

2014

TASK - N2, N3, N4



SUFFOLK COUNTY DEPARTMENT OF ECONOMIC DEVELOPMENT & PLANNING

May 2014

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY

TASK N2, N3, N4 - ANALYSIS OF EXISTING PROGRAMS
RECOMMENDATIONS AND PUBLIC OUTREACH



MADE POSSIBLE BY:
THE NEW YORK/CONNECTICUT SUSTAINABLE
COMMUNITIES REGIONAL PLANNING GRANT

Use your Smartphone and
a QR App to scan this code
for more information



SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY

ANALYSIS OF EXISTING PROGRAMS, RECOMMENDATIONS, AND PUBLIC OUT REACH

New York-Connecticut Sustainable Communities Planning Program TASK N2, N3, N4

May 2014



Steven Bellone

Suffolk County Executive

Suffolk County Department of Economic Development and Planning

H. Lee Dennison Building, 4th floor

100 Veterans Memorial Highway

Hauppauge, New York 11788-0099

Steven Bellone

Suffolk County Executive

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY

ANALYSIS OF EXISTING PROGRAMS, RECOMMENDATIONS, AND PUBLIC OUT REACH

New York-Connecticut Sustainable Communities Planning Program TASK N2, N3, N4

May 2014

Suffolk County Department of Economic Development and Planning

Joanne Minieri

Commissioner

Vanessa Pugh

Deputy Commissioner

Sarah Lansdale, AICP

Director of Planning

Project Manager

Andrew P. Freleng

Chief Planner

Report Preparation

Andrew P. Freleng

Peter Lambert

Ted Klein

John Corral

DeWitt Davies

Lauretta Fischer

Jennifer McGivern

Frank Castelli

Colleen Badolato

Jill Rosen-Nikoloff

Andrew Amakawa

Carl Lind

Kate Oheim

Christine DeSalvo

Susan Filipowich

Katie Magee

Michele Crosby

Barbara DelGiudice

Heidi Kowalchuk

Janet Longo

Suffolk County Department of Health Services

Walter Dawydiak

Pat Floria

Walter Hilbert

*The work that provided the basis for this publication was supported by funding under an award with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government.

Suffolk County Transfer of Development Rights (TDR) Study

Analysis of Existing Programs and
Recommendations

May 2014

*Funding provided by a
HUD Sustainable Communities Grant*

Table of Contents

I.	Introduction.....	4
II.	Overview.....	6
	A. Summary Comparison of Programs Nationwide	
	B. Conclusions	
III.	Detailed Inventory of Development Rights Credits.....	10
	A. Town TDR Programs	
	1. Town TDR Program Sending and Receiving Areas	
	B. Regional TDR Programs	
	1. Central Pine Barrens Credit Program	
	2. Suffolk County Workforce Housing Credit Program	
	3. Suffolk County Sanitary Credit Program	
IV.	Analysis of the Ratio of Sending to Receiving Sites.....	21
	A. Vacant Land Analysis	
	B. Potential TDR Uses in Sewered Areas	
	C. Potential TDR Yield from Master List of Proposed Open Space Acquisitions	
	D. Potential TDR Yield from Overlap Parcels in the Core Preservation Area	
	E. Total Potential TDR Yield in Suffolk County	
V.	Duplication of TDR Programs.....	31
VI.	Case Studies.....	32
	A. Town of Riverhead	
	B. Town of Huntington	
	C. Town of Smithtown	
	D. Town of Brookhaven	
	E. Central Pine Barrens Commission	
VII.	Lessons Learned.....	38
	A. Benefits of TDR	
	1. TDR can be an effective way to preserve open space.	
	2. A TDR program can be funded solely by the private sector.	
	3. A TDR program can promote economic development in downtowns and transit hubs.	

4. A TDR program enables a restricted landowner to sell development potential and recover land value.
5. A TDR program allows zoning regulation without a takings claim.
6. A TDR program can allow a builder to transfer additional development potential to a project site as-of-right.

B. Problems with TDR

1. There is often civic opposition to zoning changes for increased density.
2. TDR as a land use tool is not easily understood by the general public.
3. There is currently only a small market for using a development right as a wastewater credit in Suffolk County.
4. TDR equivalents can vary by municipality.
5. The TDR process can be unpredictable.
6. Development rights can be expensive.
7. There is no pressing demand for the use of TDRs.
8. Uncoordinated TDR programs can lead to a patchwork pattern of open space.

Summary of Problems with TDR

VIII. Recommendations.....51

Recommendation 1: Develop a publicly accessible database of County TDRs.

Recommendation 2: Explore the feasibility, interest, cost, and revenue potential to create a countywide TDR clearinghouse and bank with local towns and the Pine Barrens Commission.

Recommendation 3: Explore the feasibility of requiring the use of TDRs for increases in development density or intensity.

Recommendation 4: Explore local support for standardizing TDR floor area equivalents.

Recommendation 5: Explore the feasibility of creating a public/private open space Master List TDR Program.

Implementation of Recommendations

IX. Public Outreach.....59

- A. Community Advisory Committee
- B. Establishment of Website
- C. Community Meetings

X. Conclusion and Next Steps.....61

XI. Bibliography.....62

XII. Appendix.....64

Appendix 1: Resolution No. 1210 -2013, directing the Division of Real Property Acquisition and Management to canvass the owners of Master List properties.

Appendix 2: Development Rights Yield from Master List Properties

Appendix 3: Resolution No. 812 -2011, adopting local law No. 51 -2011, a charter law to authorize the use of development rights for municipal fire, ambulance and police districts in Suffolk County.

Appendix 4: Suffolk County Tax Default Development Right Transfer Program

Appendix 5: Model Transfer of Development Rights (TDR) Municipal Local Law

Appendix 6: Outreach Meetings for Suffolk County TDR Study

I. Introduction

This document is the second report in a study reviewing all of the “transfer of development rights” (TDR) programs utilized by the County of Suffolk, New York, and the 43 incorporated towns and villages within its borders. In 2011, Suffolk County was awarded a Sustainable Communities Regional Planning Grant by the U. S. Department of Housing and Urban Development (HUD) as part of a bi-state collaboration of cities, counties, and regional planning organizations that came together to form the [New York-Connecticut Sustainable Communities Consortium](#). The Consortium is a collaboration of eleven municipalities, the Regional Plan Association, and the New York Metropolitan Transportation Council. This partnership is committed to advancing principles that provide better access to affordable housing, more transportation options, and lower transportation costs, while protecting the environment and reducing energy dependence. This Suffolk County Transfer of Development Rights Study makes recommendations toward that end, proposing to allow transfers of density (development rights) from targeted open space preservation areas, into mixed use transit oriented development (TOD) in identified growth areas.

This regional TDR study examines existing TDR programs at the local, county, and regional level, and proposes specific recommendations that will:

1. Encourage better participation within existing TDR programs,
2. Coordinate development right absorption within identified growth zones in the County while discouraging development in environmentally sensitive areas, and
3. Improve implementation and coordination between local land use decisions and regional transportation policies.

This report is the second Suffolk County report under the New York-Connecticut Sustainable Communities Planning Program. The prior report, titled [Suffolk County Transfer of Development Rights \(TDR Study\) Inventory of Existing TDR Programs](#), fulfilled the requirements of Task N.1 and was completed in March 2014. This report includes Task N. 2, a complete analysis of all existing programs, Task N.3, recommendations for specific strategies to coordinate credit absorption within specific growth zones, and Task N.4, public outreach. In total, these reports comprise the scope of work for the Suffolk County Department of Planning under the HUD Sustainable Communities Grant as envisioned by the New York-Connecticut Sustainable Communities Consortium.

As part of Suffolk County's commitment to environmentally-conscious smart growth, decreased automobile dependency, and economic growth, Suffolk County Executive Steven Bellone introduced "Connect Long Island" in 2012, a comprehensive regional transportation and long-term economic development concept. Connect Long Island helps to create an innovation economy and sustainable growth in Suffolk County by supporting TODs and a 21st century transportation infrastructure that connects TODs to major research and educational institutions and innovation zones for emerging hi-tech companies. Facilitating the transfer of development potential to downtown TODs utilizing TDRs allows Suffolk County to promote economic development while preserving open space and natural resources.

One goal of this TDR study is to identify strategies for coordinating development right absorption within identified and designated growth zones in Suffolk County. Five such areas were identified in a 2006 Suffolk County Department of Planning report titled [A Review of Selected Growth and Development Areas, Suffolk County New York](#). The report was created as a result of a Suffolk County Executive Order which directed the Department of Planning to evaluate and analyze proposed development in five major growth and development areas in Suffolk County. These five areas were identified through a collaborative process between Suffolk County, local municipalities, and the New York Metropolitan Transportation Council (NYMTC). The five areas were:

- Route 110 Office - Industrial Corridor
- Sagtikos Regional Development Zone
- Yaphank
- Town of Riverhead, and
- Stony Brook High Tech Campus

While the five major growth and development areas do not represent the total of all potential growth in Suffolk County, they were selected because each one uniquely has the potential for some kind of significant additional development. Since 2006, additional growth zones have been recognized, including the redevelopment initiatives "Wyandanch Rising" in the Town of Babylon and "Ronkonkoma Hub" in the Town of Brookhaven.

II. Overview

The history and evolution of TDR as a zoning instrument was presented in the prior report titled [Suffolk County Transfer of Development Rights \(TDR Study\), Inventory of Existing TDR Programs](#). In 1968, the New York City Landmark Preservation Law was the first TDR legislation upheld by the courts. In Suffolk County, TDR programs were set up under the enabling legislation in Town Law ([Section 261-a](#)) and Village Law ([Section 7-701](#)). In Suffolk County, since the 1970s the Towns of Islip and Southampton have been local leaders in using TDR as a land use tool. There are now 14 local town TDR programs and three regional countywide programs. Six of the TDR programs are presently sanctioned by the Suffolk County Department of Health Services as “as-of-right” programs, meaning by legal entitlement.

A review of the TDR ordinances in Suffolk County reveals that the TDR programs in the various towns have similar types of “sending” areas. The typical TDR “sending” areas are environmentally sensitive land (such as steep slopes, wetlands, prime agricultural soil, and coastal erosion areas) or historic locations. Typical “receiving” sites in town ordinances are downtowns, commercial areas, and affordable housing and TOD projects.

A. Summary of Comparison Programs Nationwide

The nomenclature, process, procedures, and elements of TDR were comprehensively researched for places locally and around the nation that use TDR. The following are highlights of the reports that were reviewed.

A useful research report was produced by “GrowSmart RI” in 2007 titled *“Transfer of Development Rights: a Study of Its Use in Other States and the Potential for Use in Rhode Island.”* The paper is a valuable summary of the key elements of TDR programs and provides guidance on implementation at the local level. A related report is the *“Washington County (RI) Transfer of Development Rights Study.”* This study was funded by a Challenge Grant from the Rhode Island Statewide Planning Program to study TDR in the County and in Rhode Island as a whole. The report investigated nationwide programs, including Montgomery County, Maryland; King County, Washington; Bolder County, Colorado; Tahoe Regional Planning Agency, California and Nevada; Pinelands, New Jersey; Old Tappan, New Jersey; Livermore, California; Warwick, New York; Sarasota County, Florida; San Juan County, Washington; Santa Clarita, California; Douglas County, Colorado; Franconia, Pennsylvania; State of Georgia; State of Maryland;

State of Connecticut; State of Vermont; Riverside, California; Sacramento California; and Chandler, Arizona. This report and the Rhode Island TDR study demonstrate that there are many programs that use the original TDR procedures and adapt them to meet local concerns and conditions.

In addition to a literature search, telephone and personal interviews were conducted with municipalities currently utilizing TDR. Interview questions focused on the following topics: unique features of the plan, plan recommendations, whether all plan recommendations were implemented, number of credits, use of credits, number and price of credits used in past 12 months, and lessons learned. Staff members visited the offices of the Maryland Department of Environmental Conservation; the New Jersey Pineland Commission; Kingston, Rhode Island; and Barnstable Massachusetts. A summary of TDR programs in these areas follows.

Maryland:

- Maryland has several counties with TDR programs, including: Calvert, Caroline, Charles, Howard, Montgomery, Queen Anne's, and St. Mary's.
- The TDR bank is funded by general obligation bonds and operated by the county government. This setup ensures an interim market for development rights by guaranteeing loans secured by TDRs through private banks, by making loans using TDR as collateral, and by directly purchasing the TDRs. If TDRs are purchased, the bank is authorized to hold them until appropriate receiving areas are identified, then liquidate the holdings and return the proceeds to the county treasury.
- Maryland's programs work to preserve open space and farms and steer development to growth areas.
- Montgomery and Calvert Counties have been particularly successful in preserving many acres of undeveloped land and using TDRs to concentrate development in the Washington DC metropolitan area.
- Montgomery County has preserved 52,000 acres using TDR, which is more than 16% of its total land area.

New Jersey Pinelands Commission:

- The New Jersey Pinelands is a 1.1 million acre area that includes portions of seven counties.
- In 1978-1979, Congress and the State of New Jersey adopted legislation to protect the Pinelands.

- The protection and development of the Pinelands is guided by the Pinelands Comprehensive Management Plan. The Plan is administered by the New Jersey Pinelands Commission as well as the federal, state, and local governments.
- The Plan establishes nine land use management areas with established land use standards.
- The Pinelands Development Credit Program is a TDR program that helps to redirect growth in the Pinelands from the preservation and agricultural districts to infrastructure-supported regional growth areas.

