



Transfer of Development Rights as Climate Adaptation: A Discussion of Model Programs and Opportunities for State Involvement

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I. Introduction

Transfer of Development Rights (TDR) programs can be an important tool for state and local governments as part of a broader climate adaptation strategy. TDR programs come in many shapes and sizes and can be designed or adapted to fit a state or municipality's specific design needs. TDR programs operate at the local level, establishing both a sending district and a receiving district. The properties in the sending district are eligible to sell development rights, while the properties in the receiving district are eligible to receive them. After development rights are transferred, the receiving property can be developed more than would otherwise be permitted under zoning laws, while development on the sending property is restricted relative to what would otherwise be permitted under zoning laws.

The sending and receiving districts are not necessarily identical to other zoning boundaries. For example, they could be two different neighborhoods within the same city. Also, TDR programs can be established within an area administered by a single local government (for example, between two neighborhoods in the same city), or in areas administered by two or more local governments (for example, the sending district could be in one village while the receiving district might be in a different town). Throughout this piece, I refer to these as *intra*jurisdictional for the former and *inter*jurisdictional for the latter.

In this analysis, I provide practical background knowledge for a state agency or local government interested in using TDR programs. I first describe four existing TDR programs: Town of Southampton (New York), Long Island Central Pine Barrens Maritime Reserve (New York), Palm Beach County (Florida), and King County (Washington). These programs provide examples of some of the options available to governments in establishing TDR programs, including creating TDR banks, coordinating between many municipal governments and the state, pairing TDR programs with land acquisition, and using TDR programs to incentivize affordable housing development. I then discuss opportunities for state agencies to support local governments in establishing TDR programs. Though the involvement of local governments is key for TDR, there are many ways state agencies and state legislatures can help to develop and support TDR programs.



II. TDR Programs in Practice: Case Studies

In this section, I describe four examples of model TDR programs.¹ While these programs were not designed for climate adaptation, they show different ways TDRs can be implemented.

Advanced Policy Tools Support TDR Program Sustainability: The Town of Southampton

In 2001, the Town of Southampton, NY, passed a law creating a voluntary TDR Certificate Program.² The program furthers the town's 1999 Comprehensive Plan and the 1995 Central Pine Barrens Comprehensive Land Use Plan, and the Suffolk County Smart Growth Policy Plan adopted in 2000.³ The 1999 Comprehensive Plan Update recommended that TDRs be used to “to reduce density on farmland parcels, environmentally sensitive lands, and scenic vista.”⁴ The program focuses on preserving farmland and groundwater protection areas,⁵ and creating diversity in hamlets and residential areas through Planned Development Districts, highlighting mixed uses of residential and commercial space.⁶

The program includes a real estate transfer tax and a centralized purchasing body. Southampton adopted a Community Preservation Fund (CPF) Project Plan “that allows the funds generated from a two-percent real estate transfer tax to fund the establishment of a [TDR] program.”⁷ Southampton also established a Town Board Development Rights Clearinghouse that allows the town to use the CPF and other funding sources to buy

¹ For more examples and analyses of TDR programs, see Evangeline R. Linkous & Timothy S. Chapin, *TDR Program Performance in Florida*, 80 J. AM. PLAN. ASS'N 253 (2014); KATIE SPIDALIERI ET. AL., GEORGETOWN CLIMATE CENTER, *MANAGING THE RETREAT FROM RISING SEAS* (2020), https://www.georgetownclimate.org/files/MRT/GCC_20_FULLL-3web.pdf; WILLIAM FULTON ET AL., *TDRS AND OTHER MARKET-BASED LAND MECHANISMS* (2004), https://www.brookings.edu/wp-content/uploads/2016/06/20040629_fulton.pdf; MARGARET WALLS & VIRGINIA MCCONNELL, *TRANSFER OF DEVELOPMENT RIGHTS IN U.S. COMMUNITIES* (2007), https://media.rff.org/documents/Walls_McConnell_Sep_07_TDR_Report.pdf. Various studies and reports have also compared TDR programs to identify factors that lead to a successful TDR program. In addition to the previously listed sources, see Michael D. Kaplowitz et al., *Planners' experiences in managing growth using transferable development rights (TDR) in the United States*, 25 LAND USE POL'Y 378 (2008), <https://jacksontetonplan.com/DocumentCenter/View/776/Kaplowitz-MD-P-Machemer-and-R-Pruetz-2008-PDF?bidId=>.

