gross floor area permitted on the lot by Section 124 of this Code and the gross floor area of the development on the lot, if all the requirements for transfer set forth in Section 128 are met. Lots on which are located Significant Buildings which have been altered in conformance with the provisions of this Article retain eligibility for the transfer of TDR.

(b) **Contributory Buildings.** Lots on which are located buildings designated as Contributory Buildings - Category III or Category IV - are eligible to transfer the difference between the allowable gross floor area permitted on the lot by Section 124 of this Code and the gross floor area of the development on the lot, if all the requirements for transfer set forth in Section 128 are met. Alteration or demolition of such a building in violation of Section 1110, or alterations or demolitions made without a permit issued pursuant to Sections 1111 through 1111.7, eliminates eligibility for the transfer of TDR; provided, however, that such eligibility may nonetheless be retained or acquired again if, pursuant to Section 1116(b), the property owner demonstrates as to any alteration that it

was a Minor Alteration as defined in this Article and has applied for a Permit for Minor Alteration pursuant to Section 1111.1; or that the property owner has obtained a Permit to Alter to restore the original distinguishing qualities and character-defining features that were altered. Once any TDR have been transferred from a Contributory Building, the building is subject to the same restrictions on demolition and alteration as a Significant Building. These restrictions may not be removed by the transfer of TDR back to the building.

(c) **Category V Buildings in Conservation Districts.** Where explicitly permitted in Section 8 of the Appendix establishing a Conservation District, lots located in such a District on which are located Category V Buildings (designated as neither Significant nor Contributory) are eligible to transfer the difference between the allowable gross floor area permitted on the lot under Section 124 of the Code and the gross floor area of the development on the lot, if all the requirements for transfer set forth in Section 128 are met; provided, however, that a lot is eligible as a Preservation Lot pursuant to this Section only if:

(1) the exterior of the building is substantially altered so as to make it compatible with the scale and character of the Significant and Contributory Buildings in the district, including those features described in Sections 6 and 7 of the Appendix to Article 11 describing the relevant district, and has thus been determined by the HPC to be a Compatible Rehabilitation, and the building meets or has been reinforced to meet the standards for seismic loads and forces of the Building Code; or

(2) the building on the lot is new, having replaced a Category V Building, and has received approval by the HPC as a Compatible Replacement Building, pursuant to Section 1113.

(Added by Ord. 414-85, App. 9/17/85; amended by Ord. 95-12, File No. 120301, App. 5/21/2012, Eff. 6/20/2012)

Amendment History

Undesignated introductory paragraph and divisions (b) and (c) amended; Ord. 95-12, Eff. 6/20/2012.

APPENDIX V
CITY OF NEW ORLEANS FORMER COMPREHENSIVE ZONING
ORDINANCE § 16.6

The following text is taken from The City of New Orleans Former Comprehensive Zoning Ordinance. The excerpted portion concerns the former transfer of development rights program in New Orleans, and was last amended on June 20, 2014. This program is no longer in effect and is absent from the current Comprehensive Zoning Ordinance which went into effect on August 12, 2015. The complete text can be found online at: <http://www.nola.gov/city-planning/czo/former-comprehensive-zoning-ordinance/>.

Section 16.8. Permit for Transfer of Development Rights.

16.8.1. Purpose and Intent. It is the City's intent to authorize the transfer of development rights from certain sites, places, buildings or structures designated as historic landmarks, or having a special historical, community or aesthetic interest or value, located in certain zoning districts, hereinafter referred to respectively as "transfer sites" and "transfer districts," to certain sites, places, buildings or structures located in other zoning districts, hereinafter referred to respectively as "receiving sites" and "receiving districts," in order to preserve and enhance the transfer sites and structures located thereon. It is the City's further intent to restrict the use of the transfer sites in accordance with terms of the permit authorizing such transfer and to authorize utilization of the development rights so transferred on the receiving site in accordance with the terms of the conditional use permit for such site. Because of their unique characteristics, each of these actions requires the exercise of planning judgment.

16.8.2. Applicability—Transfer and Receiving Districts. The City Council may permit development rights to be transferred from lots occupied by buildings or structures worthy of preservation and having special historical, community or aesthetic interest located in any CBD District (transfer districts) to lots located in a CBD-1, CBD-2, or CBD-2B District (receiving districts) and may permit development rights to be transferred from lots occupied by buildings or structures worthy of preservation located in the CBD-8 District (transfer district) to lots located in the CBD-9 District (receiving district). Such buildings or structures shall not include any landmarks owned by the City, State, or Federal Government. From time to time, the City Council may designate other zoning

districts as transfer and receiving districts pursuant to procedures for zoning amendments in Section 16.2.