Kingston, Rhode Island:

- Kingston, Rhode Island is located in Washington County, which has a TDR program.
- In 2012 a Plan was developed to study and encourage the use of TDRs in Washington County.
- Although a TDR program is not well established in Washington County, the County's growing population and its large amount of farmland and sensitive environmental areas make it a very good location for the use of TDRs.

Barnstable, Massachusetts:

- The Town of Barnstable is developing a market-based TDR program that will redirect development from critical natural resource areas to downtown Hyannis.

B. Conclusions

The review of TDR programs in municipalities across the nation revealed some common themes. These include the desire for preservation and the directing of development into areas with existing infrastructure. In addition, there seem to be two models for the operation of a TDR clearinghouse and bank. In one model, the County (or a formation of local governments) operates and funds the clearinghouse/bank, and in the other model non-government entities are created for this purpose.

Unlike many of programs around the country, agricultural land in Suffolk County cannot transfer a development right if the agricultural land is to remain in agricultural use. If the property remains in agricultural use, future nitrogen pollution is not removed from the sending property because of the nitrogen contained in fertilizers applied to farm

crops on the sending property. Therefore, the Suffolk County Department of Health Services will not accept a TDR from active farmland. Also, the Suffolk County Purchase of Development Rights Program is a farmland preservation program but it does not result in the creation and banking of development rights credits.

There are other differences between Suffolk County's TDR programs and other programs nationwide. Many of the TDR programs reviewed were in municipalities that are more rural than Suffolk County. Unlike those predominantly rural counties, Suffolk County does not have forest land of long-term commercial significance or land designated as rural that is being managed for forestry.

There are only a few examples of TDR being utilized to preserve historic properties around the country. Suffolk County contains historic districts and properties on the National Register that could possibly act as sending properties. In Suffolk County and in other municipalities, the TDR tool could be used more frequently to help preserve land and buildings of national, state, and local historic significance.

Around the country, municipalities with TDR programs generally favored an emphasis on educating the public about proposed TDR programs. In this way, public understanding and support for TDR programs can be increased, which in turn can advance ecological preservation, smart growth planning, and economic development.

III. Detailed Inventory of Development Rights Credits

C. Town TDR Programs

The prior report, [*Suffolk County Transfer of Development Rights \(TDR Study\), Inventory of Existing TDR Programs*](#), identified 14 town TDR programs operated by the 10 towns that comprise Suffolk County. These TDR programs were identified through a review of each of the 10 town codes. A summary of these town TDR programs as defined in the town codes is provided in that report and these town TDR programs are further examined in this report. The research of these programs involved extensive outreach, including meetings with representatives from each of the 10 towns and then follow-up letters, emails, and phone calls. The information obtained clarified which town TDR programs are active and which are not currently utilized. Table 1 provides the current status of each of the 14 town TDR programs, including the credits created and redeemed. Some of the town programs are quite active, resulting in a large number of credits created and redeemed, while other programs have not currently been implemented.

Table 1. Development Rights Credits in Town TDR Programs in Suffolk County					
Town	Town TDR Program	Credits Created	- Credits Redeemed	= Available Credits	Percentage of Credits Used
Babylon	No TDR Programs	-			
Brookhaven	Transfer of Development Rights Program	0 Town does not have an active TDR program.			
East Hampton	Affordable Housing Credit Program	16	16	0	100%
Huntington ⁽¹⁾	Transfer of Density Flow Rights	25.50 Town Owned Credits	0.26 Town Credits Redeemed	25.24 Town Owned Credits	1% of Town Credits Used
		16.48 Privately Owned Credits	9.84 Private Credits Redeemed	6.64 Privately Owned Credits	60% of Private Credits Used
	Transfer of Development Rights	0 Program does not result in banked credits.			
Islip	Planned Landmark Preservation Overlay District (PLP)	0 Program does not result in banked credits.			

Table 1. Development Rights Credits in Town TDR Programs in Suffolk County					
Town	Town TDR Program	Credits Created	- Credits Redeemed	= Available Credits	Percentage of Credits Used
Riverhead⁽²⁾	TDR Program	121	121	0 (Note: Program Does Not Result in Banked Credits)	100% (Note: Program Does Not Result In Banked Credits)
Shelter Island	Community Preservation Fund	0 Town does not have an active TDR program.			
Smithtown⁽³⁾	Transfer of Development Flow Rights	2.85	0.75	2.1	26%
Southampton⁽⁴⁾	TDR Program Community Preservation Fund	424.76 (35.66 are Pine Barrens Credits)	0	424.76	0%
	Transfer of Permitted Residential Development Rights	0 Program does not result in banked credits.			
	Old Filed Map Transfer of Development Program	3.99	0	3.99	0%
	Special Old Filed Map Transfer of Development Right Program	0	0	0	-
	Increased Residential Density to Establish Low and Lower Middle Income Housing	0 Program does not result in banked credits.			
Southold⁽⁵⁾	Southold Community Preservation Fund and Transfer of Development Rights (Sanitary Flow Credits)	61.99	10	51.99	16%
Sources: (1) Town of Huntington, August, 2013 (2) Town of Riverhead, February, 2014 (3) Town of Smithtown, September, 2013 (4) Town of Southampton, August, 2013 (5) Town of Southold, October, 2013					

In the Town of Riverhead, 121 credits have been created and 121 credits have been redeemed. The Town of Riverhead's TDR program, developed as part of the [Town of Riverhead's 2003 Comprehensive Plan](#), utilizes the transfer of development rights off farmland properties in the Town's Agricultural Protection Zone (APZ) to 10 designated residential and commercial zoning districts. The Town of Riverhead's program does not result in banked credits; instead, development rights are removed from a farmland property and immediately transferred to a designated receiving site. Additional information on the Town of Riverhead's TDR program is provided in the Case Study section of this report.

The Town of Southampton has several different town-operated TDR programs. Southampton Town's [Community Preservation TDR Program](#) has resulted in the creation of 424.76 development right credits. This program utilizes the Southampton Town's Community Preservation Fund, which is supported by a 2% real estate transfer tax, to purchase open space or farmland. Once the Town acquires the land, thereby "sterilizing" it, the development rights are stripped off the sterilized land and banked. To date, none of the Town's banked development rights credits have been redeemed. Information provided by the Town clarified that the Town's [Transfer of Permitted Residential Development Rights](#) and the [Increased Residential Density to Establish Low and Middle Income Housing](#) programs do not result in the creation of development rights credits. In addition, the Town's [Old Filed Map Transfer of Development Rights Program](#) currently has 3.99 credits created/banked, and its [Special Old Filed Map Transfer of Development Rights Program](#) currently has 0 credits created/banked.

Other Suffolk County towns have active town-operated TDR programs. The [Town of Huntington's TDR program](#) involves the transfer of development rights flow credits. To date, this program has resulted in 41.98 credits created, of which 10.1 credits have been utilized (24% of the total). The [Town of Smithtown's TDR program](#) is well-defined, with a small number of credits created (2.85) and redeemed (0.75) at the present time. The [Town of Southold's TDR program](#) involves sanitary flow credits and is supported by its Community Preservation Fund (funded by a 2% real estate transfer tax). The latest information received from the Town of Southold indicates that 61.99 credits have been created and 10 credits (16% of the total) have been redeemed. The [Town of East Hampton's Affordable Housing Credit Program](#) has resulted in the transfer of 16 Affordable Housing Credits to date. East Hampton's program utilizes a direct transfer of TDR credits from an identified sending parcel to an identified receiving parcel. Each transfer must be approved by the East Hampton Town Board.

The Towns of Brookhaven and Shelter Island have defined TDR programs in their respective town codes, but these TDR programs have not been utilized. The Town of

Islip's [Planned Landmark Preservation Overlay District](#) program allows density transfers within historic districts, but does not result in the creation of development rights credits.

Town TDR Program Sending and Receiving Areas

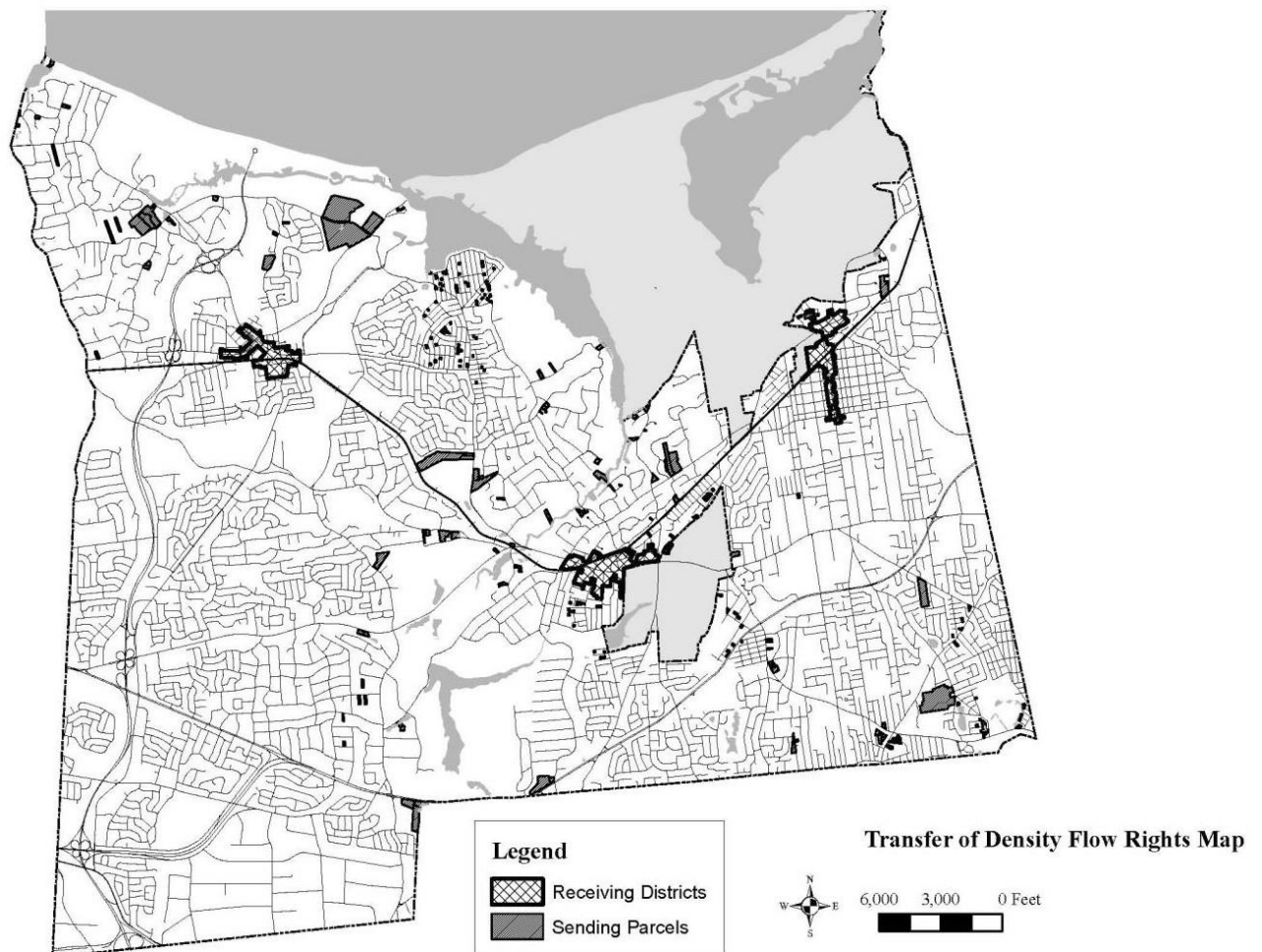
The active Town TDR programs do not designate sending and receiving areas at a parcel specific level. Instead, the Town TDR programs typically designate sending and receiving areas based on zoning and/or environmental characteristics. Designated Town sending areas tend to be in residential or agricultural zoning districts and often have environmental sensitivities. Any parcel located in these large designated sending areas can then serve as a Town sending parcel. The Town's receiving areas also tend to be large in size and are typically comprised of higher density residential zoning districts and downtown commercial districts.

The Town of Riverhead, which has one of the most active TDR programs, directly transfers development rights from its Agricultural Protection Zone (APZ) to any of four designated residential zones (Residence A-80, Residence A-40, Hamlet Residential, and Retirement Community) or six designated commercial zones (Business Center, Shopping Center, Destination Retail Center, Commercial/Residential Campus, Business F, and Planned Recreational Park). The Town of Riverhead's designated sending area, the APZ, encompasses approximately 12,500 acres. To date, 121 development rights credits have been transferred from the Town of Riverhead's designated sending area. This equates to approximately 121 acres in the Town's designated sending area. Suffolk County and the Town of Riverhead have also preserved significant farmland acreage in the APZ. However, due to the large area of the Town of Riverhead's sending district, there are still a large number of parcels that can serve as sending sites for the Town of Riverhead's TDR program. The Town of Riverhead's receiving areas are diverse and large in size and therefore have the ability to absorb large numbers of development rights. A key absorption mechanism derives from the ability to use Town of Riverhead TDR credits to receive floor area bonuses in large scale redevelopment projects. In addition, because Riverhead's TDR program utilizes direct transfers of development rights credits, it is assured that a 1 to 1 ratio of sending to receiving parcels will be maintained.