² See TOWN OF SOUTHAMPTON, N.Y., GEN. LEG. § 244-7.

³ *Transfer of Development Rights*, TOWN OF SOUTHAMPTON, <https://www.southamptontownny.gov/354/Transfer-of-Development-Rights>.

⁴ *Agricultural Overlay District*, TOWN OF SOUTHAMPTON, <https://www.southamptontownny.gov/356/Agricultural-Overlay-District#:~:text=The%201999%20Comprehensive%20Plan%20Update,Overlay%20District%20and%20the%20Aquifer>. Southampton cited to § 261-a of the Town Law when establishing the law. TOWN OF SOUTHAMPTON, N.Y., GEN. LEG. § 244-1(C).

⁵ See *Transfer of Development Rights (TDR) Program*, TOWN OF SOUTHAMPTON, p. 11–23.

<https://www.southamptontownny.gov/DocumentCenter/View/663/TRD-Proposal?bidId=>.

⁶ See *id.* at p. 13–14.

⁷ TOWN OF SOUTHAMPTON, N.Y., GEN. LEG. § 244-1(C).



development rights, and allows landowners to purchase those rights from the town.⁸ The clearinghouse allows for the establishment of a special fund to administer the money generated from the TDRs.⁹ The clearinghouse is also permitted to (1) establish the monetary value of development rights purchased and sold by the clearinghouse, (2) purchase development rights to further the objectives of the Comprehensive Plan, (3) apply for and receive grants or loans for the program, (4) use funds to implement fiscal and accounting practices, and (5) create an advisory board to guide the clearinghouse on TDRs.¹⁰

In establishing the program, Southampton identified several TDR procedural problems and aimed to address those. First, buyers and sellers have difficulty connecting on TDRs,¹¹ so Southampton created a TDR Registry with a database of buyers and sellers of development rights.¹² Second, sending landowners have difficulty separating development rights from their properties due to bureaucratic hurdles in the Town Code.¹³ Southampton addressed this by streamlining TDR procedures and creating TDR Certificates for sending landowners.¹⁴ Finally, receiving landowners have difficulty finding development rights that they would like to purchase,¹⁵ so Southampton now allows TDR Certificates to be sold on the private market and also established a town TDR Bank (through the Clearinghouse).¹⁶ By 2002, Southampton had raised \$60.4 million through the transfer tax and had spent \$70.1 million to preserve 1,178 acres.¹⁷

Express Authorization Facilitates Regional, Federal Coordination: The Long Island Central Pine Barrens Maritime Reserve

The Long Island Pine Barrens Maritime Reserve Act (Reserve Act) was passed to protect and manage the Pine Barrens-Peconic Bay system.¹⁸ The Long Island Pine Barrens area overlies the “largest source of pure groundwater in New York”, and contains a large concentration and diversity of endangered and threatened species of plants and animals as well as many other resources of interest to the state.¹⁹ The Reserve Act, among other things, established a land preserve;²⁰ established a maritime reserve council to coordinate the efforts of the

⁸ TOWN OF SOUTHAMPTON, N.Y., GEN. LEG. § 244-7.

⁹ TOWN OF SOUTHAMPTON, N.Y., GEN. LEG. § 244-7(A).

¹⁰ TOWN OF SOUTHAMPTON, N.Y., GEN. LEG. § 244-7.

¹¹ See *Transfer of Development Rights (TDR) Program*, TOWN OF SOUTHAMPTON, p. 18.

<https://www.southamptontownny.gov/DocumentCenter/View/663/TRD-Proposal?bidId=> .

¹² *Id.* at p. 19–20..

¹³ *Id.* at p. 18.

¹⁴ *Id.* at p. 20–27..

¹⁵ *Id.* at p. 18.

¹⁶ *Id.* at p. 25–31.