16.8.3. Rights Transferred and Restrictions. Floor area authorized for the transfer site under the transfer district regulations may be transferred to the increase the maximum floor area allowable on the receiving site or sites under the receiving district regulations, subject to the following conditions and limitations: 1. The maximum amount of floor area that may be transferred from a transfer site shall be the maximum floor area allowed by the applicable transfer district regulations, exclusive of any additional bonus floor area, less the total floor area of all the buildings on the transfer site. 2. The increased floor area on the receiving site may exceed by ten (10) percent the maximum floor area allowed by the provisions of Section 6.11 for developments which earn bonus floor area. Article 16, Section 16.8, Permit for Transfer of Development Rights 16-23 (4-14) 3. In all CBD Districts, the transfer of development rights once completed shall irrevocably reduce the amount of floor area that can be developed on the transfer site by the amount of floor area transferred. In the event that the landmark's designation is removed or if the landmark building is destroyed, or if for any other reason the transfer site is redeveloped, such transfer site can only be developed up to the amount of floor area as reduced by the transfer.

16.8.4. Procedures.

1. Application Requirements. An application for transfer of development rights under this section shall be made by the owners or their representative of the transfer site and of the receiving site in the form of a request for restriction of development rights on the transfer site and to allow additional development rights on the receiving site through authorization of a conditional use permit for the receiving site. The application shall be submitted to the Executive Director of the City Planning Commission, and shall be processed in accordance with Section 16.9.4. The application shall include the following: a. A site plan for the transfer site; b. A conditional use permit application, together with all materials required for such submission, for the receiving site; c. A program for the continuing maintenance of the transfer site; d. A report from the CBD Historic District Landmarks Commission commenting on the proposed transfer; and e. Such other information as may be required by the City Council or the City Planning Commission.

2. Planning Commission Recommendation. After receiving the report of the Executive Director, the Planning Commission shall conduct a public hearing to determine whether to recommend to the City Council whether the transfer of development rights should be permitted, in accordance with the procedures of Sections 16.9.3 and 16.9.5. Thereafter, the Planning Commission may recommend approval, conditional approval or denial of the request for transfer of development rights, and shall cause such recommendation to be delivered to the City Council for action.

3. City Council Action. After receiving the recommendation of the City Planning Commission, the City Council shall conduct a public hearing and, thereafter, shall

determine whether to approve, modify or deny the request for transfer of development rights. Such decision shall be conveyed to the applicants in the manner provided in Section 16.9.2.

4. Approval Criteria. The Planning Commission in making its recommendation and the Council in taking action on the application for transfer of development rights shall approve such application only if: a. The permitted transfer of floor area to the receiving site will not create adverse effects on the character of the surrounding area, to the detriment of the occupants of buildings on the block or nearby blocks. b. Adequate safeguards exist to insure that buildings from which development rights are transferred are retained and renovated. c. All requirements for a conditional use permit on the receiving site have been met. Article 16, Section 16.8, Permit for Transfer of Development Rights 16-24 (4-14)

5. Conditions. The Planning Commission may recommend and the City Council may impose such conditions as are necessary to reasonably assure that such criteria are met. In addition to all other conditions, the City Council may require that a surety bond be filed or deposited in escrow with the City to insure compliance with the requirements as may be imposed by the Council.

16.8.5. Transfer Instruments. The owners of the transfer site and of receiving site shall submit to the City Council a copy of the transfer instrument legally sufficient in both form and content to effect such transfer and a certified copy of the notice of restrictions, which shall be filed by the owners of the sites in the place designated by the law for the filing of deeds and restrictions on real property. Both the instrument of transfer and the notice of restrictions shall specify the amount of floor area to be transferred, and shall specify by lot and block numbers the sites from which and to which such transfer is made.

16.8.6. Termination and Extension of Transfer Permit and Conditional Use Permit. Termination of the permit to transfer development rights and the conditional use permit for the receiving site for failure to commence construction, as well as the extension of such permits, shall be in accordance with Section 16.9.11.

APPENDIX VI
DISTRICT OF COLUMBIA MUNICIPAL REGULATIONS CHAPTER
11-1709

The following text is taken from The District of Columbia Municipal Regulations.

The excerpted portion concerns transfer of development rights in the District, and went into effect on September 28, 2007. The Zoning Regulations of 2016, effective on September 6, 2016, eliminated this program. The complete text can be found online at: <http://www.dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=11-1709>.

1709 TRANSFERABLE DEVELOPMENT RIGHTS (DD)

1709.1 This section shall authorize the transfer of development rights from a project within the DD Overlay District to a receiving lot or lots located elsewhere in the DD Overlay District or in the Downtown East, New Downtown, or other receiving zones or sites pursuant to this section.