The active TDR programs in the other towns in Suffolk County (Huntington, Smithtown, Southampton and Southold) result in banked development rights. Like the Town of Riverhead, these towns tend to have designated sending and receiving areas that are large in area and have the potential both to produce and absorb large numbers of development rights. For example, the Town of Southampton allows any environmentally

sensitive parcels located in five residential zoning districts (CR-80, R-80, CR-120, R-120, and CR-200) to be used as a sending parcel if the parcel is preserved for open space or parkland. In addition, the Town of Southampton permits development rights to be transferred into five residential zoning districts (R-20, CR-40, R-40, CR-120, and R-120) and four commercial zoning districts (Highway Business, Office District, Village Business, Light Industrial Districts), provided the development rights are derived from the same school district. The Town of Smithtown has mapped designated sending and receiving areas (See Figure 1).

Figure 1. Town of Smithtown Transfer of Density Flow Rights Map



In 2013, the Town of Smithtown increased the size of its designated sending and receiving areas by redefining its sending areas to include all areas in the Town that are not mapped receiving areas. The Town of Smithtown also increased the size of its receiving areas to include all areas of the Town of Smithtown that are not mapped

sending areas (as long as the receiving area is not listed on the Town's inventory of historic sites or required to be a preserved area).

All together, the existing town sending and receiving areas within Suffolk County provide many potential locations for the creation and absorption of development rights credits, helping to maintain a viable ratio of sending to receiving areas.

D. Regional TDR Programs

The previous report titled *Suffolk County TDR Study, Inventory of Existing TDR Programs* described the three regional TDR programs in Suffolk County. These programs include the [New York State Central Pine Barrens Credit Program](#), the [Suffolk County Workforce Housing Credit Program](#), and the [Suffolk County Sanitary Credit Program](#)¹. The [Suffolk County Purchase of Development Rights Program](#), does not result in the creation or banking of development rights credits and is therefore not addressed in this section because these TDRs are retired at the time of purchase.

Table 2 provides detailed information on the number of credits created, redeemed, and available for the Central Pine Barrens Credit Program and the Suffolk County Workforce Housing Credit Program (which consists of the [Save Open Space Program](#) and the [¼ % New Drinking Water Protection Program](#)). The table contains a current inventory of credits. Because these are active TDR programs, additional development rights will continue to be generated in each of these programs in the future.

Town	TDR Program	Credits Created	- Credits Redeemed	= Available Credits	Percentage of Credits Used
Babylon	SC Save Open Space Program	0 ⁽³⁾	0 ⁽³⁾	0	-
	SC 1/4% New Drinking Water Protection Program	0 ⁽⁴⁾	0 ⁽⁴⁾	0	-
Brookhaven	Central Pine Barrens	467.06 ⁽¹⁾	252.95 ⁽²⁾	214.11	54%
	SC Save Open Space Program	46.5 ⁽³⁾	0 ⁽³⁾	46.5	0%
	SC 1/4% New Drinking Water Protection Program	268 ⁽⁴⁾	0 ⁽⁴⁾	268	0%

¹ Pursuant to Suffolk County Sanitary Code §760-609 Variances, Waivers and Exemptions; and Suffolk County Department of Health Services General Guidance Memorandum #27: Guidelines for Transfer of Development Rights and Pine Barrens Credits for Sanitary Density Credit.

Table 2. Development Rights Credits in Regional TDR Programs in Suffolk County, by Town.

Town	TDR Program	Credits Created	- Credits Redeemed	= Available Credits	Percentage of Credits Used
East Hampton	SC Save Open Space Program	0 ⁽³⁾	0 ⁽³⁾	0	-
	SC 1/4% New Drinking Water Protection Program	0 ⁽⁴⁾	0 ⁽⁴⁾	0	-
Huntington	SC Save Open Space Program	5.5 ⁽³⁾	1.19 ⁽³⁾	4.31	22%
	SC 1/4% New Drinking Water Protection Program	0 ⁽⁴⁾	0 ⁽⁴⁾	0	-
Islip	SC Save Open Space Program	3 ⁽³⁾	0 ⁽³⁾	3	0%
	SC 1/4% New Drinking Water Protection Program	0 ⁽⁴⁾	0 ⁽⁴⁾	0	-
Riverhead	Central Pine Barrens	172.29 ⁽¹⁾	55.85 ⁽²⁾	116.44	32%
	SC Save Open Space Program	0 ⁽³⁾	0 ⁽³⁾	0	-
	SC 1/4% New Drinking Water Protection Program	92 ⁽⁴⁾	0 ⁽⁴⁾	92	0%
Shelter Island	SC Save Open Space Program	0 ⁽³⁾	0 ⁽³⁾	0	-
	SC 1/4% New Drinking Water Protection Program	0 ⁽⁴⁾	0 ⁽⁴⁾	0	-
Smithtown	SC Save Open Space Program	8 ⁽³⁾	0 ⁽³⁾	8	0%
	SC 1/4% New Drinking Water Protection Program	9 ⁽⁴⁾	0 ⁽⁴⁾	9	0%
Southampton	Central Pine Barrens	287.14 ⁽¹⁾	119.06 ⁽²⁾	168.08	41%
	SC Save Open Space Program	3 ⁽³⁾	1 ⁽³⁾	2	33%
	SC 1/4% New Drinking Water Protection Program	31 ⁽⁴⁾	0 ⁽⁴⁾	31	0%

Table 2. Development Rights Credits in Regional TDR Programs in Suffolk County, by Town.

Town	TDR Program	Credits Created	- Credits Redeemed	= Available Credits	Percentage of Credits Used
Southold	SC Save Open Space Program	3 ⁽³⁾	0 ⁽³⁾	3	0%
	SC 1/4% New Drinking Water Protection Program	9 ⁽⁴⁾	0 ⁽⁴⁾	9	0%
Suffolk County	Central Pine Barrens	926.49⁽¹⁾	427.86⁽²⁾	498.63	46%
	SC Save Open Space Program	69⁽³⁾	2.19⁽³⁾	66.81	3%
	SC 1/4% New Drinking Water Protection Program	409⁽⁴⁾	0⁽⁴⁾	409	0%
	Suffolk County Sanitary Credit Program	180⁽⁵⁾	180⁽⁵⁾	0	100%

Sources:

(1) Central Pine Barrens Commission website, table titled "Parcels Protected by the Pine Barrens Credit Program as of 10/10/2013"

(2) Central Pine Barrens Commission website, table titled "Pine Barrens Credit Certificate Redeemed as of 10/10/2013"

(3) Suffolk County Department of Economic Development and Planning New Drinking Water Protection Program inventory database, December, 2013.

(4) Suffolk County Department of Economic Development and Planning, Save Open Space Program inventory database, December, 2013.

(5) Suffolk County Department of Economic Development and Planning, based on data from the Suffolk County Department of Health Services, December 2013.

1. Central Pine Barrens Credit Program

The New York State Central Pine Barrens Credit Program's development rights credits are known as Pine Barrens Credits or PBCs. They are created only in the Core Preservation Area in the Towns of Brookhaven, Riverhead, and Southampton. PBCs can be redeemed as-of-right at receiving sites in the Compatible Growth Area in these three towns, and throughout the remainder of Suffolk County (as determined by the Suffolk County Department of Health Services and by agreement between the sending and receiving towns).

The Town of Brookhaven has the greatest number of PBCs, with 467.06 PBCs created, of which 252.95 have been redeemed. This leaves 214.11 credits still available for use. In the Town of Riverhead, 172.29 credits have been created and 55.85 credits have been

redeemed. In the Town of Southampton, 287.14 credits have been created and 119.06 credits have been redeemed. Overall, to date the Central Pine Barrens Credit Program has resulted in the creation of 926.49 credits, of which 427.86 credits have been redeemed (46% of the credits). There are currently 498.63 available PBCs.

There still may be additional small properties in the Core Preservation Area that will yield a PBC in the future. A small number of vacant parcels in the Core Preservation Area have ownership issues due to title overlap conditions, and these may never yield a PBC. It is estimated that the number of additional PBCs that could be derived from the Core Preservation Area is small compared to the overall total number of PBCs in the program.

2. Suffolk County Workforce Housing Credit Program

The Suffolk County Workforce Housing Credit Program consists of the Save Open Space Program and the ¼ % New Drinking Water Protection Program. The Workforce Housing Credit Program allows the creation of Workforce Housing Development Right (WHDR) credits in all of Suffolk County's 10 Towns. WHDRs are created when Suffolk County purchases a property for open space purposes. WHDRs are administered by the Suffolk County Department of Economic Development and Planning for the purposes of providing affordable workforce housing and the expansion of emergency service facilities such as police, fire, and ambulance. The vast majority of credits created in these programs were from the Towns of Brookhaven, Riverhead, and Southampton. Although 69 credits have been created in the Save Open Space Program, only 2.19 credits have been redeemed. There have been 409 credits created in the ¼ % Program, but no credits have been redeemed.

3. Suffolk County Sanitary Credit Program

Article 6 of the [Suffolk County Sanitary Code](#) is the foundation upon which the majority of TDR programs in Suffolk County are based. The Suffolk County Sanitary Code sets forth requirements for approval of water supply and sewage disposal systems (Article 6, Sections 760-605.C, 760-605.D, 760-607.E, and 760-607.F). Article 6 is administered by the Suffolk County Department of Health Services. Relief or variance from the strict application of the Sanitary Code is possible through the Suffolk County Department of Health Services Board of Review (BOR). Variance petitions are reviewed by the BOR as needed. If an applicant is unable to meet the standards of Article 6, the applicant suggests to the BOR a potential sending parcel (for sterilization and creation of a wastewater credit) to utilize the wastewater potential as it is transferred to another site. The BOR uses objective criteria and discretion in determining the ability of the applicant to transfer the credit. All of the sending sites in the BOR program require the filing of a conservation easement on the subject parcel prohibiting the development of the site in

perpetuity and transferring the ownership to a government entity or non-profit environmental preservation organization. All of the sending parcels are therefore classified as open space.

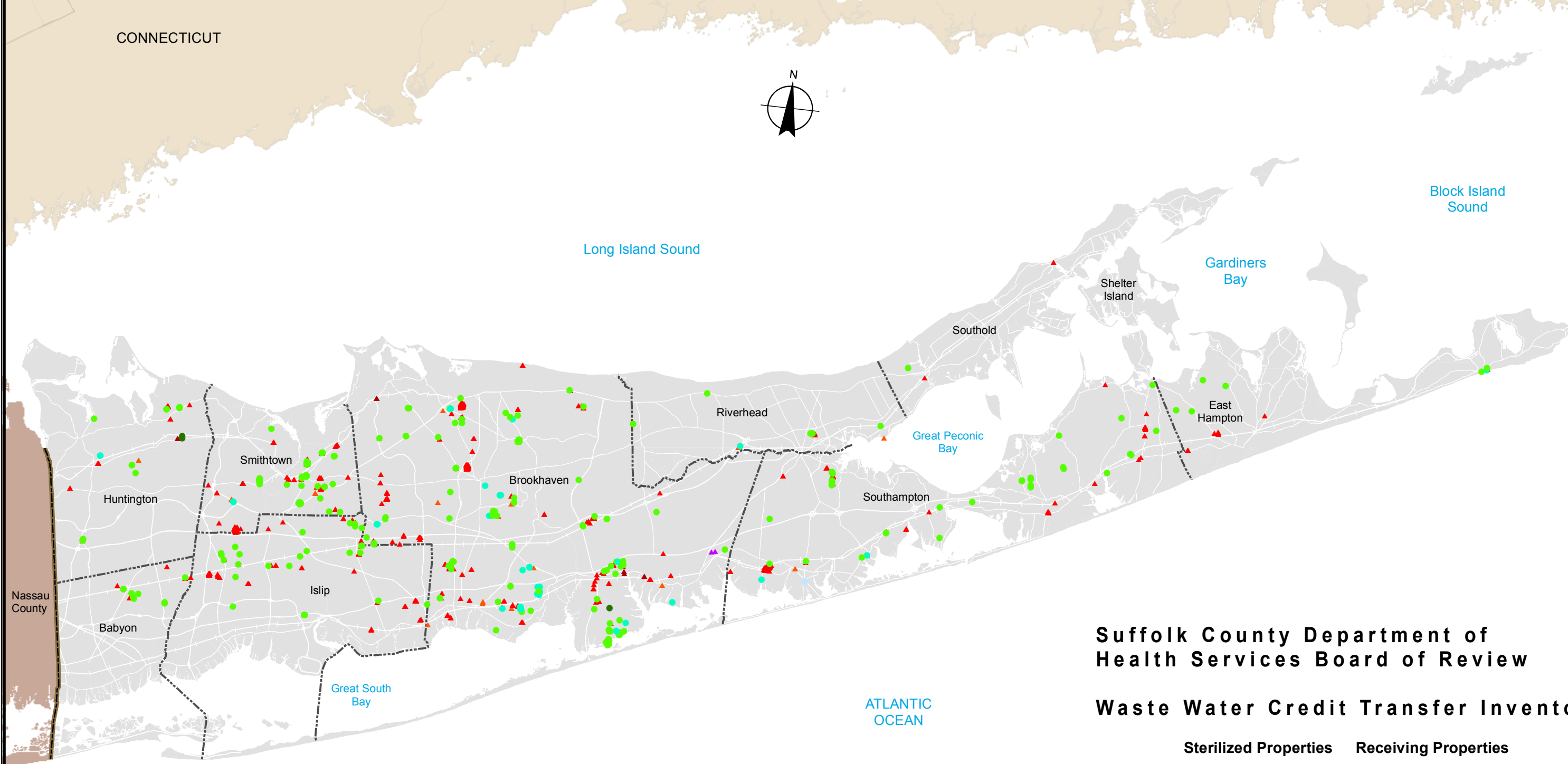
In order to fully characterize the TDR programs in Suffolk County and account for those parcels no longer able to generate development rights, a review of BOR files was undertaken to map the pattern of sterilizations (sending parcels) and absorptions (transfers to receiving parcels) in the County since the inception of the BOR in the early 1990s. (See Map 1.) To date, approximately 180 wastewater credits have been generated, transferred, and retired by the BOR for particular development projects. All of these wastewater credits (development rights) have been used, and none of them are currently available to transfer to any project. They have all been generated for specific use through the BOR variance process. Most variances for use of a TDR in a sewered area involve the temporary use of a TDR until necessary sewer capacity becomes available to serve the receiving site. In these specific instances, the TDR may be banked for a temporary time period.

