

## Chapter 203. Zoning

### Part 1. Zoning Regulations

#### Article II § 203-5 Definitions and word usage

##### AGRICULTURAL USE

~~The use of the premises for common agricultural and ordinary farm site activities and farmland uses as defined in this chapter and all other activities and improvements as specifically permitted by the New Jersey Right to Farm Act. (N.J.S.A. 4:1C-1 et seq.) and activities which shall deem the property eligible to receive farmland assessment pursuant to N.J.S.A. 54:4-23.1 et seq., including, but not limited to, production for sale of plants and animals useful to man, harvesting, production, storage, grading (of produce), packaging, processing and the wholesale and retail marketing of crops, plants, dairy animals and dairy products; poultry and poultry products; livestock, including beef cattle, sheep, llamas, horses, ponies, mules and goats, including the breeding, boarding, raising, rehabilitating, training and grazing of any or all such animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management; fish and wildlife management.~~

~~[Added 10-27-2008 by Ord. No. 2008-20; amended 8-4-2014 by Ord. No. 2014-09]~~

##### “Agricultural Use”

~~The use of the Premises for common farmsite activities including, but not limited to: production, harvesting, storage, grading, packaging, processing and the wholesale and retail marketing of crops, plants, animals and other related commodities and the use and application of techniques and methods of soil preparation and management, fertilization, weed, disease and pest control, disposal of farm waste, irrigation, drainage and water management and grazing.~~

#### Article VI. Voluntary TDR Program

[Added 10-27-2008 by Ord. No. 2008-20; amended 8-4-2014 by Ord. No. 2014-09]

[1]

*Editor's Note: Former Art. VI, Planned Developments, as amended, which consisted of §§ 203-50 through 203-57, was repealed 12-15-2003 by Ord. No. 2003-24.*

##### § 203-51. Allocation and transfer of development rights

- A. The Voluntary TDR Program is intended as a method of preserving land within certain designated zoning districts by allowing landowners the voluntary option of transferring their right to develop land to a receiving zone or district or any other area so designated in this article and thereby restricting the subject property in perpetuity to agriculture use, farmland, conservation land, open space or public areas, except as modified herein. This

voluntary land use option will preserve land in locations where there is limited infrastructure while directing development to areas most suited for housing and other development within the Township.

- B. Agricultural land involved in an approved development transfer shall be provided the right to farm benefits under the New Jersey Right to Farm Act and other benefits that may be provided pursuant to the New Jersey Agriculture Retention and Development Act.<sup>[1]</sup> *[1]Editor's Note: See N.J.S.A. 4:1C-1 et seq. and N.J.S.A. 4:1C-11 et seq., respectively.*
- C. Property from which and to which development potential has been transferred shall be assessed at its fair market value reflecting the development transfer. Development potential that has been removed from a sending zone but has not yet been employed in a receiving zone shall not be assessed for real property taxation. Property in a sending zone or receiving zone that has been subject to a development potential transfer shall be newly valued, assessed, and taxed as of October 1 next following the development potential transfer.
- D. A parcel's eligibility for inclusion under the Voluntary TDR program is described in the allocation plan which is attached to this article and is made part of it by reference.<sup>[2]</sup> *[2]Editor's Note: The allocation plan is on file in the Township offices.*
- E. The following minimum eligibility requirements shall be met in order for an applicant or developer to participate in the Voluntary TDR program:
- (1) A sending zone parcel shall be designated on the TDR Plan of the Township Master Plan, and/or on the Acquisition/Preservation Plan developed in accordance with criteria established by ordinance, as it may be last amended or superseded. The TDR Plan shall be a sub-plan element of the Master Plan of the Township of Woolwich and shall be amended or superseded pursuant to the provisions of any applicable law.
  - (2) A sending zone parcel must be at least 10 acres in size on the date that the ordinance is adopted, except as indicated on the parcel list and map attached hereto.<sup>[3]</sup> *[3]Editor's Note: The map is on file in Township offices.*
  - (3) Sending zone parcels identified on the TDR Plan Map may be increased in size to support agricultural use of the property without eliminating the parcels' eligibility for credits. Additional credits for the lands added which have not been enrolled prior to their addition to an existing lot may be obtained by following the credit allocation appeal process outlined in § ~~203-53~~ below.
  - (4) A parcel located within a sending zone shall not be subject to existing deed restrictions or other prohibitions on further development or subdivision, with the exception of those participating in the eight-year farmland preservation program or has had its rights to sewer allocation purchased and/or retired.
  - (5) No transferable development rights are available for lots or properties from which all of the development rights have already been sold or transferred;

on which an easement or other restriction in a deed or other document has been granted to a farmland preservation program, with the exception of those participating in the eight-year farmland preservation program, any utility company, to any other program or agency, or to any person, partnership, corporation, or other legal entity; lots or properties which have been restricted from development by the terms or conditions of a development plan, subdivision approval, or other agreement that restricts the property from further development; land within the ultimate right-of-way of existing roads; and lots or properties or portions of lots or properties which have been designated and used to meet the open space or resource protection requirements of a subdivision or site plan.

- (6) A sending zone parcel or development right shall not be owned by a government, government agency, or other political subdivision, a public utility as defined in N.J.S.A. 48:2-13; or an interstate energy transmission company regulated by the Federal Energy Regulatory Commission.
- (7) The property which shall become the subject of the deed of easement, restriction and enrollment shall contain general reservation or dedication language for rights-of-way and easement areas that may be needed for state, county and Township infrastructure improvements, such as road and drainage improvements, so long as the public improvements individually or collectively have no more than a de minimis impact on the actual or potential use of the Premises for agricultural production. The right-of-way dedication shall be submitted to the state, county or Township prior to filing the deed language. Impacted properties shall receive full credit value for public dedications. If the government entity chooses to purchase right-of-way or easement areas after the filing of the TDR deed of easement, the purchase price will be based on the residual value of the property.
- (8) Except for uses expressly authorized herein, any site which has been developed for uses inconsistent with agricultural use and farmland, open space or public areas shall be deemed ineligible to participate in the TDR program.
- (9) The only criterion for participating in the receiving zone is that the parcel is located within the boundaries of a receiving zone as amended and as identified on the TDR Plan Map of the Township Master Plan.
- (10) The locations within the Township of the sending and receiving zones are attached to this article and made a part of it by reference.<sup>[4]</sup>*Editor's Note: The locations are on file in the Township offices.*

- F. The applicable base zoning in the sending area shall be a minimum one single-family detached dwelling unit per 15 gross acres, if the owner of a sending zone parcel chooses not to participate in the TDR program. However, if the owner of a vacant sending zone lot smaller than 15 acres existing as of the date of this ordinance chooses not to participate in the TDR program, the owner of that vacant lot shall be entitled to develop one single family detached dwelling on that lot provided that the lot size conforms to the minimum lot size of the underlying zoning.