1709.2 Transferable development rights shall be generated either by historic preservation as provided in § 1707, bonus uses pursuant to the subarea provisions of §§ 1703 through 1705, or the residential development provisions of § 1706.3. Transferable development rights shall also be generated pursuant to the downtown historic properties residential rehabilitation incentive provisions of § 755.

1709.3 No transfer of development rights from historic properties pursuant to §§ 755 and 1707, nor of bonus density derived from bonus uses, shall be effective under this section unless an instrument, approved by the Office of the Attorney General to be legally sufficient to effect such a transfer and approved in content by the Zoning Administrator and the Director of the D.C. Office of Planning, has been entered into among all of the parties concerned, including the District of Columbia.

1709.4 In the case of transferable development rights derived from historic preservation pursuant to § 1707, the instrument shall effect the requirements of § 1707.5 as well as the applicable requirements of this section.

1709.5 In the case of bonus density derived from bonus uses, the following provisions shall apply:

(a) The property owner shall obtain a building permit indicating in appropriate plans the floor area designed and reserved for the designated bonus uses;

(b) The instrument of transfer shall indicate the size of the applicable bonus uses in square feet of floor area and the location of bonus uses by reference to the plans required by paragraph (a);

(c) The indicated floor area shall be occupied by the designated bonus uses, or held as vacant;

(d) The instrument of transfer may be executed to transfer development rights to receiving lots after the building permit has been issued; provided, that no certificate of occupancy for the transferred floor area shall be issued for the receiving lot until the conditions specified in paragraphs (e) or (f) of this subsection, as applicable, have been met;

(e) If the project on the sending lot generates transferable development rights from bonus uses of less than fifteen thousand square feet (15,000 ft.²) of gross floor area, any transferred development rights shall vest in the receiving lot without regard for the status of the development on the sending lot, after the certificate of occupancy for the bonus uses on the sending lot has been issued;

(f) If the project on the sending lot generates transferable development rights from bonus uses of fifteen thousand square feet (15,000 ft.²) or more of gross floor area, any transferred development rights shall vest in the receiving lot without regard for the status of development on the sending lot, after applicant provides evidence of a lease agreement with a complying user/occupant of the bonus gross floor area; provided:

(1) The applicant shall provide the Zoning Administrator and the Director of the D.C. Office of Planning with evidence of the lease agreement with the operator of the bonus use; and

(2) The Zoning Administrator, with the concurrence of the Director of the Office of Planning, will certify in writing that the requirements of this paragraph have been satisfied; and

(g) Following the execution and recordation of an instrument transferring development rights to a receiving lot, any modification of provisions of the instrument that relates to the type, size, or discontinuance of a bonus use in the sending lot shall require the approval of the Zoning Commission, after public hearing and with the concurrence of the Office of Planning; provided, that the Commission shall find that the proposed modification is fully justified and consistent with the purposes of this chapter.

1709.6 The instrument of transfer shall increase the development rights under the Zoning Regulations otherwise available to the receiving lot, to the extent of the rights transferred.

1709.7 If more than one transfer of development rights is made from a sending lot, the second transfer and all subsequent transfers shall be numbered "two" and sequentially, and the instrument of transfer shall include the names of the transferors and transferees involved in all previous transfers, including the amount of gross floor area transferred and the dates of recordation of each transfer.

1709.8 Transferable development rights may be re-transferred from the original receiving lot to another eligible receiving lot; provided, that there is compliance with the procedures specified in § 1709.7 and other applicable provisions.

1709.9 Nothing in this chapter shall prohibit the purchase of transferable development rights by an entity or individual who intends to resell the transferable development rights at a future date for use on a receiving lot, so long as there is compliance with this section and chapter.

1709.10 A certified copy of the instrument of transfer shall be filed with the Zoning Administrator prior to approval by the Department of Consumer and Regulatory Affairs of any building permit application affected by the transfer.

1709.11 The instrument shall be recorded in the Office of the Recorder of Deeds, serving as a notice both to the receiving lot and to the sending lot by virtue of this agreement for transfer of required gross floor area or bonus floor area.

1709.12 The notice of restrictions and transfer shall run with the title and deed to each affected lot.

1709.13 A building that has been constructed or that is under construction as of January 18, 1991, shall not be eligible to earn bonus density or transferable development rights, nor to utilize the combined lot development provisions.