Ideally, sending sites should be located adjacent to existing preserved open space. There are some patterns to the locations of *sending sites* (sterilized properties) generated by the Suffolk County Sanitary Credit Program. (See Map 2.) Clusters of sending sites appear in Wyandanch in the Town of Babylon, the northern part of the Town of Islip, and the east-central portion of the Town of Smithtown. In the Town of Brookhaven, sending parcels are dispersed throughout the town, but are concentrated in the Mastic-Shirley peninsula, especially in Mastic Beach. Many of these sending sites are located adjacent to existing preserved open space. There are very few sending parcels on the North Fork in eastern Suffolk County, and on the South Fork the sending parcels are dispersed.

The locations of *receiving sites* are more widely dispersed throughout the County. Notably, very few are located in areas served by public sewers. (See Map 3.) The North Fork contains only a few receiving sites, which may be because the Suffolk County Department of Health Services permits TDRs for sanitary density only if the receiving parcel is served by public water, and the North Fork is served mainly by private wells. On the South Fork, receiving sites are located throughout both the Town of Southampton and the Town of East Hampton. In the Town of Brookhaven, receiving sites are dispersed throughout the town, with the largest concentration on the south shore in Shirley. In the four western towns of Suffolk County, receiving sites are scattered throughout, but again are generally located outside of areas served by public sewers (with the exception of the Hauppauge Industrial Park which has several receiving sites).

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, 1

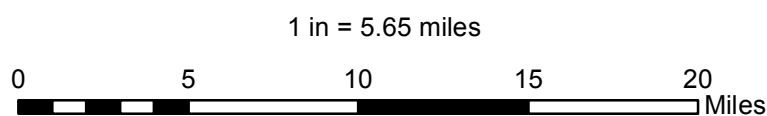
Suffolk County, New York



Suffolk County Department of Health Services Board of Review

Waste Water Credit Transfer Inventory

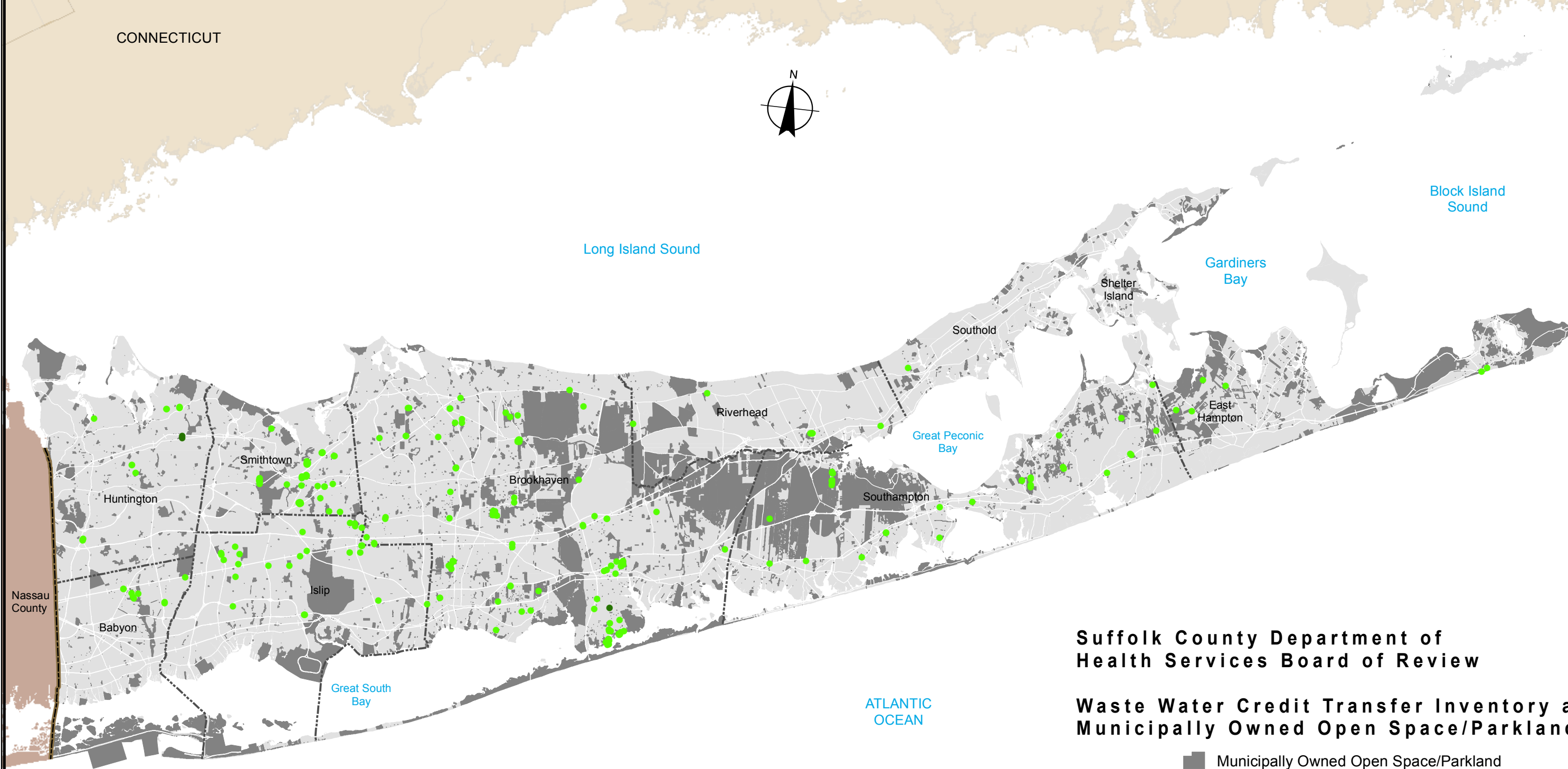
- | Sterilized Properties
<i>Project Status</i> | Receiving Properties
<i>Project Status</i> |
|--|---|
| ● approved | ▲ approved |
| ● finalized | ▲ finalized |
| ● pending | ▲ pending |
| ● void/approved | ▲ replaced/finalized |



Source: Suffolk County Department of Health Services (SCDHS).

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, 2

Suffolk County, New York



Suffolk County Department of
Health Services Board of Review

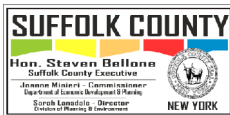
Waste Water Credit Transfer Inventory and
Municipally Owned Open Space/Parkland

■ Municipally Owned Open Space/Parkland

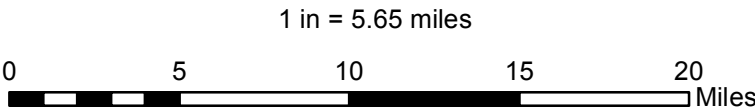
Sterilized Properties

Project Status

- approved
- finalized

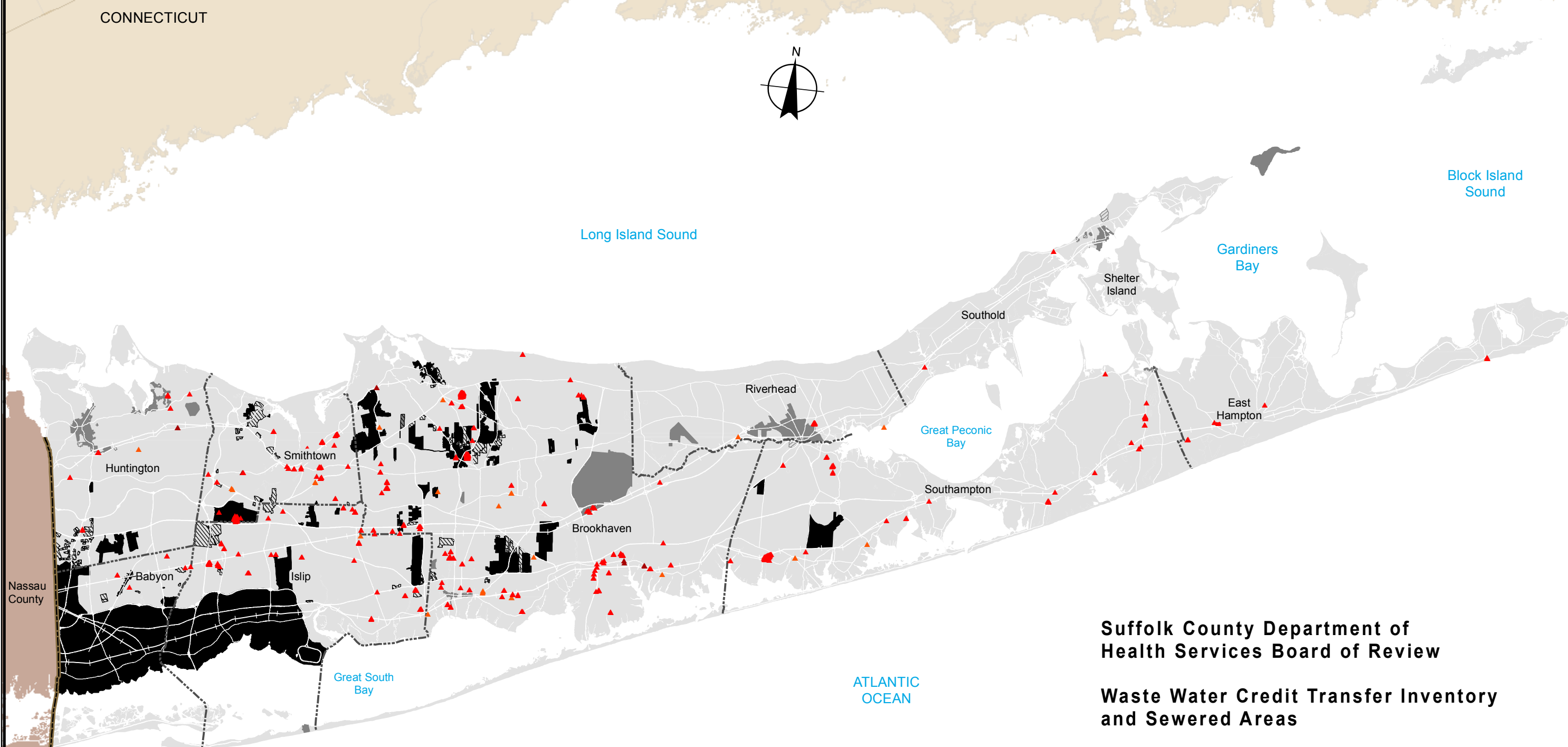


Source: SC Department of Health Services (SCDHS); SC Department of Economic Development & Planning, Division of Planning & Environment; SC Real Property Tax Map Base.



SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, 3

Suffolk County, New York



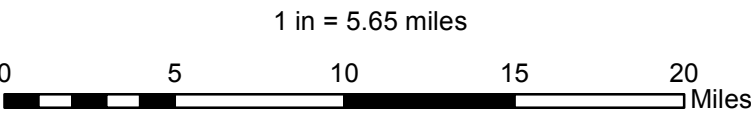
**Suffolk County Department of
Health Services Board of Review**

**Waste Water Credit Transfer Inventory
and Sewered Areas**

- | | |
|--------------------------------------|-------------------------------|
| Receiving Properties | SC Sewer District Contractees |
| Project Status | SC Sewer Districts, 2012 |
| Municipal Sewer District Contractees | |
| approved | Municipal Sewer Districts |
| finalized | |
| pending | |



Source: Suffolk County Department of Economic Development & Planning, Division of Planning & Environment, 2011; Suffolk County Real Property Tax Map Base, 2012, Suffolk County Department of Public Works & Suffolk County Department of Health Services.



Very few of the receiving sites are located in identified growth and development areas in Suffolk County.

IV. Analysis of the Ratio of Sending to Receiving Sites

Transfer of development rights programs need to sustain a greater demand for TDRs than the supply of TDRs, in order to maintain a high value for the credits. In order to achieve a constant demand, there should be at least as many places to retire a development right credit as there are credits. Optimally, there should be a greater than a 1 to 1 ratio of receiving sites to credits. In the [Central Pine Barrens Comprehensive Land Use Plan](#), the Central Pine Barrens Joint Planning and Policy Commission identifies a goal of 2.5 to 1 ratio of receiving sites to credits. No other program in Suffolk County attempts to achieve or maintain this high a ratio. Most of the programs use TDR on a case-by-case basis, and TDR is utilized at the final stages of the approval process to facilitate the approval of the application. The TDRs from the sending site are determined and receiving site is identified simultaneously, thereby creating an instant demand and instant supply.