- G. In the Route 322 Corridor receiving area, properties participating in TDR and subject to residential development under TDR shall be assigned by-right credits based on one dwelling unit per 1.5 acres in locations in the RC-1 District. The applicable base zoning in the Route 322 Corridor receiving area shall be a minimum one single-family detached dwelling unit per 15 gross acres with a mandatory clustering of that gross density to a two-acre lot size for a single-family detached dwelling unit, if the owner of a receiving zone parcel which is subject to residential development under TDR chooses not to participate in the TDR program. Properties in the RC-1 District subject to RC-1 Flats regulations that can become mixed use if participating in TDR are assigned by right a floor area ratio (FAR) of 0.15. These properties are subject to one single-family dwelling unit per 15 gross acres with a mandatory cluster to a two-acre lot size for a single-family detached unit if the owner of the receiving zone parcel chooses not to participate in TDR. Properties participating in TDR that are currently zoned RC-2 or RC-4 and subject to purely commercial development under TDR may increase from 0.15 FAR to 0.30 FAR in accordance with the standards set forth in the Woolwich Township TDR Zoning Regulations and Design Standards. The base zoning in all other portions of the Route 322 Corridor receiving area shall remain as that which were in effect on the date Ordinance No. 2008-20 was adopted on October 27, 2008.
- H. In the Route 322 Corridor receiving area, properties known as the "Nike Site" (Block 14, Lot 2 and a portion of Lot 3) and properties to be occupied by mixed-use commercial/residential buildings along Swedesboro-Paulsboro Road are not participating in TDR. Therefore, they shall not be assigned by-right TDR credits. Base zoning shall be in accordance with the provisions contained in the Woolwich Township TDR Zoning Regulations and Design Standards.
- I. In the Auburn Road receiving area, by-right credits are calculated based on zoning in effect on the date Ordinance No. 2008-20 was adopted on October 27, 2008. However, no more than 130 single-family houses may be constructed using these by-right credits. All remaining by-right credits shall be used to construct twin dwelling units on the basis of 1.6 twins being the equivalent of one single-family unit. Nonparticipation in TDR results in permitted densities based on the zoning in effect on October 27, 2008.
- J. No density increases may be achieved in a receiving area without the use of appropriate instruments of transfer.
- K. Increasing the development potential of a parcel of property not located in a designated receiving zone for which a variance has been granted by more than 5% shall constitute a receiving zone and the receiving zone provisions of this article shall apply with respect to the amount of development potential required to implement the variance. This shall not apply to any development that fulfills the definition of a minor site plan or minor subdivision plan.
- L. This Voluntary TDR Program shall no longer be reasonable if state plan endorsement or regulations adopted pursuant thereto are no longer in effect or a sufficient percentage of the development potential has not been transferred as provided in N.J.S.A. 40:55D-156.

- M. This Voluntary TDR Program, including the real estate market analysis, shall be reviewed by the Joint Land Use Board and the Township Committee at the end of three years subsequent to its adoption. This review shall include an analysis of development potential transactions in both the private and public market, an update of current conditions in comparison to the development transfer plan element of the Township's Master Plan and Capital Improvement Program, and an assessment of the performance goals of the development transfer program, including an evaluation of the units constructed with and without the utilization of the development transfer ordinance. A report of findings from this review shall be submitted to the County Planning Board, the State Office ~~for Planning Advocacy of Smart Growth~~ and, ~~when the sending zone includes agricultural land,~~ the County Agricultural Development ~~Board~~ Committee (CADBSADC), for review and recommendations. Based on this review, the Township shall act to maintain and enhance the value of development transfer potential not yet utilized and, if necessary, amend the Capital Improvement Program, the Development Transfer Plan Element of the Master Plan, and this TDR article.
- N. This Voluntary TDR Program, including the real estate market analysis, shall also be reviewed by the Joint Land Use Board and Township Committee at the end of five years subsequent to its adoption. This review shall provide for the examination of the development transfer ordinance and the real estate market analysis to determine whether the program for development transfer and the permitted uses in the sending zone continue to remain economically viable, and, if not, an update of the Development Transfer Plan Element of the Master Plan and Capital Improvement Program shall be required. If at least 25% of the development potential has not transferred at the end of this five-year period, the development transfer ordinance shall be presumed to be no longer reasonable, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of the five-year period unless one of the following is met:
- (1) The Township immediately takes action to acquire or provide for the private purchase of the difference between the development potential already transferred and 25% of the total development transfer potential created in the sending zone under the development transfer ordinance;
  - (2) A majority of the property owners in a sending zone who own land from which the development potential has not yet been transferred agree that the TDR ordinance should remain in effect;
  - (3) The Township can demonstrate either future success or can demonstrate that low levels of development potential transfer activity are due, not to ordinance failure, but to low levels of development demand in general. This demonstration shall require the concurrence of the County Planning Board and the State Office ~~for Planning Advocacy of Smart Growth~~ and shall be the subject of a Township public hearing conducted prior to a final determination regarding the future viability of the TDR program;
  - (4) The Township can demonstrate that less than 25% of the remaining development potential in the sending zone has been available for sale at market value during the five-year period.

- O. The Joint Land Use Board and the Township Committee shall review the TDR ordinance and the real estate market analysis at least every five years with every second review occurring in conjunction with the review and update of the Township Master Plan. This review shall provide for the examination of the ordinance and the real estate market analysis to determine whether the program and uses permitted in the sending zone continue to be economically viable and, if not, an update of the Development Transfer Plan Element of the Master Plan and Capital Improvement Program shall be required. If 25% of the remaining development transfer potential at the start of each five-year review period in the sending zone under the TDR ordinance has not been transferred during the five-year period, the Township Committee shall repeal the development transfer ordinance, including any zoning changes adopted as part of the development transfer program, within 90 days after the end of that five-year period unless the Township meets one of the standards established pursuant to Section 20 of P.L. 2003, c. 2 (N.J.S.A. 40:55D-156).
- P. The County shall not be permitted to sell development rights to receiving zone buyers, in accordance with N.J.S.A. 40:55D-160, from already preserved lands under the provisions of the Agriculture Retention and Development Act, P.L. 1983, c. 32 (N.J.S.A. 4:1C-11 et seq.).
- Q. The number of credits from one sending parcel may be allocated to more than one receiving parcel and one receiving parcel may accept credits from more than one sending parcel.

§ 203-52. Credit allocation

- A. Pursuant to N.J.S.A. 40:55D-137, a Transfer of Development Rights program must seek to transfer the development potential from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized.
- B. Pursuant to N.J.S.A. 40:55D-115, "development potential" is defined as "the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the Township Master Plan and land use regulations in effect on the date of the adoption of the development transfer ordinance and in accordance with recognized environmental constraints."
- C. The Township TDR credit allocation formula seeks to closely estimate the number of dwelling units which could have been built on each eligible parcel given the base zoning density as set forth in the district, which zoning is replaced by the adoption of this article and the environmental constraints present on the site. As referenced above, base zoning density shall be based on the zoning in place as of October 27, 2008, per Ordinance No. 2005-25 (and further amended per Ordinance No. 2008-19) which stipulates the zoning densities for the R-1 Zone District, R-2 Zone District and R-3 Zone Districts respectively.<sup>[1]</sup>*[1]Editor's Note: See §§ 203-40, 203-41, and 203-42.*

- D. The underlying zoning district requires the use of individual septic tanks for sewage disposal. Accordingly, it has been determined that it is the suitability of soil for septic tank permitting which most directly indicates the development rights or credits that are allocated.
- E. The standard source of information related to the septic suitability of soils located in Gloucester County is the USDA Soil Conservation Service (SCS) soil survey (survey). The SCS survey characteristics soil based on numerous factors, one of which is the disposal of septic effluent. The combination of the soils' characteristics result in a septic suitability rating of slight, moderate or severe.
- F. In order to allocate credits in a manner consistent with the preexisting zoning but within the context of environmental constraints, the formula set forth below was developed and applied to the computerized soils data generated for each parcel. Prior to applying the formula, each parcel had an infrastructure factor assigned to it to reflect acreage needs accordingly. From that, the net acreage was calculated, to which the formula set forth below was then applied.
- G. All sending zone parcels are assigned a minimum of one full credit. Any allocation above one credit is rounded down to the nearest 1/4 credit.

H. Credit allocation formula:

**R1**

TDR Credits = Acres of Slight Soils/2 + Acres of Moderate Soils/2\*1/2.22 + Acres of Severe Soils/2\*1/18  
 Infrastructure Factor:  
 0.88

**R2 & R3\***

TDR Credits = Acres of Slight Soils/1.5 + Number of Acres of Moderate Soils/1.5\*1/2.22 + Number of Acres of Severe Soils/1.5\*1/18  
 Infrastructure Factor:  
 0.88

**5 Acre**

TDR Credits = Acres of Slight Soils/5 + Acres of Moderate Soil/5\*1/2.22 + Acres of Severe Soils/5\* 1/18  
 Infrastructure Factor:  
 0.97

**NOTE:**

\* Parcels in the R-3 Zoning District that are sending zone parcels are outside of the existing sewer service area and are therefore subject by ordinance to R-2 regulations as per § 203-42, amended 8-1-2005.

- I. All parcels eligible for participation in the TDR program as set forth in the Master Plan have been identified and a computation of the TDR credits allocated pursuant to the credit allocation plan, which is incorporated within this section by reference.