1709.14 The instrument of transfer shall be processed in the government as follows:

(a) The applicant shall submit the instrument of transfer to the Zoning Administrator, with a copy provided to the Director of the Office of Planning;

(b) The Zoning Administrator and the Office of Planning shall review the instrument to determine whether its contents are complete and accurate as to the applicable provisions of the DD Overlay District;

(c) If the Zoning Administrator and the Director of the Office of Planning find that the instrument is complete and accurate in content, the Zoning Administrator shall

transmit the instrument to the Office of the Attorney General, together with a written statement that the content complies with the provisions of the DD Overlay District;

(d) The Office of the Attorney General shall determine whether the instrument is legally sufficient to effect the transfer of development rights;

(e) If the Office of the Attorney General finds the instrument to be legally sufficient, the Office of the Attorney General shall forward it to the Mayor after notifying the Zoning Administrator of the finding;

(f) After signature by the Mayor or by the Secretary of the District of Columbia for the Mayor, the covenant or instrument of transfer shall be returned to the Zoning Administrator;

(g) The applicant, upon notification by the Zoning Administrator that the instrument has been signed by the Mayor, shall take the covenant to the Recorder of Deeds, who shall record the covenant with the applicable sending and receiving lots, and provide the applicant with two (2) certified copies of the covenant and of title certificates for all affected properties; and

(h) The applicant shall provide one (1) certified copy to the Zoning Administrator and one (1) to the Office of Planning.

1709.15 The Downtown East receiving zone consists of the C-3-C and HR/C-3-C zoned portions of Squares numbered 565, 567, 569 through 574, 625, 626, 627, and 628 through 631.

1709.16 The New Downtown receiving zone consists of the C-3-C zoned portions of Squares numbered 72 through 73, 74, 76, 78, 85, 86, 99, 100, and 116 through 118.

1709.17 The North Capitol receiving zone consists of Squares 668 through 677, 709 through 713, and 715, each zoned C-3-C.

1709.18 The Capitol South receiving zone consists of those portions of Squares 695 through 697, N697, 698, 699, N699, 737 through 742, N743, and 766, each zoned C-3-C.

1709.19 The Southwest receiving zone consists of Squares 268, 270, 299, 300, 327, 386, 387, 463 through 466, 493 through 495, and 536 through 538, and Lot 61 in Square 435, each zoned C-3-C.

1709.20 If the height of a receiving building exceeds the height that the provisions of this title allow as a matter of right for a building located on an abutting lot, including a lot that is separated from the receiving lot by an alley, no part of the receiving building shall project above a plane at a forty-five degree (45°) angle from a line that is as follows:

(a) Directly above the zone district boundary line between such abutting lot and the receiving lot; and

(b) Above such boundary line by the distance of the matter-of-right height that this title allows for such abutting lot.

1709.21 Except as provided in the second sentence, the maximum permitted building height in the New Downtown, North Capitol, Capitol South, and Southwest receiving zones, the maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, approved June 1, 1910 (36 Stat. 452, as amended; D.C. Official Code §§ 6-601.01 to 6-601.09 , and the maximum permitted FAR shall be 10.0 for buildings permitted a height of one hundred thirty feet (130 ft.), and 9.0 for buildings permitted a lesser height. A building on Square 766 may exceed a height of ninety (90) feet if the Zoning Commission, after hearing, finds that the additional height:

(a) Will be sufficiently setback from the eastern building face to avoid shadowing the lower buildings in Square 797 to the east; and

(b) Will provide a suitable northern focal point for the Canal Blocks Park.

1709.22 In the New Downtown receiving zone, the height of a receiving building may not be measured from a point that fronts on New Hampshire Avenue.

1709.23 In the Downtown East receiving zone, the maximum permitted FAR for any permitted uses shall be 9.0 and the maximum permitted building height shall be one hundred ten feet (110 ft.)

1709.24 In addition to the matter-of-right transfers authorized by this section, a lot that is approved and developed as a Planned Unit Development pursuant to chapter 24 of this title may serve as a receiving lot for transferable development rights; provided:

(a) The Planned Unit Development shall be located in a receiving zone or in a DD/C-2-C, DD/C-3-C, or DD/C-4 Overlay District;

(b) The maximum permitted building height shall be that permitted by the Act to Regulate the Height of Buildings in the District of Columbia, D.C. Official Code §§ 6-601.01 to 6-601.09 (2001)(formerly codified at D.C. Code §§ 5-401 to 5-409 (1994 Repl.)); and the maximum permitted FAR shall be 10.5 for buildings permitted a height of one hundred thirty feet (130 ft.) and 9.5 for buildings permitted a lesser height; and

(c) Development rights may not be transferred to a lot that is within the site of a Planned Unit Development approved prior to October 1, 1989, nor to a historic landmark or a lot in a historic district.