¹⁷ John Rather, *Southampton Adopts Development Credits*, THE NEW YORK TIMES, Nov. 3, 2002,

<https://www.nytimes.com/2002/11/03/nyregion/southampton-adopts-development-credits.html>.

¹⁸ N.Y. ENV'T CONSERV. LAW § 57-0101 *et seq.*, https://pb.state.ny.us/assets/1/6/LIPB_Maritime-Protection_Act1-websiterev.pdf.

¹⁹ *Id.* at § 57-0105.

²⁰ *Id.* at § 57-0109.



relevant municipal, county, state, and federal agencies;²¹ required the council to prepare a comprehensive management plan for the Long Island Pine Barrens maritime reserve;²² established the Central Pine Barrens joint planning and policy commission;²³ and authorized the commission to “establish regulations, values, and standards which may include a system of bonuses and incentives in order to purchase, sell, hold and trade development rights.”²⁴ The Reserve Act explicitly authorizes interjurisdictional transfers, stating that “such transfers may cross municipal and special district boundaries.”²⁵ Thus, the commission has the power to establish TDR programs, including interjurisdictional TDR programs, within the land preserve area.

Pairing TDRs with Land Acquisition and Affordable Housing: Palm Beach County, Florida

The purpose of the Palm Beach County program is to

“to facilitate both the protection of environmentally sensitive lands, the preservation of agriculture on lands designated as [Agricultural Reserve (AGR)], and to promote orderly growth in the County. . . by allowing development rights to be severed from environmentally sensitive lands and lands designated as AGR and transferred to sites where additional development can be accommodated.”²⁶ The program also sought to establish a mechanism for landowners “to seek economic relief from the limitations of development imposed on [environmentally sensitive lands and lands designated as AGR].”²⁷

The county’s program also established a TDR bank and allows property owners in receiving districts to purchase a density bonus from the County’s TDR Bank or from a property owner with land in a designated sending area.²⁸ Like other TDR programs, property owners selling development rights record restrictions on development on their property using conservation easements.²⁹

The county’s program includes specifications for sending districts and ratios for transfer. It defines sending districts, which include lands designated RR-20 (Rural Residential, one unit per 20 acres), lands designated as priority acquisition sites by the Environmentally Sensitive Lands Acquisition Selection Committee (ESLASC) or the Conservation Land Acquisition

²¹ *Id.* at § 57-0111.

²² *Id.* at § 57-0115

²³ *Id.* at § 57-0119

²⁴ *Id.* at § 57-0119 (6)(j).

²⁵ *Id.* at § 57-0119(6)(j).

²⁶ PALM BEACH CNTY., FLA., UNIFIED LAND DEV. CODE, art. 5, ch. G, §3(A), https://discover.pbcgov.org/pzb/planning/PDF/Projects/Housing/ULDC_Art5_ChapterG_Sec3.pdf.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at § 3(J).



Selection Committee (CLASC) that meet certain biodiversity criteria, land designated AGR, privately-owned lands designated “Conservation”, and other sites determined by the Board of County Commissioners to be worthy of protection.³⁰ Different land designations are transferred at different rates. For example, for property designated RR-20, development rights are transferred at the ratio of one development right per five acres; for property designated AGR, development rights are transferred at the rate of one development right per one acre.³¹

Like Southampton, Palm Beach County established a TDR bank that can sell development rights. In addition, Palm Beach County’s TDR bank acquires development rights through the purchase of environmentally sensitive lands (the whole property, not merely the development rights, as Southampton does).³² The county buys the land, and the TDR bank then sells the development rights from the land to buyers in receiving districts.³³ Revenue from these sales is allocated to the Natural Areas Fund, which is administered by the County’s Department of Environmental Resources Management for the acquisition and management of environmentally sensitive lands and wetlands.³⁴

The county’s TDR ordinance also creates detailed requirements for receiving districts and calculating density bonuses. Development rights can only be sold to parcels that meet the qualifications for receiving areas.³⁵ To qualify as a receiving area, a property owner must show that the property is located within the Urban/Suburban tier zoning; that the receipt of development rights will be compatible with surrounding land uses and consistent with the comprehensive plan; and that the density bonus development will meet all concurrency requirements regarding public services,³⁶ all requirements in the unified land development code, and be compatible with adjacent environmentally sensitive lands.³⁷ The ordinance also established different density bonuses for different receiving areas, with schemes for calculating additional bonuses or limitations.³⁸ For example, areas in the Urban/Suburban tier west of Florida’s Turnpike could receive a density bonus of up to two dwelling units per

³⁰*Id.* at § 3(F)(4).