- J. Upon the adoption of this section the Township Clerk shall file with the County Recording Office a copy of the allocation plan and Zoning Map showing graphically the location of the Township's sending and receiving areas. A change in the credit allocation made by the allocation plan by appeal, assignment or transfer to be effective must similarly be recorded in the County Recording Office.

§ 203-53. Credit allocation appeal process.

- A. Any landowner eligible for participation in a TDR program who is dissatisfied with their credit allocation may appeal their allocation in accordance with the procedures set forth below.
- B. Any appeal of a credit allocation must occur prior to the recording of an ~~an agricultural or conservation~~ TDR deed of easement. Once a property is restricted through the recording of the easement, the opportunity for an allocation appeal is lost and the parcel's owner shall be irrefutably presumed to have elected to accept the allocation given as an appropriate measure of the development potential of the parcel.
- C. The landowner shall submit a properly completed and required TDR credit appeal application and applicable review fees to the Administrative Officer. Review fees shall be the same as TDR fees in effect at the time of appeal. The TDR credit appeal application shall include the following information:
- (1) Date of appeal.
  - (2) Name(s), mailing address(es) and telephone number(s) of all property owners, of record.
  - (3) Copy of the latest legal description and deed to the property.
  - (4) Title report if so requested by the Administrative Officer if the Administrative Officer or other Township Officials have reason to believe that the property is the subject of a development restriction.
  - (5) Block and lot number(s) of the tract parcel(s).
  - (6) Acreage of parcel(s) pursuant to Tax Map or property survey.
  - (7) Number of credits assigned to the parcel pursuant to the Allocation Table and number requested by the applicant.
  - (8) Supporting documentation which fulfills the requirements of the appeal process.
  - (9) Signature of applicant(s) and landowner(s), if different from the applicant.
  - (10) The appeal shall be publicly noticed in the same manner as notices for other applications for development in accordance with N.J.S.A. 40:55D-12.
- D. In order to appeal the allocation of credits, the landowner must include the following submissions:
- (1) Conceptual subdivision plan conforming to the submission requirements of the Township's Subdivision Checklist and the Zoning District's yard and lot layout standards without variance and waiver shall be submitted. Conforming lots shall be based on the zoning of each individual parcel in effect as of October 27, 2008, per Ordinance No. 2005-25 as amended by

Ordinance No. 2008-19. Lots that were in the R-1 Zoning District as of October 27, 2008, per Ordinance No. 2005-25 as amended by Ordinance No. 2008-19 shall conform to R-1 standards. Lots that were in the R-2 District as of October 27, 2008, per Ordinance No. 2005-25 as amended by Ordinance No. 2008-19 shall conform to R-2 standards. Lots that were in the R-3 Zoning District as of October 27, 2008, per Ordinance No. 2005-25 as amended by Ordinance No. 2008-19 shall conform to R-3 standards. The plan shall be prepared by a professional engineer licensed to practice in the State of New Jersey.

(2) Percolation test results shall be submitted for 30% or the total proposed lots. The percolation tests shall be evenly spaced throughout the proposed subdivision. If an applicant is unclear as to where tests should be performed, the Joint Land Use Board Engineer shall provide advice as to location(s). The Joint Land Use Board Engineer shall review the percolation tests for viability for on-lot effluent disposal. The Joint Land Use Board shall determine the lot yield for the tract within the time of action required of a preliminary subdivision application pursuant to N.J.S.A. 40:55D-48(c), once a complete application has been submitted by the applicant to the Administrative Officer.

- E. Each lot that the Joint Land Use Board finds to be without variance and waiver and certified by the Joint Land Use Board Engineer shall be assigned one credit and the total of all credits for the subject property recorded in the Allocation Table.
- F. The landowner shall receive an additional one-time 1/4 credit if the appeal process as described above results in showing that the Township credit allocation was off by 20% or more.
- G. Appeal of a Joint Land Use Board decision in the determination of the allocation of credits shall be made to a New Jersey Court of competent jurisdiction as provided for by law.

§ 203-54. TDR bank, creation, transfer and use.

A. TDR bank creation.

(1) The Township of Woolwich TDR Bank ("TDR Bank") is hereby created pursuant to N.J.S.A. 40:55D-158.

(2) Members.

(a) The TDR Bank shall be governed by a Board of Directors comprising five members appointed by the Township Committee, who shall serve at the pleasure of the Committee. The members shall have expertise in ~~either~~ banking, law, land use planning, natural resource protection, historic site preservation or agriculture. The Board of Directors shall include the Township's Director of Community Development and four other Township

officials appointed by the Township Committee, who shall serve as ex-officio members of the Board.

(b) A Board Chairperson shall be elected annually from among the members of the Board.

(3) Executive Director.

(a) The Board of Directors shall appoint an Executive Director as the chief administrative officer of the TDR Bank. The Executive Director shall serve at the pleasure of the Board.

(4) Powers of TDR Bank.

(a) The TDR Bank is established for the purchase, sale or exchange of the development potential that is available for transfer from a sending zone. In accordance with N.J.S.A. 40:55D-159, the TDR Bank shall have the following powers:

[1] Purchase property in a sending zone if adequate funds have been provided for these purposes and the person from whom the development potential is to be purchased demonstrates possession of marketable title to the property, is legally empowered to restrict the use of the property in conformance with P.L. 2004, c.2 (N.J.S.A. 40:55D-137 et seq.), and certifies that the property is not otherwise encumbered or transferred.

[2] For the purposes of its own development potential transactions, establish a municipal average of the value of the development potential of all property in a sending zone, which value shall generally reflect market value prior to the effective date of the development transfer ordinance. The establishment of this municipal average shall not prohibit the purchase of development potential for any price by private sale or transfer, but shall be only taken into consideration when the development transfer bank itself is purchasing the development potential of property in the sending zone. Several average values in any sending zone may be established for greater accuracy of valuation.

[3] Sell, exchange or otherwise convey the development potential of property that it has purchased or otherwise acquired pursuant to the provisions of P.L. 2004, c.2 (N.J.S.A. 40:55D-137 et seq.), but only in a manner that does not substantially impair the private sale or transfer of development potential.

[4] When a sending zone includes agricultural land, the TDR Bank shall, when considering the purchase of development potential based upon values established by the municipal average, submit the municipal average arrived at pursuant to Subsection [2]~~B~~ of this section for review and comment to the County Agricultural Development Board. The TDR Bank shall coordinate the development transfer program with the farmland preservation programs established pursuant to the Agriculture Retention and Development Act, P.L. 1983, c.32 (N.J.S.A. 4:1C-11 et seq.) and the Garden State Preservation Trust Act, Sections 1 through 42 of

P.L. 1999, c.152 (N.J.S.A. 13:8C-1 et seq.) to the maximum extent practicable and feasible.

[5] Apply for funds for the purchase of development potential under the provisions of Sections 1 through 42 of P.L. 1999, c.152 (N.J.S.A. 13:8C-1 et seq.), or any other act providing funds for the purpose of acquiring and developing land for recreation and conservation purposes consistent with the provisions and conditions of those acts.

[6] Apply for matching funds for the purchase of development potential under the provisions of the Garden State Preservation Trust Act, sections 1 through 42 of P.L. 1999, c.152 (N.J.S.A. 13:8C-1 et seq.) for the purpose of farmland preservation and agricultural development consistent with the provisions and conditions of that act and the Agriculture Retention and Development Act, P.L. 1983, c.32 (N.J.S.A. 4:1C-11 et seq.). In addition, the TDR Bank may apply to the State Transfer of Development Rights Bank established pursuant to Section 3 of P.L. 1993, c.339 (N.J.S.A. 4:1C-51) for either planning or development potential purchasing funds, or both, as provided pursuant to Section 4 of P.L. 1993, c.339 (N.J.S.A. 4:1C-52).

[7] Undertake any and all other functions granted to development transfer banks by the State Transfer of Development Rights Act, N.J.S.A. 40:55D-137 et seq., as may from time to time be amended.

(5) By-laws.

(a) The Board of Directors is hereby authorized to adopt by-laws for the regulation of its affairs and the conduct of its business.

(6) Regular meetings.