TDR policies and programs can be amended to improve the ratio of sending to receiving sites. In order to increase the demand and the use of the Workforce Housing Development Right program, Suffolk County amended the program to allow the use of these TDRs for the expansion of emergency service provider facilities (police, fire, and ambulance).

For this report, various analyses of potential TDR yield were performed. The description and results of these analyses follow.

A. Vacant Land Analysis

Vacant land can be defined as land that is unprotected, not developed, and not utilized. For TDR purposes, a vacant parcel may be utilized as either a sending parcel or a parcel that can receive development rights to incorporate into a proposed development. In recent decades, Suffolk County agencies and other organizations have conducted several analyses to determine the amount of vacant land and land available for development in Suffolk County. These calculations are estimates at particular points in time, because land uses change over time and land classified as vacant may not be vacant immediately after being evaluated. In addition, there may be constraints that prohibit development of a land parcel. Constraints can be environmental, such as wetlands, or they can be geometric, such as the size and shape of a parcel.

Classifying the land use of parcels and their potential development yield can be difficult. Land that is technically developed but is further sub-dividable may not be considered

vacant but a portion of that land is technically available for development. Moreover, certain land uses classified as private open space (such as golf clubs) or other uses are not classified as vacant land but could be further developed or redeveloped in the future. For these reasons, land use data cannot be expected to be precise but is useful for regional planning purposes. For this study, the land use data compiled and maintained by the Cartographic Unit of the Suffolk County Division of Planning and Environment was utilized.

According to current data from the Suffolk County Division of Planning and Environment, there are approximately 36,400 acres of vacant land in the County. (See Map 4.) This number amounts to 6% of the entire land area of the County. The majority of the vacant land in the County is located in three towns: Brookhaven (10,862 vacant acres), Southampton (7,546 vacant acres), and East Hampton (6,463 vacant acres). The Town of Babylon has the smallest amount of vacant land (408 vacant acres), followed by Shelter Island with 718 vacant acres. Table 3 shows the detailed number of vacant parcels, and vacant acreage by town in Suffolk County.

Table 3. Vacant Land by Town, Suffolk County.

Town	Vacant Parcels	Vacant Acreage	Total Land Acreage	% of Acreage Vacant
Babylon	1,877	408.5	33,472	1%
Brookhaven	12,165	10,862.7	166,016	7%
East Hampton	3,005	6,463.3	46,912	14%
Huntington	2,102	1,808.9	60,160	3%
Islip	2,282	2,377.8	67,328	4%
Riverhead	917	1,864.1	43,330	4%
Shelter Island	541	718.3	7,744	9%
Smithtown	1,478	1,103.4	34,304	3%
Southampton	5,028	7,546.5	89,728	8%
Southold	2,008	3,310.5	34,368	10%
Suffolk County	31,403	36,463.9	583,362	6%

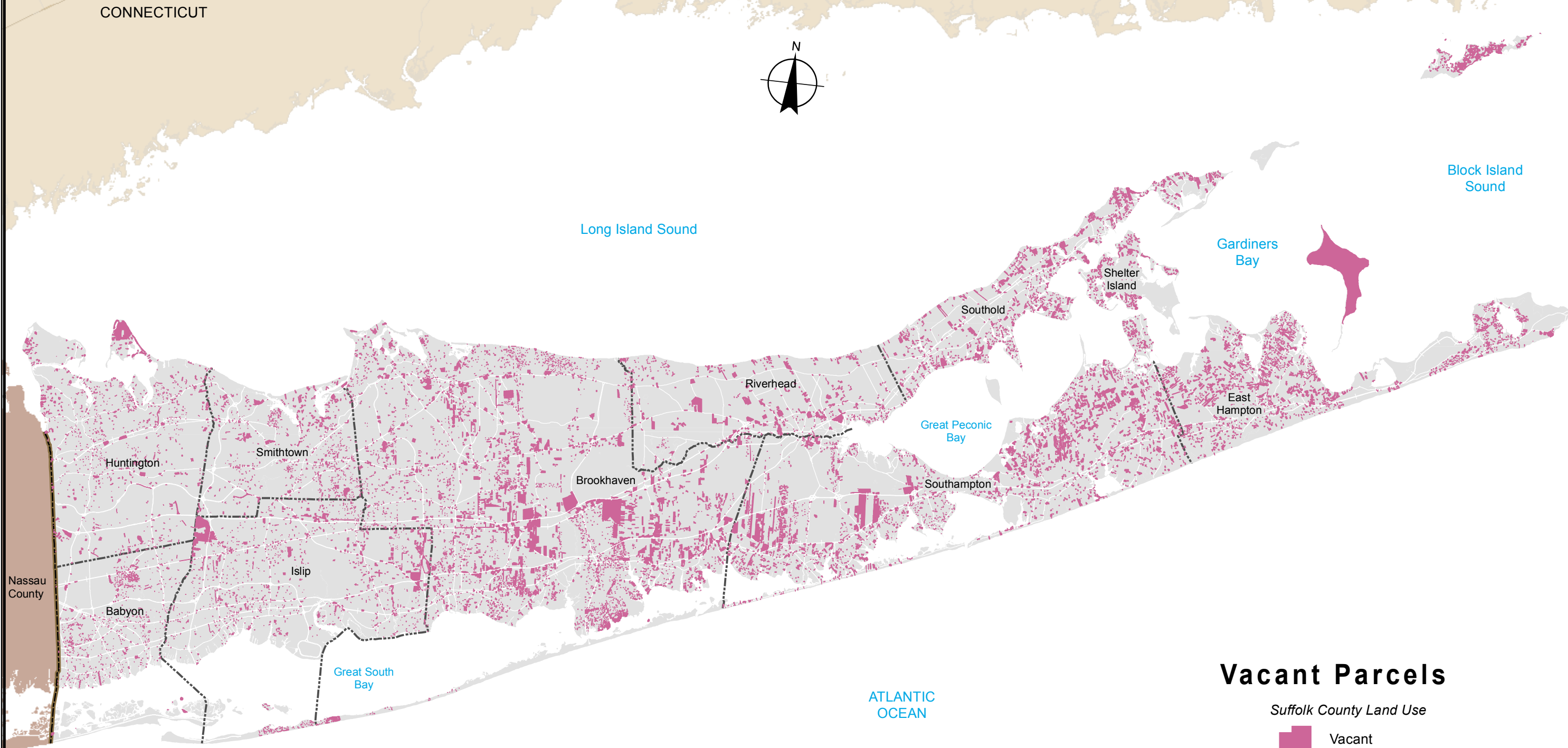
Source: Suffolk County Division of Planning & Environment

B. Potential TDR Uses in Sewered Areas

A portion of Suffolk County is served by various municipal sewer districts and private sewage treatment plants (STPs). In 2012, the Suffolk County Department of Economic


SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, 4

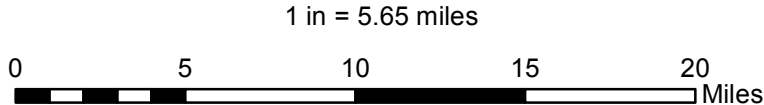
Suffolk County, New York



Vacant Parcels

Suffolk County Land Use

 Vacant



Development and Planning, Division of Planning and Environment prepared a comprehensive [GIS-based map](#) of the County, showing all 585,000 Suffolk County Tax Map parcels, boundaries of public sewer districts, areas contracted to connect to public sewer districts, private wastewater collection service areas, and locations of all associated STP facilities. The assembling of this information was performed in consultation with the Suffolk County Department of Public Works and the Suffolk County Department of Health Services, as well as with the Federal Government and local towns and villages. Maps and data from various sources were verified and assembled. This effort resulted in the first ever preparation of a comprehensive inventory of [all sewer service area boundaries and their related STPs in Suffolk County](#).

The land area of Suffolk County is 583,362 acres. Of the total land area of the County, 13.1% of the County (76,678 acres) is served by sewers. The remaining 86.9% of the County (506,684 acres) is not sewered. There are a total of 193 STPs located in Suffolk County. The total flow from these STPs is about 60 million gallons per day (mgd).

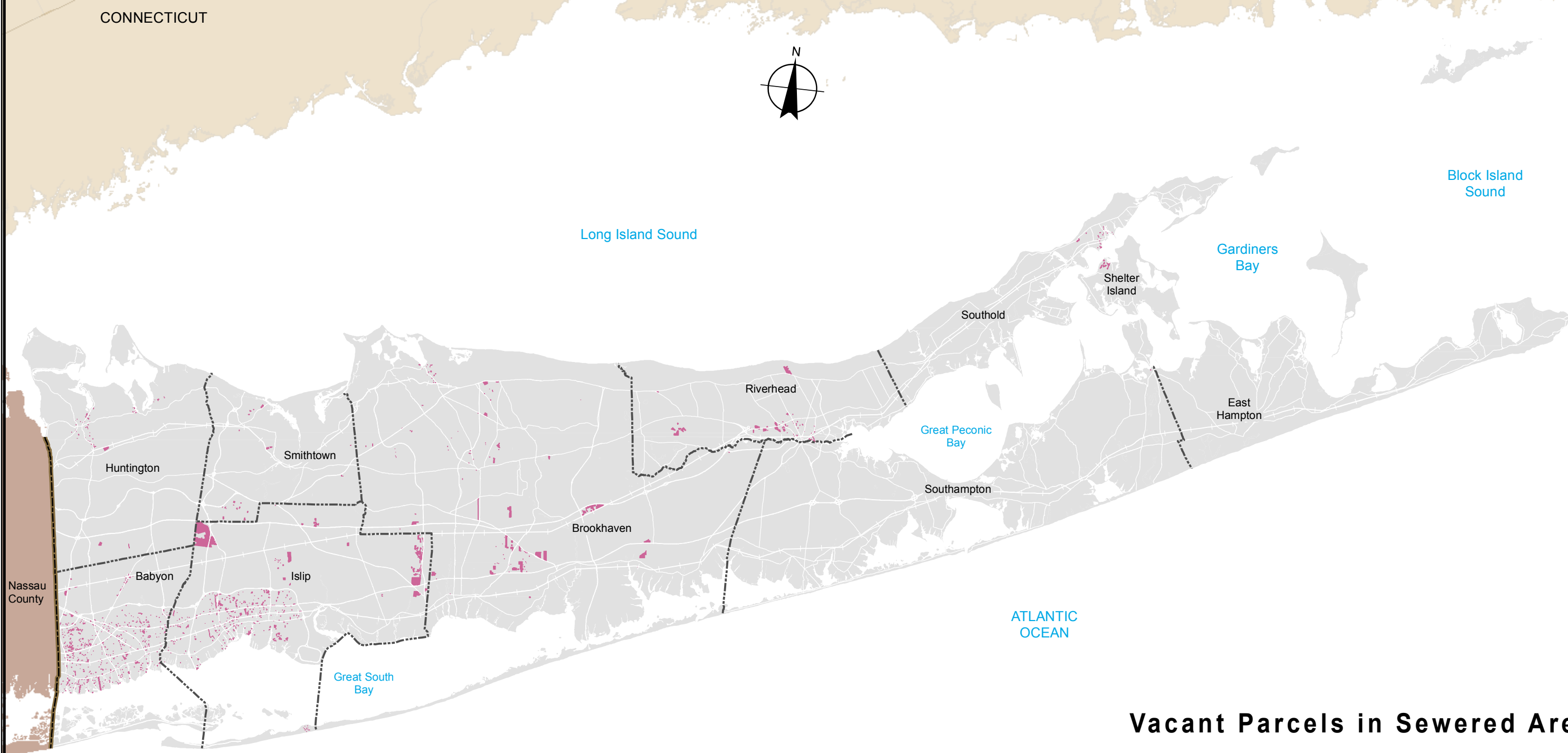
In total, 12.0% of the County land area (70,239 acres) is served by *public* sewer districts. There are 22 Suffolk County sewer districts (and two proposed County sewer districts) served by 23 County STPs. The County also operates two STPs at Suffolk County Community College campuses. The total current flow from all 25 County STPs is 31.6 mgd. In addition, there are 15 STPs operated by federal, town, and village governments in Suffolk County, with a total permitted discharge of 9.6 mgd. These STPs serve four large federal facilities, seven town sewer districts, five village sewer districts, and two town facilities.

There are 153 *private* STPs in the County, two of which are currently under construction. The total permitted flow from the areas served is 8.2 mgd and of the total land area in the County, 1.1% of the land area (6,439 acres) is served by these private STPs. None of the land served by private STPs is considered to be vacant.

The location and acreage of vacant land within municipal sewer districts was reviewed and analyzed. Lands that are undeveloped but are located within a municipal sewer district have greater potential to become receiving areas to utilize TDRs for additional density. Out of the 76,678 acres in the County that are served by sewers, 2,421 acres (3%) are vacant. (See Map 5.) Table 4 shows the number and total acreage of vacant land parcels located within sewered areas, for each of the towns in the County.

SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, 5

Suffolk County, New York



Vacant Parcels in Sewered Areas

 Vacant Parcels in Sewered Areas

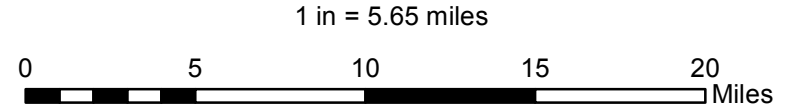


Table 4. Vacant Land in Sewered Areas by Town, Suffolk County.