³¹*Id.*

³²*Id.* at § 3(G).

³³ *Id.*

³⁴ *Id.* at § 3(G)(5).

³⁵ *Id.* at § 3(H)(5).

³⁶ “Concurrency requirements” are the “Concurrency Requirements of the Plan – the provisions in the Plan and the implementing land development regulations requiring that public facilities for traffic circulation, mass transit, sanitary sewer, potable water, recreation/open space, fire-rescue, solid waste, and drainage are available at the minimum LOS concurrent with the impact of the development; and as to the applicability of expanded or more stringent traffic performance standards pursuant to State of Florida mandates under F.S. ch. 163 such requirements as set forth in the future Traffic Performance Standards Ordinance(s).” Art. 1, Chapter H, Section 2, C, 70, p. 43. The Plan is “the 1989 Comprehensive Plan of PBC, Florida, as amended.” Art. 1, Chapter H, Section 2, P, 40, p. 75,

³⁷ *Id.* at § 3(H)(5).

³⁸ *Id.* at § 3(I)(4).



acre, while areas in a Revitalization, Redevelopment, and Infill overlay have a density bonus of up to four dwelling units per acre.³⁹

Interestingly, the program requires that receiving properties use some portion of the TDR density bonus to provide affordable housing and encourages use of TDRs to provide lower-cost housing through pricing of the TDRs.

- First, a receiving area cannot also contain a sending area unless the development project on the receiving property is providing “all of the units at prices attainable by persons making between 30 to 120 percent of [the Area Median Income].”⁴⁰
- Second, density bonus units acquired from the TDR Bank have a workforce housing obligation of 34%, meaning that 34% of the units generated by the TDR rights density bonus must meet certain affordability requirements to provide low, moderate, and middle-income housing through the Workforce Housing Program.⁴¹ The purpose of the Workforce Housing Program is “to increase the supply of housing opportunities for persons employed in [Palm Beach County] in jobs that residents rely upon to make the community viable.”⁴² The development can also use the TDR density bonus units to participate in the Affordable Housing Program, which aims to provide housing targeted to households at incomes at 60 percent or below of the area median income.⁴³
- Third, the price for TDRs used to provide workforce housing units is set at 5% of the full TDR price, and the price for TDRs used to provide affordable housing units onsite is 1% of the full TDR price.⁴⁴

In 2014, a study comparing the success of Florida’s TDR programs found that Palm Beach was Florida’s leading TDR program, having preserved or protected 14,119 acres (at the time the study was published).⁴⁵ However, as the authors pointed out, though the original TDR program was adopted in 1980, it was not until 1993, when voters approved a \$100 million bond referendum to support public purchase of environmentally sensitive lands, that the program actually facilitated large transfers of development rights.⁴⁶ The program has also

³⁹ *Id.*

⁴⁰ *Id.* at § 3(H)(5) (emphasis added).

⁴¹ *See Id.* at §§ 3(I)(1), 5(G)(1); *Palm Beach County, Florida*, SMART PRESERVATION, <https://smartpreservation.net/palm-beach-county-florida/>.

⁴² PALM BEACH CNTY., FLA., UNIFIED LAND DEV. CODE, art. 5, ch. G, §1, https://www.pbcgov.com/uldc/pdf/Entire_ULDC.pdf.

⁴³ *Id.* at § 5(G)(2).

⁴⁴ *Id.* at § 3(G)(4)(d).

⁴⁵ Evangeline R. Linkous & Timothy S. Chapin, *TDR Program Performance in Florida*, 80 J. AM. PLAN. ASS’N 253, 259–60 (2014).