(a) A regular meeting of the Board of Directors shall be held no less than quarterly, at a time to be fixed by its members, and shall be held in accordance with the Open Public Meetings Act, P.L. 1975, c.231 (N.J.S.A. 10:4-6 et seq.).

(7) Special meetings.

(a) Special meetings may be called at any time by the Board Chairperson. The Chairperson may set any time and place to hold special meetings, which shall be held in accordance with the Open Public Meetings Act, P.L. 1975, c. 231 (N.J.S.A. 10:4-6 et seq.).

B. All sending and receiving transactions shall be recorded with the New Jersey State TDR Bank per Subdivision C of 40:55D-147(e) and the State Transfer of Development Rights Bank Act, N.J.S.A. 4:1C-53.

C. A landowner seeking to enroll his land within the TDR program and thus create credits which may thereafter be transferred shall abide by the following procedures:

- (1) The landowner, on forms authorized by the Joint Land Use Board and obtained from the Township Clerk, shall submit to the Administrative Officer:
  - (a) The original and two copies of a fully completed application for enrollment form.
  - (b) ~~All landowner shall be responsible for all~~ costs associated with the review of the assignment application, including professional fees authorized by this article.
  - (c) The original and two copies of the TDR deed of easement.
  - (d) Clear proof of title by a New Jersey certified title company.
- (2) The Administrative Officer shall, within 45 days of receipt, determine that the application:
  - (a) Accurately specifies the number of TDR credits available to the parcel.
  - (b) Covers a parcel of land eligible for inclusion within the TDR program.
  - (c) Accurately sets forth the block and lot description of the parcel seeking enrollment.
  - (d) Reserves sufficient credits for the existing and proposed uses on the site.
  - (e) Contains all other information as required by the Township Application for Enrollment.
- (3) The Administrative Officer, upon receipt, shall forward to the Joint Land Use Board Solicitor for review:
  - (a) One copy of the enrollment application and form(s).
  - (b) The original and one copy of the TDR deed of easement.
  - (c) Clear proof of title provided by the landowner.
  - (d) A copy of each of the foregoing documents shall also be sent to the County Planning Board so that the County Board can determine the nature and extent of any areas which should be withheld from the TDR deed of easement for future infrastructure purposes. The County Planning Board shall have 14 days from receipt of the same to advise the Administrative Officer and Joint Land Use Board Solicitor of its concerns, and comments and recommendations.
- (4) The Joint Land Use Board Solicitor shall determine within 14 days of receipt that:
  - (a) The ~~agricultural or conservation~~-TDR deed of easement is in a proper legal form for recording in the County Clerk's office.
  - (b) The applicant for enrollment holds legal title clear of any encumbrances to the parcel or that the holder of any lien, mortgage or other interest has agreed in writing to subordinate their interest in the parcel to the public interests set forth in the TDR deed of easement.
- (5) Upon determining the facts set forth above, the Joint Land Use Board Solicitor shall certify to these facts by:
  - (a) Signing the ~~agricultural or conservation~~-TDR deed of easement at a space provided.
  - (b) Returning the original TDR deed of easement to the Administrative Officer for further processing.

- (6) Upon return of the original ~~Agricultural or Conservation~~ TDR deed of easement signed by the Joint Land Use Board Solicitor, the Administrative Officer shall:
    - (a) Assign serial numbers to each TDR credit sought to be created.
    - (b) Sign the easement form, certifying that the application procedures required by this article have been followed and that, upon proper recording of the easement, the parcel will contain the number of transferable credits specified within the certification, provided that the easement is recorded within 90 days for the date that the certification is signed. If unrecorded, the enrollment shall be null and void and the landowner must reapply.
    - (c) Return the fully executed and notarized easement to the landowner for recording. The TDR deed of easement shall be recorded with the Township and the County.
  - (7) If the Administrative Officer or Joint Land Use Board Solicitor shall fail to act within the time periods specified, unless these time periods are extended by the applicant, the application shall be deemed approved.
  - (8) After the ~~agricultural or conservation~~ TDR deed of easement has been recorded, the landowner shall file proof of the recording with the Administrative Officer prior to the approval of any transfer of any credit created under the easement.
  - (9) Upon receipt of proof that an ~~agricultural or conservation~~ TDR deed of easement has been recorded, the Administrative Officer shall:
    - (a) Record the fact of recordation upon the records of the Township. This record shall include the Clerk's assigned book and page of recording, if known.
    - (b) Forward a copy of the recorded easement to the Joint Land Use Board and the County ~~Agricultural Development~~ Planning Board for their information.
    - (c) Forward a copy of the recorded easement and the state TDR enrollment notification form to the State TDR Bank within 10 business days and of receipt of proof of easement recording.
  - (10) A landowner shall be responsible for all costs associated with the review of the enrollment application, including professional fees authorized by this article.
  - (11) The Administrative Officer shall act on all applications submitted in the order in which they are submitted and determined to be complete.
- D. Assignment. A landowner against whose land an ~~agricultural or conservation~~ TDR deed of easement has been recorded may assign any of the credits created through the use of the following procedures:
- (1) The landowner or subsequent owner of the credits, on forms authorized by the Joint Land Use Board and obtained from the Township Clerk, shall submit to the Administrative Officer for review:
    - (a) An original and two copies of the application for assignment of TDR credits.
    - (b) An original and two copies of the proposed assignment.
    - (c) Appropriate review fees.

- (2) The Administrative Officer, within 45 days, shall determine that the application:
  - (a) Contains all of the information required by the form.
  - (b) Seeks to assign no more than the maximum number of credits available and not already assigned or extinguished.
  - (c) Provides the recording information about the ~~agricultural or conservation~~ TDR deed of easement, in applications where the credits are being assigned for the first time.
  - (d) Accurately reflects the information contained in it.
  - (e) Reflects no material change in the title of the parcel has occurred since the ~~agricultural or conservation~~ TDR deed of easement was recorded.
- (3) The Administrative Officer, upon receipt, shall forward to the Joint Land Use Board Solicitor for review:
  - (a) One copy of the Application for Assignment.
  - (b) The original and one copy of the assignment.
  - (c) Clear proof of title provided by the landowner.
- (4) The Joint Land Use Board Solicitor shall determine within 14 days of receipt that:
  - (a) The assignment is in a proper legal form for recording in the County Clerk's office.
  - (b) The applicant for an initial assignment holds legal title clear of any encumbrances to the parcel or that the holder of any lien, mortgage or other interest has agreed in writing to subordinate their interest in the parcel to the public interests set forth in the assignment.
  - (c) For subsequent assignments, that the applicant is the legal owner of the credits to be transferred.
- (5) Upon determining the facts set forth above, the Joint Land Use Board Solicitor shall return the original assignment to the Administrative Officer for further processing.
- (6) If the Administrative Officer determines that the application and supporting documentation establishes the criteria as set forth above, the Administrative Officer shall sign the assignment, certifying that upon recording the assignment will transfer the number of credits contained within it to the party named, provided that if the assignment is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, the assignment shall be null and void.
- (7) If the Administrative Officer shall fail to act within the time period provided, the application shall be deemed approved.
- (8) Upon signing, the assignment shall be returned to the landowner for recording.
- (9) The assignee of the credits shall, upon filing of the assignment, file proof of recording with the Administrative Officer prior to the approval of any credit use.
- (10) Upon receipt of proof that the assignment has been recorded, the Administrative Officer shall:

(a) Record the fact of recordation upon the records of the Township. The record shall include the Clerk's assigned book and page of recording, if known.

(b) Forward a copy of the recorded assignment to the Joint Land Use Board and the County ~~Agricultural Development Planning~~ Board for their information.

(c) Forward a copy of the recorded assignment and the state TDR bank assignment notification form to the State TDR Bank within 10 business days and of receipt of proof of assignment recording.

(11) A landowner shall be responsible for all costs associated with the review of the assignment application, including professional fees authorized by this article.

(12) The Administrative Officer shall act on all applications in the order in which they are received and determined to be complete.