SOURCE: Final Rulemaking published at 38 DCR 612, 635 (January 18, 1991); as amended and renumbered by: Final Rulemaking published at 39 DCR 8312, 8318 (November 13, 1992); and Final Rulemaking published at 46 DCR 1016, 1018 (February 5, 1999); as amended by Final Rulemaking published at 47 DCR 5871, 5874 (July 21, 2000); Final Rulemaking published at 47 DCR 6230, 6232 (August 4, 2000); Final Rulemaking published at 47 DCR 9741-43 (December 8, 2000), incorporating by reference the text of Proposed Rulemaking published at 47 DCR 8335, 8483-86 (October 20, 2000); as amended by Final Rulemaking and Order No. 06-23 published at 54 DCR 9393 (September 28, 2007); as corrected by Errata Notice published at 58 DCR 4314, 4315 (May 20, 2011).

APPENDIX VII
TRANSFER OF DEVELOPMENT RIGHTS QUESTIONNAIRE FOR
PROGRAM ADMINISTRATORS

1. When did the TDR program begin?
2. What was its original purpose?
3. What is the annual operating cost of the TDR program?
4. What development right is transferred under this program? (For example, floor-to-area ratio, dwelling units, etc.)
5. What is the transfer ratio for the development rights?
6. Does this program use a TDR bank?
7. Does the program include long-term conservation easements or other means to ensure long-term preservation?
8. Can you provide a list of developers that have utilized the program?
9. How many development projects utilized transfers have there been since the program began? How many transfers have there been each year for the past five years?
10. How many development right units (FAR, dwelling units, etc.) have been transferred since the program began? How many units have been transferred in each year for the past five years?
11. Have any properties been demolished or significantly altered so as to lose their landmark designation status since participating in the transfer program?
12. Do you think the program has been effective in meeting its original purpose? What could make it more effective?
13. Are there other mechanisms to achieve historic preservation goals available in your area that you find more effective?
14. Has there been any independent evaluation of the program? If so, how could I obtain a copy?

15. Does your organization produce an annual report? If so, where can I get copies?

APPENDIX VIII
TRANSFER OF DEVELOPMENT RIGHTS QUESTIONNAIRE FOR
PARTICIPANTS

1. How long have you been involved with the TDR program?
2. How many developments or projects using TDRs have you participated in? Could you give me some examples?
3. What do you think was the original purpose of the TDR program?
4. How easy to use is the TDR program?
5. How effective has the program been from your standpoint as a developer?
6. What kind of changes would you make to the program to make it more effective?

ENDNOTES

1. John J. Costonis, *Space Adrift: Landmark Preservation and the Marketplace*, (Chicago: University of Illinois Press, 1974), 34.
2. Arthur C. Nelson, Rick Pruetz, and Doug Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, Washington: Island Press, 2011.
3. *Penn Central Transportation Company, et al. v. New York City, et al.*, 438 U.S. 104 (1978).
4. As an example, if income per square foot is \$100 in the sending zone and \$50 in the receiving zone (due to be in a less desirable location), transferring 100 SF (or \$10,000 value in income) to the receiving zone would allow the developer to construct 200 SF ($\$50/\text{sf} \times 200 \text{ SF} = \$10,000$).
5. James Cohen and Ilana Preuss, "An Analysis of Social Equity Issues in Montgomery County (MD) Transfer of Development Rights Programs," (College Park, MD: National Center for Smart Growth Research & Education, 2002), 38.
6. Arthur C. Nelson, Rick Pruetz, and Doug Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, (Washington: Island Press, 2011), xxiv.
7. *Ibid.*, xxi.
8. City of New York, Building Zone Resolution, (July 25, 1916), Section 9(d).
9. New York City Department of Planning, "A Survey of Transferable Development Rights Mechanisms in New York City," (2015), 5.
10. *Ibid.*, 6.
11. *Ibid.*, 9.
12. *Fur-Lex Realty v. Lindsay*, 367 N.Y.S.2d 388, 81 Misc. 2d 904 (1975).
13. *Ibid.*

14. *Dupont Circle Citizens Ass'n v. District of Columbia Zoning Comm'n*, 355 A.2d 550 (D.C. App. 1976).
15. Ibid.
16. *Fred F. French Inv. Co. v. New York City*, 39 N.Y.2d 587 (1976)
17. Ibid.
18. *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978)
19. Ibid.
20. *Aptos Seascope Corp. v. Santa Cruz City*, 138 Cal. App.3d 484 (1982).
21. Ibid.
22. *City of Hollywood v. Hollywood, Inc.* 432 So.2d 1332 (Fla. App. 1983).
23. Ibid.
24. *Glisson v. Alachua City*. 558 So.2d 1030 (Fla. App. 1990).
25. Ibid.
26. *Neuzil v. Iowa City*, 451 N.W.2d 159 (Iowa 1990).
27. Ibid.
28. *Gardner v. New Jersey Pinelands Comm'n*, 125 N.J. 193, 593 A.2d 251 (1991).
29. Ibid.
30. *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997).
31. Ibid.
32. National Parks Service, "The Cairo Apartment Building," *National Register of Historic Places Registration Form*, 1994, Section 8, page 1.
33. Wendy Lanthrop, "The Curse of (Certain) Tall Buildings," *The American Surveyor*, January, 2009. http://www.amerisurv.com/PDF/TheAmericanSurveyor_Lanthrop-TallBuildings_January2009.pdf