⁴⁶ The county originally adopted TDR in 1980, but the program took off in 1993 when voters approved a \$100 million bond referendum to support public purchase of environmentally sensitive lands. The county then acquired 14,000 acres of lands and “banked” development right credits from these properties for resale to developers. In a similar vein, Sarasota’s 1981 TDR program protected 8,200 acres. But almost all (8,169 acres) were bought by the county under the terms of the result of a legal settlement, not the result of the private sale and purchase of TDRs.



been successful in integrating the Workforce Housing Program with the TDR Program, with 65% of TDRs tracked by the County used to facilitate workforce housing.⁴⁷

Affordable Housing and Interjurisdictional Programs Facilitated by a TDR Bank Revenue Sharing Mechanism: King County, Washington

King County in Washington State has one of the most successful TDR programs in the US, having protected over 145,600 acres of land from 1998 to 2022.⁴⁸ The TDR Program aims “to transfer residential density from eligible sending sites to eligible receiving sites through a voluntary process that permanently preserves urban, rural and resource lands that provide a public benefit.”⁴⁹ The program requires that sending properties are within one of a list of various zones and contain a public benefit (agricultural potential, forestry potential, critical wildlife habitat, open space, regional trail connectors, or urban separators.)⁵⁰ Sending sites must be approved by an interagency review committee before development rights are transferred.⁵¹ Receiving properties must be located in unincorporated King County or in an incorporated municipality that has an agreement with King County (Bellevue, Issaquah, Normandy Park, Sammamish, or Seattle).⁵² Receiving areas in cities will vary by city.⁵³ To facilitate connections between property owners, King County also provides a “TDR Exchange”, an online information clearinghouse where property owners can list development rights for sale and development rights wanted.⁵⁴

King County’s TDR program explicitly allows for sending properties to transfer some residential development rights, but continue to develop on the property.⁵⁵ After transferring a portion of the available residential development rights, a sending property may build using the remaining development rights.⁵⁶ King County requires that “any remaining residential dwelling units and associated accessory units shall be located in a single and contiguous reserved residential area that shall be adjacent to any existing development or roadways on

⁴⁷ Evangeline Linkous, *Transfer of Development Rights: Innovations from Florida*, USF (March 31, 2021) <https://www.usf.edu/arts-sciences/departments/public-affairs/documents/blog/evangeline-linkous-032021.pdf>.

⁴⁸ *Transfer of Development Rights*, KING COUNTY, <https://kingcounty.gov/en/legacy/services/environment/stewardship/sustainable-building/transfer-development-rights.aspx>.

⁴⁹ KING COUNTY, WASH., CODE 21A.37.010, https://kingcounty.gov/en/legacy/council/legislation/kc_code/24_30_Title_21A.aspx.

⁵⁰ *Id.*, at 21A.37.020;–*Sending Cite Information*, KING COUNTY, <https://kingcounty.gov/en/legacy/services/environment/stewardship/sustainable-building/transfer-development-rights/sending-sites.aspx>.

⁵¹ See KING COUNTY, WASH., CODE 21A.37.070.

⁵² *Id.* at 21A.37.030;– *Receiving Site Information*, KING COUNTY, .

⁵³ See, e.g., *S. Lake Union, Denny Triangle & Commercial Core*, KING COUNTY, <https://kingcounty.gov/en/legacy/services/environment/stewardship/sustainable-building/transfer-development-rights/receiving-sites/Seattle-tdr.aspx>.

⁵⁴ *TDR Exchange*, KING COUNTY, <https://kingcounty.gov/en/legacy/services/environment/stewardship/sustainable-building/transfer-development-rights/tdr-exchange-link-page.aspx>.

⁵⁵ See KING COUNTY, WASH., CODE 21A.37.050.