E. At the time a final plan for the first section of an approved subdivision plan is signed by representatives of the Township or the signing of an approved plan by the Township Engineer of a final site plan which utilized or effects, in the opinion of the Joint Land Use Board Solicitor, the operation of the TDR program in the receiving area, the person or entity submitting the application for development cited shall record against the land to be developed a deed of dedication and enrollment of land within the receiving area on forms approved by the Township of Woolwich which dedicates the entire site for use in the TDR program. The by-right credits existing on the land covered by the development shall be deemed created only upon the filing of the deed of dedication cited. Filing the deed of dedication shall entitle the land owner to use the credits created on the land affected by the application of development at the density or for the uses permitted by the TDR provisions of this article adopted on October 27, 2008. Until the deed of dedication is recorded, the land is subject to the zoning density and land use restrictions otherwise controlling within the TDR receiving zone, area or district.

F. Credit use and extinguishment. An owner or developer of land located within the receiving area may utilize credits held by a landowner of land located within a sending area or his assigns to increase the number of units that may be developed by utilizing the following procedures:

(1) The owner/developer of land within the receiving area must first obtain final approval for the development of a project within the receiving area contingent and conditioned on the acquisition and extinguishment of TDR credits.

(2) To meet the condition of approval, the owner/developer, at or prior to the signing of a subdivision plat or the issuance of the first building permit, whichever occurs first, on forms approved by the Joint Land Use Board and obtained from the Township Clerk, shall submit to the Administrative Officer:

(a) An original and two copies of a deed of credit use and extinguishment, which indicates the source of credit to be used within the development.

(b) All appropriate fees for review.

- (3) The Administrative Officer shall, within 45 days of receipt, determine that the request:

  - (a) Accurately specifies the number of TDR credits needed for the development of the parcel sought to be developed.
  - (b) Demonstrates that the developer owns, by assignment or otherwise, all credits needed for the proposed development.
  - (c) Accurately specifies by reference to assigned serial numbers or otherwise which credits are being used by the development.
  - (d) Accurately provided such other information required by the application.
  - (e) Demonstrates that the parcel from which the credits arise are subject to a recorded easement.
- (4) The Administrative Officer, upon receipt, shall forward to the Joint Land Use Board Solicitor for review the original and one copy of the deed of credit use and extinguishment.
- (5) The Joint Land Use Board Solicitor shall, within 14 days of receipt:

  - (a) Determine that the deed of credit use and extinguishment is in a proper legal form for recording in the County Clerk's office; and
  - (b) The owner holds legal title clear of any encumbrances to the parcel or that the holder of any lien, mortgage or other interest has agreed in writing to subordinate their interest in the parcel to the public interests set forth in the deed of credit use and extinguishment; or
  - (c) The developer owns the credits to be used and extinguished.
- (6) Upon determining the facts set forth above, the Joint Land Use Board Solicitor shall certify to these facts by:

  - (a) Signing the deed of credit use and extinguishment at a space provided.
  - (b) Returning the original deed of credit use and extinguishment to the Administrative Officer for further processing.
- (7) If the Administrative Officer determines that the request and supporting documentation establishes the criteria set forth above, the Administrative Officer shall sign the deed of credit use and extinguishment, certifying that upon recording the deed of credit use and extinguishment will permanently transfer the number of credits contained within it to the parcel of land cited, provided that if the deed of credit use and extinguishment is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, the deed of credit use and extinguishment shall be null and void.
- (8) If the Administrative Officer shall fail to act within the time periods provided, the application shall be deemed approved.
- (9) Upon signing, the deed of credit use and extinguishment shall be returned to the landowner for recording.
- (10) The owner or developer of the land using the credits shall, upon filing of the deed of credit use and extinguishment, file proof of recording with the Administrative Officer prior to the issuance of any building permit for development of the land upon which the credit is to be used.

- (11) Recording the deed of credit use and extinguishment shall extinguish the ability to use any credit transferred except upon the parcel to which the TDR credit has been transferred.
- (12) Upon receipt of proof that the deed of credit use and extinguishment has been recorded, the Administrative Officer shall:
  - (a) Record the fact of recordation upon the records of the Township. The record shall include the Clerk's assigned book and page of recording, if known.
  - (b) Forward a copy of the recorded deed of credit use and extinguishment to the Joint Land Use Board and the TDR Bank for their information.
  - (c) Forward a copy of the recorded deed of credit use and extinguishment and the State TDR Bank credit use and extinguishment notification form to the State TDR Bank within 10 business days and of receipt of proof of easement recording.
- (13) A landowner shall be responsible for all costs associated with the review of the deed of credit use and extinguishment, including professional fees authorized by the Ordinance.
- (14) The Administrative Officer shall act on all requests in the order in which they are received and determined to be complete.
- (15) The purchaser of transfer credits shall be obligated to present credible evidence of the transfer to the Township Clerk or other designee within 30 days of the transaction. Each and every day in which the transaction record has not been so transmitted to the Township Clerk within the specified time limit shall constitute a separate violation of the provisions of this article and is enforceable by fine, imprisonment, and/or community service as otherwise provided herein. The Township Clerk shall so record the transaction in the Record of Transfer and annually in January provide a copy of the Record of Transfer to the Administrative Officer and the Tax Assessor's Office to be kept on file.
- (16) The Township shall annually prepare and submit a report on activity undertaken pursuant to this article to the County Planning Board which in turn is expected to submit copies of the Township report along with an analysis of the effectiveness of the article to the Office for Planning Advocacy, the County Agriculture Development Board, and the State TDR Bank on July 1 of the third year next following enactment and annually thereafter.

G. Land included in the sending area ~~from which credits are severed~~ shall be ~~subject deed restricted~~ to the following ~~allowed uses permitted within either an agricultural TDR easement or conservation~~ TDR ~~deed of~~ easement.

- (1) ~~Agricultural~~ TDR ~~deed of~~ easement.
  - (a) ~~Land dedicated for agriculture to a government or land trust; however, nothing shall be construed by this subsection to require the dedication of the land for public open space.~~

~~(b) Agricultural and farmland uses as defined in this article and all other activities and improvements as specifically permitted by the New Jersey Right to Farm Act, (N.J.S.A. 4:1C-1 et seq.);~~

~~(a) (e) Agricultural uses as defined in Article II of this Ordinance.~~

~~(b) All nonagricultural uses, if any, existing on the premises at the time of deed restriction may be continued and any structure may be restored or repaired in the event of partial destruction. No new structures or the expansion of preexisting structures for nonagricultural uses, are permitted, except as specifically authorized herein. In the event a preexisting nonagricultural use is abandoned, the right to continue the use is extinguished.~~

~~(c) The provision of structures for housing of agricultural labor employed by the land owner or the operator of the agricultural operation is permitted, provided all necessary approvals are obtained but only with the approval of the Planning Board. Such housing shall not be used as a residence for land owner, land owner's spouse, land owner's parents, land owner's lineal descendants, adopted or natural, land owner's spouse's siblings, parents, or land owner's spouse's lineal descendants, adopted or natural.~~

~~(d) -The construction of any new buildings for residential use, regardless of its purpose, shall be prohibited except, subject to receipt of all necessary approvals, to (i) provide housing for agricultural labor employed on the premises, (ii) to construct a single-family residential building anywhere on the premises in order to replace any permitted single or multi-family residential building in existence at the time of the conveyance of the deed of easement and that is not a structure unfit for human occupancy pursuant to the International Property Maintenance Code or that if it is a structure unfit for human occupancy it was lived in for at least 90 days during the past two (2) years, (iii) if the grantor retains one TDR credit for the construction of a new single family residential unit, to construct one new single family residential unit if at the time of the recording of the deed of easement the premises contains no residential units and is greater than 15 acres but less than 50 acres in size, (iii\*) if at the time of recording of the deed of easement, the premises is 50 acres or more in size excluding the land area occupied by any buildings or structures used for a non-conforming non-residential use, the construction of new single family residential units is permitted on the premises provided the total number of single family residential units, (including existing units,) which may be built on the premises shall not exceed one unit per fifty acres of gross land area, except for a lot created pursuant to section (G)(1)(d)(ii) above. No TDR credits are required for units that do not exceed one (1) unit per fifty (50) acres of gross land area density pursuant to the purpose found in section (G)(1)(d)(iii) above. To the extent permitted herein, any single family residential building constructed pursuant to this section (d), above, may also contain any of the uses permitted in (e) (r) or (s) below; provided that, the overall building size contains no more than 5,000 square feet and if it is demonstrated that the~~

uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production but only with the approval of the Administrative Officer. Any lots created by the division of property by testamentary or intestate provisions without approval of the Joint Land Use Board shall be entitled to only those benefits under this Chapter 203 the property would have been entitled to if the lot had not been so subdivided. A premises may subdivide a lot for an existing single family detached dwelling in accordance with Section 203-54H of Chapter 203. The construction of up to a 50% expansion of any existing single or multi-family residential building on the Premises up to a maximum of 2,000 square feet is permitted, provided that no new dwelling unit is created and the addition is used solely for residential purposes. . If more than one of the permitted expansions authorized herein and in e., r. and s below occurs, the total expansion shall not exceed a 50% expansion of the existing building or a maximum of 2,000 square feet.