Town	Vacant Parcels in Sewered Areas	Acreage of Vacant Parcels in Sewered Areas
Babylon	1,272	234.7
Brookhaven	204	642.9
East Hampton	0	0.0
Huntington	187	54.0
Islip	655	1,184.7
Riverhead	71	226.2
Shelter Island	25	15.5
Smithtown	26	48.3
Southampton	1	0.5
Southold	26	14.3
Suffolk County	2,467	2,421.1

Source: Suffolk County Division of Planning & Environment

Nearly half of the vacant land in sewer districts of the County is located in the Town of Islip, 1,184 acres. Much of this land is located at the former Pilgrim State Hospital site in Brentwood. The town with the next highest vacant acreage in sewer districts is Brookhaven, with 642 acres of vacant land in municipal sewer districts. Babylon and Riverhead rank next, each with more than 200 vacant acres in municipal sewer districts. On the other hand, the Town of Southampton has just 0.5 acres of vacant land in a municipal sewer district, and the Town of East Hampton has no vacant land in sewer districts.

One of the key recommendations from the [Executive Summary](#) of the [Suffolk County Comprehensive Water Resources Management Plan](#) released in January 2014 includes reducing wastewater nitrogen loading to the groundwater table. Suffolk County is a region with a federally designated sole source aquifer (its drinking water is derived from the ground). Therefore, the County must pay particular attention to the 360,000 legacy septic systems and cesspools in the County that exceed density limitations. Suffolk County has estimated that 200,000 septic systems are degrading our marshland habitats (that act as a defense during storm events like Sandy) and these septic systems may be contributing to groundwater degradation. Septic and cesspool systems are particularly problematic in areas with high water tables in close proximity to surface waters. When these septic systems are flooded or submerged in groundwater, they do not function as

designed and fail to adequately treat pathogens. Excess nitrogen from this sewage threatens our valuable natural resources, coastal defenses, and human health.

To reverse the upward trend of nitrogen in Suffolk County's drinking water and surface waters, several strategies are being pursued. Suffolk County is considering the expansion of municipal sewer districts in targeted areas to reduce nitrogen loading and to promote coastal resiliency. In addition, the County is considering promoting innovative and alternative wastewater technology for small on-site systems, and introducing intermediate-sized clustered community systems (the clustering of groups of detached single family homes into a retrofitted sub-regional advanced technology system). In the future, development of vacant land will need to accommodate new wastewater technology to reduce nitrogen loading to the groundwater. Incorporating such wastewater technology can enhance property value, as demonstrated in Rhode Island. The County is working closely with Federal and State partners to examine financing options for wastewater management upgrades.

If municipal sewer districts are expanded, the concept of a Transfer of Sewage Flow Credits program could help privately finance their operation. In Suffolk County, TDR programs focus on the transfer of development rights in order to exceed the allowable sanitary density for an *unsewered* parcel or project in conformance with standards established by the Suffolk County Department of Health Services. The mechanics of a Transfer of Sewage Flow Credits program would be similar to existing TDR programs, but sewage flow credits could be transferred to parcels within the new sewer district. In order to increase floor area on a parcel in the new district, some (or all) of the difference between the old permitted flow and the new allowable flow is purchased by the builder on the parcel. The retirement of Sewage Flow Credits would allow each property in the district to increase intensity up to its permitted maximum sewage flow level.

C. Potential TDR Yield from Master List of Proposed Open Space Acquisitions

Between 2004 and 2006, Suffolk County established four "Master Lists" of environmentally sensitive lands the County wishes to preserve, lands that are often contiguous to other preserved open space and considered environmentally sensitive. These land parcels totaled more than 7,700 acres. Since 2004, the County has acquired approximately 1,400 acres of land from those Master Lists and nearly 1,200 additional acres of Master List lands were preserved by other municipalities. In 2012, the Suffolk County Division of Planning and Environment reviewed the properties on all four Master Lists, removed those that are not available for preservation, and numerically rated the

remaining properties in order to prioritize the sites for preservation. The [2012 Master List Update](#) identified 86 sites/assemblages for future open space acquisition totaling 4,650 acres.

In 2013, the Suffolk County Legislature directed the Division of Real Property Acquisition and Management to contact owners of properties on the 2012 Master List (whose parcels were rated 50 points or higher) to inquire whether these landowners would be interested in selling their property or development rights to the County. The legislation can be found in Appendix 1.

For this TDR study, the 2012 Master List was reviewed to establish the development right potential that could be generated from these lands. This yield analysis is not an official determination but serves as an approximation. An official determination would be coordinated with the Suffolk County Department of Health Services. The Master List parcels were analyzed individually rather than as a whole (although adjacent parcels with the same owner were analyzed as assembled). The method for calculating development rights from Master List parcels is as follows:

- Step 1: Gather relevant information: tax map number, lot size, location, zoning, Groundwater Management Zone, soil conditions, and aerial photo.
- Step 2: Review Suffolk County Department of Health Services standards for minimum lot area.
- Step 3: Review local zoning for minimum lot area. A parcel zoned for uses other than residential is analyzed in accordance with its Groundwater Management Zone, Article 6 Sanitary Code for single family development purposes.
- Step 4: Determine which standard is more restrictive and apply that criteria.
- Step 5: Determine if subdivision potential exists. If the parcel is significantly substandard in size (less than 50% of the Suffolk County Department of Health Services Article 6 standard for minimum lot area), the parcel is not considered buildable and is unlikely to be granted approval to independently support development as “single and separate.” Therefore, no transferrable development right credit is assigned to the parcel, unless strongly supported by a similar land use pattern in the immediate area. If the parcel is “landlocked” and does not maintain road access in accordance with local standards, any further subdivision of the parcel into multiple lots is considered to be unlikely. Therefore, the parcel would not generate more than one transferable development right credit after analysis. If no subdivision potential exists, skip Steps 6 and 7.
- Step 6: Subtract any wetland area from the total area of the parcel.
- Step 7: Reduce the area of the parcel by 25% to accommodate roads, drainage, and other necessary infrastructure.

Step 8: Consider any other additional factors considered influential.

Step 9: Calculate development right yield.

Based on this analysis, **the 2012 Master List properties would yield approximately 737 Transferable Development Rights (TDRs)**. Appendix 2 identifies the properties analyzed and the estimated development rights yield for each property.

D. Potential TDR Yield from Overlap Parcels in the Core Preservation Area

Certain tax map parcels in Suffolk County have two claims of ownership. These parcels are known as “title overlap parcels.” Overlap parcels located in the Core Preservation Area of the Central Pine Barrens could generate Pine Barrens Credits (PBCs) if the ownership overlap issue can be resolved. Suffolk County is interested in prioritizing open space acquisitions within the Central Pine Barrens Core Preservation Area for water quality protection purposes. Properties not in a legal dispute over ownership are ripe for open space acquisition or conversion to PBCs, thereby adding credits to the overall PBC inventory.

Overlap parcels within the Core Preservation Area were identified and analyzed for potential development yield. The Suffolk County Division of Real Property Acquisition and Management identified 15 properties in the Core Preservation Area going back to 1962 where the County has a claim to the title overlap. These properties total approximately eight acres and may yield as many as eight PBCs. However, since these properties are located in the Core Preservation Area of the Central Pine Barrens, the Central Pine Barrens Comprehensive Land Use Plan prevails and no PBCs may be created from government land.² There is no prohibition for property owned or held by private entities. Overlaps between private individuals may make up some component of the vacant land in the Core Preservation Area (between 1,000 and 1,500 acres), but have not requested a PBC allocation. These parcels are difficult to identify and there is no way of determining when the overlap issue would be resolved. The number of additional PBCs that could be derived from the Core Preservation Area in the near or long term is considered a minor percentage of the overall total PBCs in the program due to the variables and time associated with clearing proper title for the assignment of PBCs.

² Section 6.3.3 of the Central Pine Barrens Comprehensive Land Use Plan discusses limitations on the allocation of PBCs from potential sending parcels and states in section 6.3.3.1 that “no allocation shall be made for any property owned or held by a public agency, municipal corporation or governmental subdivision, including property held by reason of tax default.”

There are various methods to establish clear title to a property where there is overlap between the boundaries of one parcel (as described in a deed or other document in the chain of title) and the boundaries of another. An action under Real Property Actions and Proceedings Law (RPAPL) Article 15, §§ 1501, *et seq.*, is one of the most common types of actions used to clear title. Under RPAPL Article 15, a person may bring an action to compel the determination of any adverse claim to real property. An important element of a County action under RPAPL §1501 would be that the County has an estate or interest in the parcel of land which is the subject of the action. County ownership or status as a contract vendee would be examples of such an interest. Another type of court action is an equitable action which requests the Court to quiet title or remove a cloud on the title. If the overlapping ownership claims involve a tax deed, the Suffolk County Tax Act may provide a procedure for resolving the claims and correcting the problem.³ The suitability of a particular procedure, legal action or proceeding to clear title would depend upon the facts and circumstances of each case.

If the County has already acquired and dedicated a parcel to park use and the question of overlapping title arises, the County may be able to resolve the title issue using similar methods as described above. It is well established that a municipality may not alienate real property dedicated to the public trust for park purposes without specific State legislative authority.⁴ In addition, land which comes into County ownership in the Core Preservation Area of the Central Pine Barrens is deemed dedicated to the Long Island Pine Barrens Preserve.⁵ However, circumstances may exist where the property is dedicated by mistake or could not have been dedicated by the County. Examples would be where two assessed properties overlap because of errors in the deed descriptions, and one of those properties is dedicated as a park, or where the dedication document incorrectly describes the property being dedicated (i.e. a misidentified tax map number). Depending on the facts and circumstances, the procedure for correcting the mistake might be a court action or a legislative resolution.⁶ Where a court decides that the County does not own the property and could not have dedicated it, the documents constituting the dedication might be modified or voided, as if the dedication had never happened. In sum, there are procedures for resolving adverse claims to real property, even if the land has been dedicated to the public trust. However, not every legal

³ See, *e.g.*, SCTA §40-c.

⁴ *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 630, 727 N.Y.S.2d 2, 5, 750 N.E.2d 1050, 1053 (N.Y. 2001).

⁵ NY Environmental Conservation Law §57-0117(5).

⁶ See 1987 N.Y. Op. Atty. Gen. (Inf.) 159, Informal Opin. No. 87-77 (County may amend a resolution which erroneously purported to dedicate property to the County Nature Preserve, when the mistake involved misidentification of tax map number or ministerial error.)

procedure is applicable to every set of facts. The County Attorney provides County departments with advice on how to resolve the competing ownership claims.

E. Total Potential TDR Yield in Suffolk County

For purposes of further characterizing TDR countywide, the potential number of new development rights in Suffolk County can be estimated. For this calculation, we shall assume that the vacant land in the County is roughly split between having a minimum residential lot size of 20,000 square feet (roughly one-half acre) and 40,000 square feet (roughly one acre) under Article 6 of the Suffolk County Sanitary Code. The overall yield is therefore approximated to be the average of the 20,000 and the 40,000 square foot lot sizes, or roughly *one TDR per 30,000 square feet of vacant land*.

There are approximately 36,400 acres of vacant land in Suffolk County, which is equal to 1.585 billion square feet of vacant land (because each acre is equal to 43,560 square feet). At one TDR per 30,000 square feet of vacant land, 52,852 theoretical development rights could be generated from all the vacant land in the County (1.585 billion square feet of vacant land divided by 30,000 square feet per development right). However, some residential zoning districts in Suffolk County require even larger lot sizes than the Article 6 minimum lot requirement (such as two acre, five acre, or 10 acre zoning in eastern Suffolk). Moreover, other constraints associated with each property may prohibit development or limit development potential. Therefore, in determining a more precise TDR yield of vacant land in Suffolk County, it is assumed that 25% of the land area is eliminated from potential development due to roads, drainage, and environmental constraints, leaving 75% of the acreage available to yield development rights. Multiplying 75% of the 52,852 theoretical development rights would result in **39,639 total potential TDRs** in the County.

A desired number of sending sites versus receiving sites (or redemption opportunities) can then be calculated. A viable TDR program should identify sufficient receiving areas to absorb all potential development rights in at least a 1 to 1 ratio. A smaller ratio of receiving area capacity to sending area capacity would have an adverse effect on a TDR program, because the supply of TDRs would exceed the receiving site demand potential. If there are more ways that a transferable development right may be used within a jurisdiction, then there would be an increase in demand for available development rights. Ideally, receiving sites should be of sufficient quantity and quality to accommodate at least 2.5 times the number of transferable rights. Therefore, the ratio

of receiving sites to potential development rights should have at least a 1 to 1, or optimally at least a 2.5 to 1 ratio.

Using the optimal 2.5 to 1 ratio, the 39,639 total potential TDRs would be partitioned into **28,314 TDR receiving sites and 11,325 sending TDRs.**

This calculation establishes a theoretical TDR program accounting for all the available vacant land in Suffolk County. Assuming that 28,314 opportunities to retire development rights on vacant developable land in the County are established (at receiving sites), approximately 11,325 TDRs can be created to enhance development projects. This number is significant but includes all of the towns and villages in Suffolk County and all TDR programs. The 39,639 potential TDRs is a representation of the magnitude of the total universe of the potential of development rights to receiving sites in the County. This exercise, while not precise, is instructive in defining a total limit of all TDR programs in Suffolk County.