⁵⁶ *Id.*



the property,” and requires specific building patterns to ensure that preservation goals are achieved if properties sell some, but not all, of their development rights.⁵⁷

One of the most interesting features of the King County program is the TDR Bank, established in 1999 through an appropriation of \$1.5 million to purchase development rights by the Metropolitan King County Council.⁵⁸ Like other TDR banks, the King County Bank aims to “facilitate the private TDR market by bridging the time gap between willing sellers and buyers” and “[a]ct as a revolving fund for continued land protection” by using proceeds from TDR sales for future land protection.⁵⁹ Uniquely, the bank also aims to “[c]atalyze city-county TDR agreements by strategically acquiring development rights from high priority conservation rural / resource lands in the County that are of compelling interest for specific cities to see protected.”⁶⁰ The bank can establish a revenue share agreement with a partner city, under which the county shares a portion of the proceeds it receives from the sale of TDRs with the city.⁶¹ The city can use these funds for infrastructure improvements, creation of parks and open space, or for other uses—in short, the city can use these funds as “amenity funds” to accommodate the extra density.⁶²

Another interesting feature of King County’s TDR bank is its ability to promote affordable housing. The bank must purchase development rights at prices not exceeding fair market value and sell development rights and prices not less than fair market value in most cases.⁶³ However, the bank can sell development rights for the administrative cost incurred by the county or fifteen percent of the fair market value, whichever is lower, if the bank is selling development rights for the construction of affordable housing through the TDR for an affordable housing program.⁶⁴

III. Opportunities for State Involvement

Zoning is a traditional function of local governments. In home rule states, including New York, Washington, and Florida, the creation of TDR programs requires the involvement of local governments. However, there is a role for state agencies in promoting the creation of TDR programs, including providing financial or technical assistance. State agencies can also

⁵⁷ *See id.*

⁵⁸ *King County Transfer of Development Rights Bank*, KING COUNTY, <https://kingcounty.gov/en/legacy/services/environment/stewardship/sustainable-building/transfer-development-rights/bank.aspx>.

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ *KING COUNTY, WASH., CODE 21A.37.110.*

⁶⁴ King County also has a TDR for affordable housing pilot program, which allows for the use of TDR to construct affordable housing units. *See KING COUNTY, WASH., CODE 21A.37.130 (Transfer of development rights (TDR) program - sale of TDR rights by TDR bank – TDR for affordable housing pilot program)*, https://aqua.kingcounty.gov/council/clerk/code/24-30_Title_21A.htm.



facilitate engagement with communities, foster communication between different municipalities which have created or are attempting to create TDR programs, and assist local governments in updating their comprehensive plans. State agencies can also help coordinate regional programs, spearhead state-wide programs, and implement relevant state laws. Finally, state agencies can also provide funding for TDR banks and affordable housing projects.

Opportunities for State Agencies to Promote TDR Programs

Technical Assistance

- **Provide climate modeling data to help designate sending and receiving districts that minimize climate risk.** Some TDR programs, such as the Palm Beach County TDR Program, explicitly designate certain areas as sending or receiving districts. Others, such as the Town of Southampton Program, broadly define criteria that a property will need to meet to be able to sell or buy development rights. Either way, the creators of the program must decide where development rights can be sold from and where development rights can be sold to. For a TDR program designed for climate adaptation and resilience, designating sending and receiving districts will require an understanding of the distribution of current and future risks from climate change. State agencies can support municipalities in these decisions by providing climate risk and other environmental data.
- **Assist local entities in applying for funding.** Many successful TDR programs rely on a TDR bank, which may be expensive for local governments to establish and operate. Local governments will also need to devote time and resources to creating and managing any TDR program. States can help identify and enable local governments' access to funding that can support these functions.
- **Ensure compliance with relevant state mandates.** States can help local governments identify state laws relevant to their TDR programs and aid in compliance. For example, New York's laws authorizing local governments to establish TDR programs emphasize that local governments must make sure that a TDR program does not lower the availability of affordable housing. State assistance in (1) determining whether the program impacts the availability of affordable housing and (2) identifying strategies to minimize those impacts by providing for the creation of more affordable housing could help local governments establish compliant programs. Similar considerations arise regarding compliance with the state equivalent of the National Environmental Policy Act (NEPA).
- **Assist with creating a TDR bank.** TDR banks are a key component of many successful TDR programs and state agencies can help either by creating a template for local governments to establish a local TDR bank or facilitating the creation of regional or



state-wide TDR banks to purchase and sell development rights for local TDR programs.