(e) To the extent permitted by Chapter 203 herein, existing buildings on the premises including a 50% expansion of any existing building up to a maximum of 2,000 square feet, may be retained for a winery, brewery, distillery and/or other alcohol production facility on the Premises provided that the predominant crops on the Premises are used in the production of alcohol if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production. . If more than one of the permitted expansions authorized in d. above and r. and s. below occurs, the total expansion shall not exceed a 50% expansion of the existing building or a maximum of 2,000 square feet. Nothing herein shall limit the ability to develop an alcohol production facility authorized pursuant to (a), (b), ~~(e)~~, ~~(k)~~, or ~~(l)~~, or ~~(m)~~, of this section ~~(G)(1) if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production.~~

~~(a)(f)~~ ~~(e)~~ No activity shall be permitted which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued agricultural use of the premises.

(g) Public improvements including but not limited to roadways, drainage facilities and other public infrastructure are permitted so long as the public improvements individually or collectively have no more than a *de minimis* impact on the actual or potential use of the Premises for agricultural production.

(h) ~~(h)~~ The right to maintain all roads and trails existing upon the premises as of the date of the deed of easement shall be preserved. The construction, improvement or reconstruction of any roadway necessary to service crops, agricultural buildings, or reservoirs is permitted as necessary.

(i) ~~(i)~~ To the extent permitted by Chapter 203, ~~the~~ premises may be used to derive income from for certain recreational activities such as hunting, fishing, cross-country skiing and ecological tours, only if such activities

do not interfere with the actual or potential use of the land for agricultural production. Other recreational activities ~~from which income is derived and~~ which alter the premises, such as ~~as indoor recreational facilities,~~ golf courses and athletic fields, are prohibited unless expressly authorized by the TDR deed of easement pursuant to this Section ordinance. However, if the Premises is acquired by a governmental entity, the governmental entity may establish outdoor active recreational uses on the Premises.

- (j) ~~(j)~~ Disposal of sludge or any waste material resulting from treatment of waste water, domestic or otherwise, is expressly prohibited. No sand, gravel, loam, rock or other minerals shall be deposited on or removed from the premises except those materials required by the agricultural purpose to which the land is used. ~~All oil, gas and other mineral rights are retained provided that any prospective drilling and/or mining is done by slant from adjacent property or in any other manner which will not materially affect the agricultural potential of the property.~~ No dumping or placing of trash or waste material shall be permitted unless expressly ~~authorized~~ recommended by the State Agricultural Development Committee or the Gloucester County Agricultural Development Board SADC as an agricultural management practice and pursuant to the Right to Farm Act and subject to any restrictions imposed by the Township consistent with that Act ~~permitted by the Township Committee.~~
- (k) ~~(k)~~ No historic building or structure (included in the New Jersey Register of Historic Places) located on the premises may be demolished by the grantor or any other person without the prior approval of the Township Committee, with a recommendation from the Joint Land Use Board.
- (l) ~~(l)~~ Temporary nonresidential agricultural structures may be built on the premises provided that the structure has no permanent foundation, the structure is built without electricity, and the structure is limited in size to a maximum 100 square feet. The construction of billboards, golf courses, cellular phone towers, solar panels, wind turbines, airstrips, and helicopter pads ~~are is~~ expressly prohibited. Notwithstanding this paragraph l, solar panels and wind turbines used to generate electricity for uses on the premises consistent with the deed of easement are permitted to the extent permitted by Chapter 203. To the extent permitted by Chapter 203 the zoning ordinance or the Right to Farm Act. ~~f~~Fences may be constructed in support of the agricultural operation and to prevent trespassing. On any designated public areas, ~~t~~The grantor may not erect fences to block access to public areas from the general public.
- ~~(m) Cellular phone towers shall only be permitted if designed to resemble a farm silo and other designs that are acceptable to the Planning Board.~~
- (m) Agricultural management practices as have been and continue to be promulgated by the New Jersey State Agriculture Development Committee pursuant to its authority under N.J.A.C. 2:76-2.1 et seq.,

N.J.A.C. 2:76-2A.1 et seq., N.J.A.C. 2:76-2B.1 et seq. and the Right to Farm Act (N.J.S.A. 4:1C-1 et seq. are expressly permitted.

~~(b)~~(n) The right to plant, grow, and harvest trees, timber and forest products and to engage in other woodland management activities related thereto provided that the same are carried out in a manner consistent with the Farmland Assessment Act of 1964 (N.J.S.A. 54:4-23.1 et seq.).

~~(o)~~ To the extent permitted by Chapter 203, Permissible improvements allowed in conjunction with permitted uses to include the installation of needed driveway and/or road access and ancillary unpaved parking areas for a maximum of 750 vehicles, if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the premises for agricultural production so long as these installations are designed to have a minimum impact on the resource as and subject to the review and approval of by the Joint Land Use Board Administrative Officer. ~~The use of hiking and biking trails for in which the use of motorized vehicles is not permitted except for necessary access to the premises transportation; and the location of a single family detached dwelling unit in accordance with § of this article.~~

~~(e)~~(p) New buildings for non-residential agricultural purposes may be constructed on the Premises to the extent permitted by Chapter 203 subject to the other provisions of this Deed of Easement.

(q) Use of the designated public area of the premises for a public passive recreational use is permitted consistent with the New Jersey Department of Environmental Protection, Green Acres Program Rules (N.J.A.C. 7:36-1.1 et seq.).

(r) To the extent permitted by Chapter 203 herein, existing buildings on the premises, including a 50% expansion of any existing building up to a maximum of 2,000 square feet, may be retained for use as a bed and breakfast if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production. If more than one of the permitted expansions authorized in d. and e. above and s. below occurs, the total expansion shall not exceed a 50% expansion of the existing building or a maximum of 2,000 square feet.

(s) To the extent permitted by Chapter 203 herein, existing buildings on the premises, including a 50% expansion of any existing building up to a maximum of 2,000 square feet, may be retained for use for social events such as weddings and temporary structures may be used for said social events if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production. If more than one of the permitted expansions authorized in d., e. and r. above occurs, the total expansion shall not exceed a 50% expansion of the existing building or a maximum of 2,000 square feet.

(t) To the extent permitted by Chapter 203 herein, the premises may be retained for use as a day camp if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production.

(u) To the extent permitted by Chapter 203 herein, the premises may be retained for use as a botanical garden or arboretum if it is demonstrated that the uses individually or collectively will not diminish the actual or potential use of the Premises for agricultural production.

~~(d)(v)~~ (q) None of the uses permitted shall be allowed to harm the economic viability of the subject land for agricultural production.

(2) ~~Conservation TDR easement.~~

~~(a)~~ Land dedicated for conservation to a government or land trust; however, nothing shall be construed by this subsection to require the dedication of the land for public open space.

~~(b)~~ Woolwich Township shall maintain the right of first refusal for properties identified as potential future municipal parks in the Woolwich Township Open Space Plan.

~~(c)~~ All nonconservation uses, if any, existing on the premises at the time of deed restriction may be continued and any structure may be restored or repaired in the event of partial destruction. No new structures, except as permitted herein, or the expansion of preexisting structures for nonconservation uses, are permitted. In the event a preexisting nonconservation use is abandoned, the right to continue the use is extinguished.