34. The National Building Museum, “How Tall to Build,” audio recording, September 24, 2008. <http://www.nbm.org/media/audio/how-tall-to-build.html>
35. H.R. Rep. 1704, 55th Congress, 3rd Session (Dec 20, 1898).
36. District of Columbia Board of Commissioners, Board minutes, July 27, 1894.
37. U.S. Congress, An Act to regulate the height of buildings in the District of Columbia, 1899, PL 55-322, 55th Cong., 3rd sess.
38. U.S. Congress, To amend the Act entitled An Act to regulate the height of buildings in the District of Columbia to clarify the rules of the District of Columbia regarding human occupancy of penthouses above the top story of the building upon which the penthouse is placed, 2014, PL 113-103, 113th Con.
39. Nelson, Pruetz, and Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, 217.
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50. Sarah J. Stevenson, "Banking on TDRs: The Government's Role as a Banker of Transferable Development Rights." *N.Y.U. Law Review* 73, no. 4 (October, 1998), 1345.
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56. Pruetz and Standridge, "What Makes Transfer of Development Rights Work?," 84.
57. *Ibid.*
58. *Suitum v. Tahoe Regional Planning Agency*, 520 U.S. 725 (1997).
59. *Ibid.*, 732.
60. Pruetz and Standridge, "What Makes Transfer of Development Rights Work?," 84.
61. Chan and Hou, "Developing a Framework to Appraise the Critical Success Factors of Transfer Development Rights (TDRs) for Built Heritage Conservation," 40.
62. Stevenson, "Banking on TDRs," 1331.
63. *Ibid.*, 1343.

64. Ibid. In this program, a conglomerate of commercial banks acted as the TDR bank. The commercial banks exchanged mortgage debt for development rights from property owners in the district, and then could resell the TDRs at a profit. Even though not all TDRs were resold, the commercial banks still profited from this arrangement.
65. Stevenson, "Banking on TDRs: The Government's Role as a Banker of Transferable Development Rights," 1351.
66. Ibid.
67. Ibid., 1342, 1343.
68. Pruetz and Standridge, "What Makes Transfer of Development Rights Work?," 84.
69. John J. Costonis, "The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks." *Harvard Law Review* 85, no. 3 (1972), 585.
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71. Chan and Hou, "Developing a Framework to Appraise the Critical Success Factors of Transfer Development Rights (TDRs) for Built Heritage Conservation," 41.
72. Pruetz and Pruetz, "Transfer of Development Rights Turns 40," 6.
73. Chan and Hou, "Developing a Framework to Appraise the Critical Success Factors of Transfer Development Rights (TDRs) for Built Heritage Conservation," 40.
74. David Harvey, *Social Justice and the City*, (Georgia: University of Georgia Press, 2010), 98.
75. James Cohen and Ilana Preuss, "An Analysis of Social Equity Issues in Montgomery County (MD) Transfer of Development Rights Programs," (College Park, MD: National Center for Smart Growth Research & Education, 2002), 10-11.
76. Ibid., 11. "Development rights assignment equity" concerns the ability of a TDR program "to provide greater rewards to owners of higher quality farmland." In terms of an urban, historic preservation program, this could perhaps be translated as, "The ability of a TDR program to provide greater rewards to owners of higher quality historic properties." However, it is the belief of the author that this concept is not applicable to a historic preservation focused urban program.
77. Ibid., 10.
78. Ibid., 8.

79. Ibid., 11.
80. Ibid., 11.
81. Ibid., 11.
82. Ibid., 11.
83. Pruetz and Standridge, "What Makes Transfer of Development Rights Work?," 81.
84. Edwin H. W. Chan and Jun Hou, "Developing a Framework to Appraise the Critical Success Factors of Transfer Development Rights (TDRs) for Built Heritage Conservation," *Habitat International* 46, (April, 2015), 40.
85. Ibid., 39, 40.
86. Arthur C. Nelson, Rick Pruetz, and Doug Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, (Washington: Island Press, 2011), 217.
87. "ZRR Revisions for DCs Central Area," DC Office of Planning, last modified September 1, 2015, <https://zoningdc.org/2015/09/01/zrr-revisions-for-dcs-central-area/>.
88. The District of Columbia DCMR 11.I.800.2 (2016).
89. San Francisco Building Code § 1.2.128.
90. Ibid., § 11.1109.
91. Nelson, Pruetz, and Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, 207.
92. San Francisco Building Code, § 11.1102.
93. Ibid., § 11.1109.
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95. Seifel Consulting, Inc., "TDR Study: San Francisco's Transfer of Development Rights Program," prepared for the San Francisco Planning Department, June 2013.
96. Smart Preservation. "Atlanta, Georgia." <http://smartpreservation.net/atlanta-georgia/>.