- **Facilitate regional coordination, including the creation of interjurisdictional programs.** Local governments may have limited capacity to look beyond their own borders when setting up a TDR program, but there may be instances in which a program could be more impactful by encompassing multiple municipalities. State agencies can help identify those opportunities and connect local governments that are interested in establishing interjurisdictional TDR programs.
- **Exchange information and lessons-learned between local governments.** State agencies can help local governments connect and learn from each other as they develop TDR programs.
- **Research best practices of successful TDR programs.** Not all TDR programs are successful. In a 2014 study, researchers found that though there were 31 county-run TDR programs in Florida, only 17 reported transaction activity and only nine had protected more than 1,000 acres.⁶⁵ There has been some research on the factors needed for a successful TDR program, but putting this research into practice will be time consuming. State agencies could conduct literature reviews and create state-specific guides on best practices for TDR programs.⁶⁶
- **Evaluate the potential for state-wide TDR programs.** Some TDR programs are established by the state legislature to protect areas of state interest. For example, the Long Island Pine Barrens TDR program is an example of a multi-jurisdictional, legislatively created TDR program. State agencies can assess whether there is a need for such a program at the state level.
- **Assist municipalities in updating their comprehensive plans to prepare for climate impacts.** Since many TDR programs must operate consistent with a municipality's comprehensive plan, those interested in establishing a TDR program for climate adaptation and resilience must modify their comprehensive plan to include those goals. However, updating these plans can be resource intensive. State agencies can support local governments by providing relevant data, guidance, and administrative capacity.

⁶⁵ Evangeline R. Linkous & Timothy S. Chapin, *TDR Program Performance in Florida*, 80 J. AM. PLAN. ASS'N 253, 259–60 (2014).

⁶⁶ See, e.g., Evangeline R. Linkous & Timothy S. Chapin, *TDR Program Performance in Florida*, 80 J. AM. PLAN. ASS'N 253 (2014); KATIE SPIDALIERI ET. AL., GEORGETOWN CLIMATE CENTER, MANAGING THE RETREAT FROM RISING SEAS (2020), https://www.georgetownclimate.org/files/MRT/GCC_20_FULL-3web.pdf; WILLIAM FULTON ET AL., TDRS AND OTHER MARKET-BASED LAND MECHANISMS (2004), https://www.brookings.edu/wp-content/uploads/2016/06/20040629_fulton.pdf; MARGARET WALLS & VIRGINIA MCCONNELL, TRANSFER OF DEVELOPMENT RIGHTS IN U.S. COMMUNITIES (2007), https://media.rff.org/documents/Walls_McConnell_Sep_07_TDR_Report.pdf; Michael D. Kaplowitz *et al.*, *Planners' experiences in managing growth using transferable development rights (TDR) in the United States*, 25 LAND USE POL'Y 378 (2008), <https://jacksontetonplan.com/DocumentCenter/View/776/Kaplowitz-MD-P-Machemer-and-R-Pruetz-2008-PDF?bidId=>.



Financial Assistance

- **Finance the creation of TDR banks.** As illustrated by the Town of Southampton's TDR program, matching interested sellers and buyers can be a major barrier. If the local government can buy development rights from sellers and sell those development rights to buyers at a later date, these connections will be easier to make. However, this requires that the local government has sufficient resources available to finance the creation of a bank. State funding could be an important source of financing for these banks.⁶⁷
- **Support affordable housing mandates.** Since some state laws governing land use decisions include affordable housing mandates and require assurances that a TDR program will not reduce the net stock of local affordable housing,⁶⁸ states can provide financial and other assistance to help preserve or build affordable housing to give local governments more flexibility in designing TDR programs.

⁶⁷ In some states, the availability of a TDR bank could also help to mitigate legal risk. For example, in 1976, the New York Court of Appeals in *Fred F. French* stated that development rights without a guaranteed buyer did not assure the value of the rights, and thus programs without a TDR bank that could immediately buy rights were more likely to fall to a takings claim. See *Fred F. French Investing Co., Inc. v. City of New York*, 39 N.Y.2d 587, 598–99 (N.Y. 1976).

⁶⁸ See, e.g., N.Y. GEN. CITY LAW § 20-F; N.Y. TOWN LAW § 261- A; N.Y. VILLAGE LAW § 7-701.