~~(d)~~ No activity shall be permitted which would be detrimental to drainage, flood control, water conservation, erosion control, or soil conservation, nor shall any other activity be permitted which would be detrimental to the continued conservation use of the premises.

~~(e)~~ The right to maintain all roads and trails existing upon the premises as of the date of the deed of easement shall be preserved. The construction, improvement or reconstruction of any roadway necessary to service crops, agricultural buildings, or reservoirs is permitted as necessary.

~~(f)~~ The premises may be used to derive income from certain recreational activities such as hunting, fishing, cross-country skiing and ecological tours, only if such activities do not interfere with the actual or potential use of the land for conservation purposes. Other recreational activities from which income is derived and which alter the premises, such as golf courses and athletic fields, are prohibited unless expressly authorized by ordinance.

~~(g)~~ Disposal of sludge or any waste material resulting from treatment of waste water, domestic or otherwise, is expressly prohibited.

~~(h)~~ No planting, or mowing of grass or lawns, shall be permitted on the property.

~~(i)~~ No trees or shrubs or other vegetation on or hereafter existing on the property shall be removed or destroyed except by mutual agreement of grantor and grantee and consistent with the conservation purposes to be achieved hereby.

~~(j)~~ No topsoil, sand, gravel, loam, rock or other minerals shall be excavated or removed from the property except by mutual agreement of grantor and

~~grantee and consistent with the conservation purposes to be achieved hereby.~~

~~(k) No buildings or other structures shall be erected on the property.~~

~~(l) No dumping or placing of soil or other substance or fill, and no dumping or placing of trash or waste, shall be permitted on the property.~~

~~(m) No automobiles, snowmobiles, dune buggies, motorcycles, all terrain vehicles, mopeds, or any other type of motorized vehicles, except those as may be used in connection with maintenance of the property, shall be permitted on the property.~~

~~(n) Hiking and biking trails which are used by motorized vehicles are not permitted.~~

~~(o) The grantee may require the grantor to accept a deed restriction that permits the use of land for public areas as defined in the ordinance.~~

~~(p) If the site qualifies as habitat for a permitted threatened or endangered species, a wildlife habitat conservation plan or a wildlife habitat restoration plan, and wildlife present conditions report shall be presented to the Administrative Officer for review and approval.~~

H.

(1) Landowners desiring to subdivide an existing single-family detached house or farmstead on land proposed for transfer of credits shall meet the following requirements:

(a) The applicant may simultaneously file an application for minor subdivision approval to create a lot for the existing residence or farmstead. The minor subdivision application shall not be subject to the creeping subdivision provisions of the definition of minor subdivision whereby any second subdivision of land subsequent to involving the same tract shall be deemed a major subdivision.

(b) The lot proposed for subdivision containing the existing single-family detached house or farmstead shall meet the minimum standards for lots within the zoning district, but shall not exceed two acres in area.

(c) The newly created lot for the existing residence or farmstead shall be deed restricted from further subdivision.

(d) One full credit shall be subtracted from the total credits to be transferred from the tract, and so recorded in the Record of Transfers.

~~(e) The remaining vacant lot shall contain at least 15 acres. No ~~if a~~ new single family detached dwelling can ~~is to be developed on the vacant lot pursuant to G(1)(d)ii above if the vacant lot contains less than 50 acres. A~~ new single family detached dwelling can be developed pursuant to G(1)(d)iii above on any vacant lot containing at least 50 acres.~~

(2) ~~Any lots created by the division of property by testamentary or intestate provisions without approval of the Joint Land Use Board shall be entitled to only those benefits under this Chapter 203 the property~~it~~ would have been entitled to if the lot had not been so subdivided.~~

**Formatted:** Font: (Default) CG Times, 12 pt, Font color: Black

**Formatted:** Indent: Left: 1.38", First line: 0"

**Formatted:** Font: (Default) CG Times, 12 pt, Font color: Black

**Formatted:** Font: (Default) CG Times, 12 pt, Font color: Black

**Formatted:** Font: (Default) CG Times, 12 pt, Font color: Black

**Formatted:** Indent: Left: 1.38", No bullets or numbering

~~H.I.~~ One full credit shall be subtracted from the total credits to be transferred from the tract, and so recorded in the Record of Transfers, if a subdivision of lots occurs between at least 1530 acres but less than 50 acres in size ~~between 30 and 49 acres in size~~ for one new lot created for an existing or proposed single-family detached dwelling unit. The land owner must decide whether to utilize a credit at the time of easement dedication. Subdivision of the Premises resulting in parcels of at least fifty (50) acres is permitted without the use of a TDR credit ~~For parcels between 50 and 100 acres in size, a property owner shall be permitted to retain or build a new single family detached dwelling unit without utilizing a credit. For properties that are at least 100 acres in size, a property owner shall be permitted to retain or build a single family detached dwelling unit on 50 acres without utilizing a credit. For every additional fifty acre increment, a bonus credit will be allocated to the property owner which can be used in one of two ways: 1) to retain or build a single family detached house for each fifty acre increment; or 2) to sell the credit/s through the transfer of development rights. Sale of said credit/s shall only be permitted once all other assigned credits have been transferred.~~

~~H.J.~~ Should the Township acquire ownership of a sending parcel, the land may be used for recreation coincidental with the definition of "public areas" while continuing to promote farmland preservation, conservation of open space, and preservation of view sheds.

§ 203-55. Reassignment and ~~d~~Disenrollment.

- A. It is understood that the TDR Program is voluntary. The Master Plan and Zoning Ordinance provide a reasonable balance between the number of credits which are allocated to the sending area(s) and the capacity of the acreage within the receiving area(s) to accommodate transferred credits; however, if a number of landowners/developers within the receiving area elect to subdivide their land without the use of credits, it is conceivable that more credits capable of being transferred will have been created than available locations for their receipt. Recognizing the inherent unfairness which may be visited upon a property owner in the sending zone or his assignee should property be enrolled within the program without there being in existence an adequate area within the receiving zone to utilize the credits so created, this subsection has been created to provide relief. Section C, 40:55D-154 of the Municipal Land Use Law establishes standards for the rebuttable presumption that the development transfer ordinance is no longer reasonable and as such a land owner may seek disenrollment if the ordinance is deemed to be no longer reasonable by the Township.
- B. If a rebuttable presumption exists pursuant to N.J.S.A. 40:55D-154 and the Township has failed to demonstrate that any of the criteria in N.J.S.A. 40:55D-156a-d have been met or if the Township has repealed this Article VI, Should ~~a landowner or his assignee~~ owning a parcel of land enrolled within a TDR program and having imposed the required TDR deed of easement on the land determine that they have an inability to utilize credits within the receiving zone, they may apply to the Joint Land Use Board for reassignment of the credits to the parcel from which they originated or ~~disenrollment of the procedures set forth below. A landowner or his assignee may apply to the Administrative Officer no later than one year after the final plan of an approved subdivision or site plan is signed by~~

~~the Township, for reassignment of credits associated with the parcel from which they originated or disenrollment based upon the procedures set forth below should a land owner or his assignee determine that they have an inability to utilize credits in association with a receiving area.~~

~~C. Procedure for reassignment.~~

~~(1) An assignee seeking to reassign any of the credits which have previously been assigned by a landowner may seek to reassign the credits obtained, absent any bonus, back to the parcel from which they originated by using the following procedures:~~

~~(a) The assignee on forms authorized by the Joint Land Use Board and obtained from the Township Clerk shall submit an original and two copies of the application for assignment or reassignment form, an original and two copies of the reassignment document and appropriate review fees to the Administrative Officer for review.~~

~~(b) The Administrative Officer, within 45 days, shall determine that the application:~~

~~[1] Contains all of the information required by the form.~~

~~[2] Seeks to reassign all or a portion of the credits, absent any bonus, previously assigned to the assignee back to the parcel from which the credits came.~~

~~[3] Provides the recording information about the agricultural or conservation TDR easement and original assignment.~~

~~[4] Reflects that no material change in the title of the parcel has occurred since the agricultural or conservation TDR easement and assignment were recorded.~~