97. City of Atlanta Code of Ordinances, Part III Land Development Code, § 16-28.023(2)(c) [Emphasis in the original]: *Sending area*: An area consisting of one or more parcels or lots which can qualify to be a sending property. A sending area may be: (1) An area consisting of one or more than one parcel or lot, if contiguous, which is zoned in any category R-1 through R-5 on one portion of the parcel(s) or lot(s) and also zoned RG on another portion of the same parcel(s) or lot(s), provided however that such property must be used for single-family or two family residential purposes and no other use is allowed by any special permit. Such areas may also be referred to as residential sending areas; (2) The boundaries of any property designated as a landmark building or site or historic building or site pursuant to the City of Atlanta Historic Preservation Ordinance; (3) One or more lots or parcels that are suitable to be donated to and accepted by the city, and will be dedicated for use as greenspace by an instrument to be recorded in the office of county clerk in which the property is located or property that will be purchased by the city for use as greenspace.

98. Ibid., § 16-28.023(2)(c)(2).

99. Ibid., § 16-28.023(3)(b). [Emphasis in the original]: *Historic preservation designation for individual sending properties*. Any property designated as a landmark building or site or historic building or site may, apply to sever or *transfer* the *development rights* not utilized by the present *development* of the historic property. The historic nomination or designation is not a declaration that the *development rights* are automatically severable or *transferable*. In order for any *development rights* to be severed or *transferred*, the applicant must show that the future use of the property from which the *development rights* are severed or *transferred* meets the requirements of this section and section 16-25.002(3). Approval of the severance or *transfer* of *development rights* shall not be a condition of approval of the historic designation, but no *development rights* shall be *transferred* until after the property is designated as a landmark building or site or historic building or site. *Rights transferred* from a designated building or site may be applied to any permitted use, which would be allowed on the designated property. Any redevelopment of the designated property from which the *rights* have been *transferred* or severed must be based on the remaining *development rights* and on the conditions under which the special permit was granted. No part of this section is intended to waive, alter, lessen or otherwise change the application of the City of Atlanta Historic Preservation Ordinance on future redevelopment of the designated property.

100. Ibid., § 16-28.023(3)(c). [Emphasis in the original]: *Receiving properties for development rights from historic designation*. Rights transferred from a landmark building or site or historic building or site may be applied to any permitted use, which would be allowed on the property from which the rights were transferred. The fact that such rights were transferred by a historic designation is not a declaration that the development rights may be received by a property. In order for any development rights to be received by a property, the applicant must show that the future use of the property

meets the requirements of this section. No part of this section is intended to waive, alter, lessen or otherwise change the application of the City of Atlanta Historic Preservation Ordinance on redevelopment of any designated property through the use of transferred development rights.

101. Ibid., § 16-28.023(6).

102. Nelson, Pruetz, and Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, 89.

103. The fifteen districts with their respective Sections of City of Atlanta Code of Ordinances are as follows: Downtown Special Public Interest District: § 16-18A; Buckhead Village District: § 16-18I; Buckhead/Lenox Stations Special Public Interest District: § 16-18L; Lindbergh Transit Station Area Special Public Interest District: § 16-18O; Midtown Special Public Interest District: § 16-18P; Piedmont Avenue Special Public Interest District: § 16-18Q; Mechanicsville Neighborhood Special Public Interest District: § 16-18R; Greenbrier Special Public Interest District: § 16-18T; Historic West End/Adair Park Special Public Interest District: § 16-18U; Memorial Drive/Oakland Cemetery Special Public Interest District: § 16-18V; Inman Park Historic District: § 16-20L; Castleberry Hill Landmark District: § 16-20N; Live Work District: § 16-33.009; Mixed Residential Commercial District: § 16-34.010; and Multi-family Residential District: § 16.35.

104. Smart Preservation's website concerning Atlanta's program lists four historic properties that participated in transfers. Smart Preservation, "Atlanta, Georgia," website, <http://smartpreservation.net/atlanta-georgia/>.

105. Atlanta City Council's online records reveal that one additional property was granted a Special Use Permit for "the severance of excess development rights" for future use. It appears that these severed rights have yet to be used. Atlanta City Council Ordinance 13-0-1010.

106. The City of New York Zoning Resolution, Chapter 4 § 74-79
<http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art07c04.pdf?r=071416>.