V. Duplication of TDR Programs

TDR programs in New York State are derived from the same enabling legislation and are designed to preserve similarly constrained properties by designating them as sending sites. The majority of TDR programs in Suffolk County involve the transfer of sanitary flow equivalents pursuant to Article 6 of the Suffolk County Sanitary Code. Therefore, most TDR programs overlap at the Suffolk County Department of Health Services as applicants retire development rights with the Suffolk County Department of Health Services for the ability to exceed the restrictions of the Sanitary Code.

In recent years, the concepts of “smart growth” have influenced the planning policies and zoning codes of local municipalities. Because of this influence, development right transfers (receiving sites) are located primarily in downtowns, other commercial districts, mixed use projects, and TODs. At this point in the history of TDR programs in Suffolk County, the overlap and similarities in the various programs have not been the main hindrance in realizing the full potential of TDR. There is no shortage of potential development rights and no foreseeable shortage in potential receiving sites. In fact, it may be argued that the similarities in the programs would make it easier to homogenize the various programs into one regional program.

The similarities between TDR programs within Suffolk County have led to some positive outcomes. There is a general consensus about the value of preserving identified sending properties throughout the County for a regional TDR program. The residents and municipalities within Suffolk County have a high regard for the environment, particularly the sole source groundwater aquifer and the coastal wetlands and habitats that help mitigate storm surges and the effects of climate change. Another positive outcome is that the TDR tool is generally used by the private sector to support requests for relief from the requirements of the Suffolk County Sanitary Code for building projects. Article 6 of the Sanitary Code is the common denominator for the majority of the TDR programs in the County and many municipalities, civic groups, attorneys, and builders have a good understanding of the value of a TDR. The learning curve for the mechanics of the TDR tool would likely be short.

It is apparent from analyzing the various TDR programs throughout Suffolk County that many of these TDR programs are influenced by a desire for home rule (self-government). If a TDR is sent outside a municipal jurisdiction, there is often a fear of losing tax generating development. Other times there is a fear that the unchecked sending of development rights to building projects in a particular hamlet could quickly alter the character of the community.

VI. Case Studies

The TDR case studies presented below provide an important opportunity to examine how the concept of TDR has been implemented in Suffolk County. A variety of different TDR case studies are presented including examples from both local town TDR programs and regional programs (the Central Pine Barrens Program). The case studies also include examples of TDRs being used to address wastewater flow requirements and examples of TDRs being used for building density bonuses where wastewater flow requirements are not the limiting development factor. One common theme of these case studies is the important role TDRs can play in preserving environmentally sensitive lands while at the same time facilitating the approval of important development projects.

A. Town of Riverhead

Each Agricultural Preservation Credit corresponds to one acre of agricultural land. In February 2007, the Planning Board authorized the issuance of an Agricultural Preservation Credit Certificate for **10.5** development rights to be transferred from a 27.4 acre parcel on the southwest corner of Sound Avenue and Phillips Lane in Aquebogue. Three projects utilized these development rights.

A Stop & Shop supermarket was proposed to be constructed at the southwest corner of County Route 58 and Mill Road in Riverhead. The lot size was 7.0 acres, or 304,010 square feet. The supermarket was initially proposed to have a lot coverage of 62,720 square feet and a total floor area of 68,277 square feet (including a mezzanine), or a proposed lot coverage of 20.6% and a floor area ratio of 22.5%. In the Shopping Center zoning district the maximum lot coverage and floor area ratio with sewers is 20%, but up to 30% lot coverage and 30% floor area ratio are allowed with the transfer of development rights. The lot coverage exceeded the 20% by 1,918 square feet and the floor area ratio exceeded the 20% by 7,475 square feet. *One transferred development right is required per each 1,500 square feet exceeding what is allowed.* Since the square footage of the lot coverage is included in the floor area, the calculation of credits was based upon the 7,475 square feet figure. Therefore, the 2006 resolution approving the site plan required redemption of 4.983 Agricultural Preservation Credits. Amended site plans were approved in 2007 which reduced the square footage of the footprint and mezzanine twice with a reduction in the amount of TDRs. In May 2007, **4.5** Agricultural Preservation Credits were ultimately assigned.

The second project to utilize development rights from the Aquebogue parcel was the Stoneleigh Woods retirement community on Middle Road in Riverhead. One phase of

this development required **1.0** Agricultural Preservation Credits in 2011. (Later phases used credits from another property. In the Retirement Community zoning district, one dwelling unit per 40,000 square feet is permitted, with a possible increase of one dwelling unit per preservation credit redeemed, not to exceed four dwelling units per 40,000 square feet.

In 2013, the remaining **5.0** Agricultural Preservation Credits were required to be transferred from the Aquebogue parcel prior to the issuance of a building permit for the Saber-Riverhead LLC shopping center project on Route 58. This 122,184.4 square foot development is located in the Business Center Zoning District, which permits up to 30% lot coverage and 60% floor area ratio with the transfer of development rights. (If development rights were not used, the maximum lot coverage and floor area ratio with sewers would have been 20%).

In the Town of Riverhead, another project utilizing development rights is the Headriver LLC project on the northwest corner of Route 58 and Kroemer Avenue. This project includes a new 169,547 square foot Wal-Mart store and another 27,000 square foot retail building. The project is located in the Destination Retail Center zoning district, which has the same allowances for TDRs as the Business Center zoning district (up to 30% lot coverage and 60% floor area ratio with the use of TDRs). However, with sewers the permitted lot coverage without development rights is only 15%. In this case 41 TDRs were required, which came from a parcel on Roanoke and Middle Road in Riverhead in 2010.

B. Town of Huntington

In 2012, the Town of Huntington approved an application using Transfer of Development Rights (known here as a transfer of density flow rights, or TDFR), as part of the Deshon Partners LLC zone change application. The 8.3 acre sending site was a former agricultural property known as Meyer's Farm. It was owned by a religious organization looking to build a house of worship. The property was located in a Special Groundwater Protection Area and the Town desired the property for parkland. The receiving site was the subject of a change of zone application. The application proposed the replacement of an old industrial building used by Newsday with 261 affordable residential units for seniors on an 18 acre site. The receiving site had access to public sewers and was adjacent to an existing high-density housing development. The TDFR did not involve an increase in residential units; it increased the density of development by building the 261 units on only 13 acres of land. The remaining 5 acres received the

development rights from Meyer's Farm. Instead of transferring residential development rights, the project transferred the right to build a 60,000 square foot house of worship, which is what would have been allowed on 5 acres of land at Meyer's Farm. Following the transfer, the Town purchased the 8.3 acre Meyer's Farm for parkland (including 5 of those acres purchased at a reduced price because the development rights had been removed). All three involved parties achieved their goals and at lower costs as a result of the TDFR process.

C. Town of Smithtown

In 2013, a private party transfer of density flow rights took place within the Town of Smithtown. A 1.6 acre undeveloped parcel with steep slopes located in Nesconset was donated to the Town of Smithtown in connection with the transfer of 3.0 density flow rights to a receiving parcel in Saint James. This transfer allowed seats to be added at a number of existing restaurants in a shopping center in Saint James. As a result of the transfer, the parcel was dedicated to the Town and a covenant was placed on the 1.6 acre parcel prohibiting development and requiring that it be maintained in its natural state.

D. Town of Brookhaven

Although the Town of Brookhaven does not have an active town TDR program, it has created and redeemed the most Central Pine Barrens Credits (PBCs). One important mechanism the Town of Brookhaven uses to retire PBCs is through its residential subdivision approval process. There are many examples of subdivision approvals in the Town of Brookhaven that include the retirement of PBCs to address wastewater flow requirements.

One example is a 17 lot residential subdivision approval in Miller Place called Old Orchard at Miller Place which included the retirement of three PBCs. This subdivision was proposed on an 18.5 acre parcel (805,000 square feet), located in Groundwater Management Zone III and the Compatible Growth Zone of the Pine Barrens. For subdivision wastewater calculations, the Suffolk County Health Department requires 25% of the lot area to be reserved for subdivision improvements (roads, drainage, etc.) and in Groundwater Management Zone III, 40,000 square feet for each single family residential lot. Based on Health Department requirements, this parcel would have a permitted yield of 14 to 15 residential units. As part of the subdivision approval process,

three PBCs were required to be purchased and retired. This allowed the construction of 17 residential units and the related increased sewage flow intensity. All three of the PBCs used were derived from properties in the Core Preservation Area of the Pine Barrens.

The Old Orchard at Miller Place subdivision is now completed, with all 17 residential units constructed. This project illustrated an important use of TDR credits where growth was directed away from a critical environmental area (the Core Preservation Area of the Pine Barrens) to an area designated for low density residential growth (the Compatible Growth Area of the Pine Barrens). This TDR credit transfer also allowed three additional residential units to be included in the Old Orchard subdivision project. One economic consideration that likely encouraged the use of PBCs in this project was that infrastructure costs for the 17 unit residential subdivision (such as roads, recharge basins, and utility connections) were likely similar to those costs for a 14 unit residential subdivision. Thus, while there was a financial cost to purchasing the three PBCs, this cost was outweighed by the strong economic incentive to build three additional residential units in this location.

E. Central Pine Barrens Commission

This case study describes how a statutory requirement for the retirement of TDRs is currently being created. According to the Central Pine Barrens Commission, since the inception of the Pine Barrens Credit (PBC) program in 1995, 427.86 credits have been redeemed. This means that in 19 years, an average of 22.5 credits per year have been used in development projects. An additional 498.63 credits have been generated but not utilized in this voluntary program. If the redemption rate of 22.5 credits per year were to continue, it would take an additional 22 years to retire all the credits in the program. The Clearinghouse was not satisfied with this timeframe because according to the Central Pine Barrens Comprehensive Land Use Plan, "It is the purpose of the Pine Barrens Credit Program to maintain value in land designated for preservation or protection under the Plan by providing for the allocation and use of Pine Barrens Credits (PBCs)." Compounding these concerns, the expansion of the program to include lands within the Carmans River corridor in Brookhaven Town would potentially add hundreds of new PBCs. Moreover, the Clearinghouse was aware of the various other TDR programs throughout the County that could potentially compete with PBCs for redemption in development projects.

The Clearinghouse determined that because the Comprehensive Land Use Plan stated that PBC redemption was optional, the use of PBCs was minimal, possibly leading to a decreased value of PBCs. As a result, the Board unanimously voted to recommend to the Commission to adopt mandatory redemption requirements. It was reasoned that mandating the use of PBCs would increase the demand for PBCs, leading to an increase in the value of PBCs.

By resolution on March 20, 2009, the Central Pine Barrens Credit Clearinghouse Board recommended to the Central Pine Barrens Commission a policy on the mandatory redemption of Pine Barrens Credits (PBCs). Specifically, the requirement was that PBCs must be retired on 50% of the additional wastewater generated from additional units granted by a change of zone. By resolution on April 22, 2009, the Pine Barrens Advisory Committee endorsed the Clearinghouse's recommendation. By resolution in October 2009, the Clearinghouse reiterated its support for the mandatory redemption urging the Commission to act to enhance the viability of the program. While the recommendation was being deliberated by the Commission, the Clearinghouse revised its recommendation at its January 15, 2010 meeting in response to building industry concerns. The major revision was that the original recommendation for a 50% requirement was replaced with a 25% requirement, and the waiver or hardship provision was eliminated. The Central Pine Barrens Commission continued to deliberate the Clearinghouse resolution through 2014 and currently there is a loose consensus on a 15% redemption requirement. The proposed redemption rate percentage was reduced because of concerns expressed by developers and the Towns about the financial implications this requirement would have on future development projects, particularly where the Towns may require public community benefits in addition to the mandatory PBC redemption policy.

The original requirement in the Central Pine Barrens Comprehensive Land Use Plan was:

Each town shall require the redemption of Pine Barrens Credits for those development projects within the Central Pine Barrens Compatible Growth Area, without regard to the type of "sewage disposal system" (as defined by the Suffolk County Department of Health Services, Division of Environmental Quality, "Standards for Approval of Plans and Construction for Sewage Disposal Systems for Other Than Single-family Residences" hereinafter referred to within this section as the "Suffolk County Department of Health Services standard") proposed for the development project, that increases the density, intensity, or other measures of land use development, including, but not limited to, changes or zone.

As a result of the resolutions of the Credit Clearinghouse and the Advisory Committee, as well as the deliberations of the Pine Barrens Commission, an amendment to the section has been proposed. Although it has not yet been adopted by the Pine Barrens Commission, the proposed amended section reads:

Pine Barrens Credit Redemption Requirement: Each Town shall require the redemption of Pine Barrens Credits in an amount equal to fifteen percent (15%) of the difference between a project's "density load" in excess of the projects site's "population density equivalent," divided by 300 for any project in the Compatible Growth Area of the Town. The type of "sewage disposal system" proposed for the development project shall have no effect in determining the required number of Pine Barrens Credits to be redeemed on such project...

The Pine Barrens Credit Clearinghouse Board and the Pine Barrens Commission arrived at this amended reduced standard because the Credit Clearinghouse Board was concerned that the Pine Barrens Credit program was languishing and the voluntary nature of the program had resulted in a less than robust TDR redemption rate. The perception that the program was somewhat anemic was beginning to undermine the perceived value of a Pine Barrens Credit and the public confidence in the program. There were also concerns about providing just compensation and preventing takings claims.

VII. Lessons Learned

A. Benefits of TDR

The Transfer of Development Right tool has many benefits, including those described below.