~~(c) If the Administrative Officer determines that the application and supporting documents are complete, the Officer shall schedule the matter for a hearing before the Joint Land Use Board at its next regular or special meeting called for this purpose.~~

~~(d) The Joint Land Use Board shall, at a regular or special meeting during which the matter is considered, conduct a hearing on the application. If the Joint Land Use Board determines, after considering all evidence submitted both in favor of and opposing the application, that, through an inability to use the credits within the receiving zone or through other just cause, it is not feasible to expect that the credits will be usable within a reasonable time frame and both the assignee and the landowner agree to a reassignment of the credits, the Board shall grant the assignee the right to reassign the credits provided. Otherwise the application should be denied. Public notice of the meeting shall not be required.~~

~~[1] The Joint Land Use Board shall take action on the application within 95 days of its receipt by the Joint Land Use Board Secretary. If the Joint Land Use Board fails to act, the application shall be deemed approved.~~

~~[2] Should the Joint Land Use Board approve the application, it will direct its Chairman and Secretary to certify to this fact on the~~

~~original reassignment document which is to be delivered to the applicant for recording. The reassignment document is to be extended within 90 days from the date that the certification is filed, unless this time period is extended by the applicant. If unrecorded, the appeal of the reassignment shall be null and void and the assignee must reapply to obtain relief.~~

~~(e) The assignee, upon recording the reassignment document, shall file proof of the recording with the Administrative Officer. Until such proof is filed, reassignment of the credits shall be ineffective.~~

~~(f) Upon receipt of proof that an agricultural or conservation easement has been recorded, the Administrative Officer shall:~~

~~[1] Record the fact of the reassignment upon the records of the Township. This record shall include the Clerk's assigned book and page of recording if known.~~

~~[2] Forward a copy of the recorded reassignment document to the Joint Land Use Board and the TDR Bank for its information.~~

D.C. Procedure for disenrollment.

(1) A landowner who desires to disenroll his land from involvement with the TDR program shall follow the following procedures:

(a) The landowner, on forms authorized by the Board and obtained from the Township Clerk, shall submit to the Administrative Officer:

[1] The original and two copies of a fully completed application for TDR disenrollment form.

[2] Review fees.

[3] The original and two copies of the disenrollment document designed to terminate the restrictions imposed upon the landowner's property.

[4] Clear proof of title provided by the landowner.

[5] Proof that none of the credits created for the property by enrollment have been used by another property owner or developer through the filing of a deed of credit transfer or assigned to a third party who does not consent to the disenrollment application.

(b) The Administrative Officer shall, within 45 days of receipt, determine that the application is complete.

(c) Upon determination that the application is complete, the Administrative Officer shall schedule a public hearing before the Joint Land Use Board on notice to the public ~~unless the Township has repealed this Article VI~~. At this hearing, the Joint Land Use Board shall determine whether a ~~rebuttable presumption exists pursuant to N.J.S.A. 40:55D-154 and if so whether any of the criteria specified in N.J.S.A. 40:55D-156a-d exist~~ ~~hardship exists to the land owner through an inability to utilize his credits within the receiving zone or for other good and sufficient reasons the public's interest would be served by allowing relief from the restrictions imposed under the TDR program~~. In reaching the ~~case's~~ conclusions, the Joint Land Use Board shall take into consideration all evidence, both submitted in favor of and in opposition to the relief required, in accordance with the procedures normally

available for development applications before the Board. After this review, the Board shall reduce its findings to a written resolution recommending to the Township Committee whether to grant or deny the application proposed. If the Board fails to act within 90 days of the date the application is submitted, unless this time period is extended by the applicant, the application shall be deemed denied and the applicant shall be required to reapply if relief is to be obtained.

(d) If the application is approved, the record before the Board, including its findings, shall be submitted to the Township Committee, ~~and to the applicant~~ and to all persons who participated in the public hearing. The Township Committee shall review the proceedings before the Joint Land Use Board and determine whether good cause exists for the relief specified. If they agree that the relief should be granted or if the Township has repealed this Article VI, they shall direct the Mayor and Township Clerk to execute the disenrollment document. Upon execution by the Mayor and Clerk, approval to disenroll shall be recorded in the County Clerk's Office.

(e) The landowner shall request approval of the release of the restrictions imposed upon the landowner's property from the Commissioner of Environmental Protection in accordance with the requirements of the New Jersey Conservation Restriction and Historic Preservation Restriction Act, N.J.S.A. 13:8B-1 et seq. Proof of the release, which is evidenced by a certificate of the Commissioner of Environmental Protection, shall be recorded in the same manner as the restriction and the disenrollment document.

(f) Upon receipt of proof of recording of the disenrollment document and the release certificate issued by the Commissioner of Environmental Protection, the Administrative Officer shall:

[1] Record the fact that the disenrollment document has been recorded on the Township records, including the Clerk's assigned book and page of recording, if known.

[2] Forward a copy of the recorded disenrollment document to the Joint Land Use Board and TDR Bank for their information.

~~F.D.~~ The ~~assignee and/or~~ landowner seeking ~~either reassignment or~~ disenrollment shall be responsible for all costs associated with the review of the ~~reassignment or~~ disenrollment, including professional fees authorized by this article.

~~F.E.~~ The ~~assignee and/or~~ landowner may extend the time limits for administrative action by the Administrative Officer or by the Planning Board. This right to extend shall not apply to any time period set forth in this article for recording of a document.

#### § 203-56. Building regulating plan.

A. The use of development credits shall occur as indicated on an approved plan for the receiving area lots that have been specified for development. Receiving area lots have "by-right" densities as established in the TDR real estate market analysis as base zoning that may be exercise as part of the TDR development process.

- B. Each of the permitted housing types shall be equal to the following development credits for units transferred from the sending zone(s):

**US 322 Corridor Receiving Zone:**

1.3 Single-family detached	= 1 credit
1.8 Duplex or twin unit	= 1 credit
2.8 Townhouse	= 1 credit
3.0 Urban Apartment/flat	= 1 credit

- C. No credits are needed to construct housing in mixed-use buildings located above the first floor in the area of the U.S. 322 Corridor Receiving Zone designated RC-1 Residential Retail.

**Auburn Road Receiving Zone:**

1.6 Duplex or twin unit	= 1 credit
2.5 Townhouse	= 1 credit

- D. The TDR development option may be exercised only for parcels located within receiving zones or districts. Applicants exercising the TDR development option shall submit an application that includes land within both the areas or districts in accordance with their respective requirements. Application for receiving zone development may only be made after the layout for that portion of the receiving districts intended for importation of credits from the sending zone(s) has received preliminary subdivision approval from the Planning Board. The applicant shall have secured through an equity interest all necessary credits for increasing the permitted density in the receiving area(s) prior to final action being taken by the Planning Board.

- E. Prior to any approval of a receiving area development plan, the Joint Land Use Board shall find the following facts and conclusions:

- (1) That departures by the proposed development from zoning regulations otherwise applicable to the subject properties conform to the zoning ordinance standards pursuant to N.J.S.A. 40:55D65c;
- (2) That the proposals for the maintenance and conservation of common open space are reliable, and the amount, location and purpose of the common open space are adequate;
- (3) That provisions through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;
- (4) That the proposed development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;
- (5) In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and the residents, occupants and owners of the proposed development in the total completion of the development are adequate;

(6) That the proposed development will have adequate public water and public sanitary sewer capacity for the intensity of development requested.

F. The Joint Land Use Board shall act upon an application for a development within the receiving area in the same time and manner as for a preliminary major subdivision application pursuant to N.J.S.A. 40:55D-48. No action shall be taken upon the development application unless a complete submission has been made in accordance with the applicable checklist.

G. Affordable housing requirements.

(1) For nonresidential uses, compliance with the Statewide Non-Residential Development Fee Act,<sup>(1)</sup> or other relevant statute, is required subject to all applicable affordable housing requirements as contained in Article **XII**.<sup>[1]</sup>*Editor's Note: See N.J.S.A. 40:55D-8.1 et seq.*

(2) For residential uses, a minimum of 10% of the total dwelling units shall be affordable subject to all applicable housing requirements as contained in Article **XII**.

§ 203-57. (Reserved)

|