107. New York City's Uniform Land Use Review Procedure (ULURP) is a procedure for public review of planning applications that affect the land use of the city. The Department of City Planning reviews applications which are then submitted to the public (through the Borough Board, community review, and the City Planning Commission). The process specifics can be found online at:
<http://www1.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page>.

108. New York City’s Environmental Review Process exists to identify any potential environmental effects of planning actions. The process specifics can be found online at: <http://www1.nyc.gov/site/planning/applicants/environmental-review-process.page>.
109. Vicki Been, John Infranca, Josiah Madar, Jessica Yager, “Unlocking the Right to Build: Designing a More Flexible System for Transferring Development Rights,” Furman Center for Real Estate and Urban Policy, (New York University, March 2014), 2 and 3.
110. Katherine E. Gilmore, “A Process Evaluation of New York City’s Zoning Resolution (ZR) § 74-79: Why Is It Being Used So Infrequently?,” 2013, Columbia University Academic Commons, <http://hdl.handle.net/10022/AC:P:20698>., 25.
111. Josiah Madar. “Buying Sky: The Market for Transferable Development Rights in New York City,” Furman Center for Real Estate and Urban Policy, (New York University, October, 2013), 5.
112. ZR § 74-79 places a limit on the amount of additional density and bulk at 20 percent of what is allowed by right for transfers generated by the Landmark provision.
113. Gilmore, “A Process Evaluation of New York City’s Zoning Resolution (ZR) § 74-79: Why Is It Being Used So Infrequently?,” 2013, Columbia University Academic Commons, <http://hdl.handle.net/10022/AC:P:20698>., 7.
114. Former New Orleans Comprehensive Zoning Ordinance. <http://www.nola.gov/city-planning/czo/former-comprehensive-zoning-ordinance/>
115. Ibid., § 16.8.
116. Per the Data Center, who pulled their data from the U.S. Census Bureau as well as their own data collection, New Orleans’ pre-Katrina population was 484,674. Post-Katrina, the population dropped to 230,172. The Data Center, website, <http://www.datacenterresearch.org/data-resources/katrina/facts-for-impact/>
117. U.S. Census Bureau, *Quick Facts New Orleans city*, website, <http://www.census.gov/quickfacts/table/PST045215/2255000>.
118. Former New Orleans Comprehensive Zoning Ordinance, § 4.8, §6.11, § 6.11.1, § 6.11.2, and § 5.3.8. Each of these sections details the specifics of how development bonuses may be acquired within each zone.
119. New Orleans Comprehensive Zoning Ordinance, § 9.8, § 10.9, § 11.5, § 12.5, § 13.5, § 14.5, § 15.7, and § 17.5.H. Each section all include details of density bonuses in exchange for providing affordable housing available in each zone.

120. Stevenson, "Banking on TDRs," 1337.
121. Advisory Council on Historic Preservation, *Federal Financial Assistance for Preservation Projects: Cultural and Arts Programs*, website, <http://www.achp.gov/funding-cultural.html>.
122. National Park Service, FY 2017 Budget Justifications, Overview 24. <https://www.nps.gov/aboutus/upload/FY17-NPS-Greenbook-for-website.pdf>
123. DC Office of Planning, *Apply for a Historic Homeowner Grant*, website, <http://planning.dc.gov/service/apply-historic-homeowner-grant>.
124. DC Preservation League, *The Preservation Initiatives Grant Program*, website, <http://www.dcpreservation.org/grants/>.
125. National Park Service Technical Preservation Service, *Tax Incentives for Preserving Historic Properties*, website, <http://www.nps.gov/tps/tax-incentives.htm>.
126. The National Trust for Historic Preservation, *State Historic Tax Credits (HTCs)*, website, <http://www.preservationnation.org/take-action/advocacy-center/additional-resources/historic-tax-credit-maps/state-rehabilitation-tax.html.VuMue8fiTFI>.
127. National Park Service, *Annual Report on the Economic Impact of the Federal Historic Tax Credit for FY 2014, 2015*, 6. <https://www.nps.gov/tps/tax-incentives/taxdocs/economic-impact-2014.pdf>
128. Ibid.
129. National Park Service, *Easements to Protect Historic Properties: A Useful Preservation Tool with Tax Benefits*, 2010, p. 4.
130. The list of historic preservation focused TDR programs was taken from Nelson, Pruetz, and Woodruff's *The TDR Handbook*. This list has most likely changed since its publication in 2012. A further study would compile an updated list of these programs. Nelson, Pruetz, and Woodruff, *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, 132, 134, 136.
131. This thesis originally incorporated this two-part survey for the five case studies included in Chapter III. Due to difficulty in obtaining all the information on the surveys, they were left out of the case studies as presented here.
132. Ibid., 132, 134, 136.

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