1. TDR can be an effective way to preserve open space.

A TDR program can be established so that areas designated as sending areas are deemed to be worthy of preservation as open space. In the Central Pine Barrens, the sending area restriction is severe in that no development is permitted within the sending area, the Core Preservation Area. The end result is that the maximum acres of land in the Core Preservation Area are preserved. In other regional TDR programs in Suffolk County, the practice of choosing sending parcels from areas adjacent to existing preserved open space is a relatively easy way to expand blocks of preserved open space.

Another method of open space preservation using TDR involves incentives. For example, development of a site is permitted at the existing zoning density subject to a yield map, but if all of the permitted development potential is transferred off of this sending site, then development density is calculated at a bonus. For example, a minimum residential lot size of one acre would technically not yield 1 unit per acre, but approximately 0.7 units per acre⁷ after accounting for necessities such as roads and drainage. However, if the development right is transferred off this land, 1 development right per acre could be granted, instead of 0.7 units per acre. In this way, the sale and transfer of development potential by the property owner to another site may be worth more economically than if the site was developed as-of-right. This type of bonus is used in TDR programs in eastern Suffolk County utilizing Community Preservation Funds. If land purchased using Community Preservation Funds had been developed, development would be allowed at existing zoning subject to a yield map. However, after purchase utilizing Community Preservation Funds, development rights are calculated by a mathematical formula and do not remove area that would be dedicated to roads and drainage or constrained by an environmental parameter such as wetlands or steep slopes.

⁷ According to the *Long Island Comprehensive Waste Treatment Management Plan (208 Study)* prepared by the Nassau-Suffolk Regional Planning Board, an area zoned for 1 unit per acre was estimated to yield 0.7 units per acre.

2. A TDR program can be funded solely by the private sector.

A TDR program can be set up so that it does not require government expenditures to preserve open space. In theory, the use of TDRs at a receiving site increases the overall demand for TDRs. Landowners in a sending area are able to sell their development right potential to the highest bidder in the open market. There is no government cost involved.

A greater demand than supply of available development rights increases the value of each development right. The sale price of the development right is negotiated between buyer and seller. After negotiation, the buyer may transfer the purchased development rights (additional density) to their development project. There is no government cost involved.

3. A TDR program can promote economic development in downtowns and transit hubs.

Without TDRs, approving additional development density beyond what is permitted by existing zoning established by a municipal comprehensive plan could be considered “spot zoning.” Approval of this additional density would not prevent the development of other vacant parcels in the future. If this pattern were to persist unchecked, privately owned vacant land outside of designated growth centers could be developed one parcel at a time, leading to a sprawl pattern of development and possibly “high density sprawl.” The use of TDR would prevent this consequence and sustain a balance between development and associated impacts to the environment in the overall area or region.

By using TDR, the development pattern can be condensed and density can be shifted but not necessarily increased. TDR programs work best when receiving areas have the ability to accept additional development. It makes sense to locate higher density projects where infrastructure such as public sewer, water, and mass transit is already available. Areas targeted for infrastructure expansion could become designated receiving areas after the completion of necessary infrastructure. TDR helps to locate transferred development in locally designated growth centers near transit hubs or downtown centers, and at the same time helps to reduce additional roadway congestion by preventing sprawl development outside of designated growth areas. The synergy between mixed use development in downtown centers, mass transit, and

accessible open space creates a positive atmosphere for sustained economic development activity.

4. A TDR program enables a restricted landowner to sell development potential and recover land value.

One of the largest fears of property owners in targeted “sending” areas associated with a TDR program is the loss of land value. Typically, the value of a parcel of land is tied to the highest and best use of the parcel as limited by zoning. If the zoning of a parcel is changed to restrict the use on the parcel in a TDR designated sending area and the highest and best use is reduced (from residential to parkland, for example), the value of the property is diminished.

By allowing a landowner to sell the development potential of land (as though it weren’t restricted by the sending area designation) in the form of transferrable development credits (TDRs), the property owner recovers the loss of equity. If the TDR program is established correctly, there are numerous locations in the region where development rights may be transferred (receiving sites), allowing a buyer of development rights additional density on a project. Multiple buyers would compete against each other for a limited number of development rights, thus elevating the price until the seller can make a deal with a potential buyer and recoup the loss of equity.

5. A TDR program allows zoning regulation without a takings claim.

The last portion of the Fifth Amendment to the U. S. Constitution states that private property shall not be taken for public use without just compensation. Zoning restrictions on property have been argued in the courts and have been ruled constitutional because zoning does not typically prohibit all use of a property (Examples include *Welch v. Swasey* (1909), *Eubank v. City of Richmond* (1912), *Hadacheck v. Sebastian* (1915), and *Euclid v. Ambler Realty Company* (1926)).

Nevertheless, there continue to be legal challenges to the TDR zoning tool. Plaintiffs have claimed that the use of TDR is a taking without just compensation. In 1978, New York City defended the first TDR code as a “substantial public purpose” and was upheld by the U. S. Supreme Court against a taking challenge (*Penn Central Transportation Co. v. New York City*). In Suffolk County, the [Central Pine Barrens Comprehensive Land Use Plan](#) administered by the NYS Central Pine Barrens Joint Planning and Policy Commission

was challenged several times in 1998 and again in 2002 (WJF Realty Corp., Reed Rubin v. Central Pine Barrens Joint Planning and Policy Commission; Henry Dittmer et. al v. Central Pine Barrens Joint Planning and Policy Commission; Walter Olsen v. NYS Department of Environmental Conservation; Gladys Gherardi et. al. v. State of New York et. al.). All of these challenges were also unsuccessful.

Using TDRs as a zoning tool is a dynamic and variable land use control apparatus that can restrict and regulate land development in designated sending areas. When TDR is properly established, it can successfully withstand takings claims.

6. A TDR program can allow a builder to transfer additional development to a project site as-of-right.

In a well-designed TDR program, sending and receiving areas are identified and mapped and a holder of a TDR may retire or extinguish the TDR at a receiving site as-of-right. This as-of-right use of development rights follows local planning initiatives such as comprehensive planning (to establish sending and receiving areas), visioning (to preserve community character and determine community goals), and environmental quality review (to assure the health, safety, and welfare of the public). The retirement of the TDR credit as-of-right without any special authorization by a local planning board or health agency is an incentive to use the development right and is a logical conclusion of the planning process.

To avoid delays caused by the change of zone process, zoning should ideally be “in place” (with the amended zoning map already approved by the legislative body) prior any applications using TDR. Ideally, the TDR program would be designed by the municipality to be a one-step application to the planning board. The utilization of TDRs to achieve the maximum density permitted by zoning would then be as-of-right. It is not advisable to make the use of TDR a special permit (or authorization). The uncertainty associated with meeting special standards undermines the as-of-right benefit of TDR. If the receiving sites need to have special considerations to be addressed by applicants, then the TDR program no longer acts as an incentive.

B. Problems with TDR

There are several issues or potential problems associated with the Transfer of Development Rights tool. These are outlined below.

1. There is often civic opposition to zoning changes for increased density.

Property owners generally understand the concept of zoning. As such, property owners accept restrictions placed on the use of their property. Examples of easily accepted restrictions include not allowing manufacturing activities on residentially zoned land, or not allowing residential construction in an industrial zone. Ideally, locally adopted comprehensive plans are developed as part of a community based process, which can further increase community understanding of zoning. Residents often move to an area for its aesthetic appeal and land use pattern, and changes to the status quo can trigger concern. In a residential or rural area where development square footage is capped by zoning restrictions, if the status quo is challenged by a change of zone application requesting an increase in the intensity of development, particularly a spot zoning change, community opposition to the change can result. If additional residential density is transferred from another location using TDR, local residents may view the change as unfair and public opposition to the transfer can result.

Education about the merits of TDR can diffuse possible reflexive public opposition to increased density. The connection between additional density for a project and the public open space created by TDR is crucial to this education. If the public has a better understanding of the benefits of TDR, the development process could be streamlined.

2. TDR as a land use tool is not easily understood by the general public.

The concept of zoning is widely understood by the public, but TDR as a land use tool is generally not widely understood. TDR is a more nuanced concept related to the right to develop property. Landowners generally have a two-dimensional view of their property. Often, landowners simply think of their property as just a piece of land to develop, but property owners actually have a bundle of rights with respect to their land. A property owner has the right not only to develop the property, but also to use and enjoy the property, and sell, lease, bequeath, mine, and exclude others from the property.

However, these rights may be limited or regulated through laws enacted by government, such as zoning or environmental regulation.

The proper role of government in property rights is a topic for debate. The last portion of the Fifth Amendment to the U. S. Constitution states that private property shall not be taken for public use without just compensation. However, some property owners believe that any government restriction on their property is a “taking.” The definition of “just compensation” can even be debated. On the other hand, some believe that government can, without limitation, prohibit improvement of a parcel of land, particularly if the improvement is an unpopular proposed development. If a change in zoning is proposed by a developer or a municipality, residents who have property interests in the vicinity of the proposed change are often concerned with possible negative impacts to property values or changes in development patterns.

Another public misconception about TDR is that TDRs can never cross municipal boundaries. There is a fear that the conversion of vacant land (mostly residentially zoned) to TDRs and allowing the TDRs to leave the municipality from which they were created would cause a net loss of tax ratable uses in the municipality. It is true that development rights in the Town of Southampton are not permitted to cross school district boundaries as-of-right, but in the Central Pine Barrens Comprehensive Land Use Plan, TDRs can be used anywhere in Suffolk County (except the Core Preservation Area of the Central Pine Barrens). In order to accommodate Southampton’s provision, the Suffolk County Department of Health Services currently allows Pine Barrens Credits to cross municipal boundaries into other towns, subject to the approval of both the sending and receiving towns. The Suffolk County Department of Health Services Board of Review has retired many TDRs across the County. To date, 42.56 Pine Barrens Credits crossed a municipal boundary (town or village). Other than political considerations, there are no constraints on Suffolk County to transfer TDRs across municipal boundaries.

Government, environmental, and civic organizations can assist with community education about property rights and the connection between TDR and open space preservation.

3. There is currently only a small market for using a development right as a wastewater credit in Suffolk County.

Suffolk County draws its potable water from an underground aquifer. Article 6 of the Suffolk County Sanitary Code defines Groundwater Management Zones with specific permitted densities in order to protect the integrity of the groundwater where wastewater is discharged through on-site disposal systems. Article 6 establishes limitations on the amount of sanitary waste that can be discharged into the ground. In general, there are two categories of wastewater discharge amounts, depending on the Groundwater Management Zone location. One limit is 300 gallons per day per acre (300 gpd/acre) and the other allows no more than 600 gpd/acre. In unsewered areas, applications are generally not approved when the resulting density exceeds twice that allowed under the Sanitary Code. Density beyond Sanitary Code limits would risk a violation of the 10 mg per liter nitrogen standard for groundwater or drinking water, and would therefore require advanced treatment in the form of a sewage treatment plant. *For purposes of TDR and wastewater credit (the development right based on wastewater load), the use of credits is limited to projects that do not discharge more than double the Article 6 limits.* If a project has more wastewater flow than that, it would necessitate a sewage treatment plant and the development right is no longer attributable to wastewater load.

4. TDR equivalents can vary by municipality.

Article 6 of the Suffolk County Code states, in part: *In Suffolk County, a full "Transfer of Development Right" (TDR), when used to address the Suffolk County Sanitary Code, can be equated to approximately 300 gallons per day (gpd) of wastewater flow. Depending on the proposed use of the TDR, the 300 gpd credit can be used to permit additional density or intensity on a development site.*

If a sewage treatment plant is utilized, Article 6 restrictions are not applicable. Therefore, any number of development rights could be transferred into a sewer area, subject to local planning and zoning regulations and decisions. These transferable development rights can be used to grant floor area and other bonuses. It should be reemphasized that this form of development right is affiliated with areas that are within a municipal sewer district or development projects that include an on-site community sewage treatment facility.

Even if Article 6 doesn't apply, its requirements can still be used as a guideline for TDR credit equivalents in sewered areas. In Article 6, one TDR equates to 300 gallons per day of wastewater flow, and this also equates to the following density increases⁸:

1 full TDR =	300 gpd of wastewater flow.
=	1 detached single family residence
=	2 attached housing units up to 600 Gross Floor Area (GFA) each
=	1.3 attached housing units up to 1,200 GFA each
=	3 attached Planned Retirement Community units up to 600 Gross Sq. Ft. (GSF) each
=	2 attached Planned Retirement Community units greater than 600 GSF each
=	10,000 Square Feet (SF) of (dry) retail space
=	7,500 SF of general industrial space
=	5,000 SF of non-medical office space
=	3,000 SF of medical office space
=	2,000 SF of wet store (deli/takeout) space
=	10 seats for a full service restaurant

The TDR equivalents listed above are approximate and have occasionally been amended by the Suffolk County Department of Health Services, as data has become available.

Municipalities sometimes use TDR equivalents that are different from those spelled out under Article 6. An example of the use of TDR where Article 6 is not applicable has occurred in the Town of Riverhead. Riverhead allows the use of Community Preservation Funds to purchase open space and thereby create development right credits. In this way, development rights can be transferred from "sending" farmland areas to the "receiving" commercial corridor along County Route 58. This Route 58 receiving area is within the Town of Riverhead's municipal sewer district. One TDR allows a "floor area bonus" of 1,500 square feet of additional building area. Several development projects have utilized this incentive and the Town has preserved several acres of farmland using this method.

In the Town of Brookhaven, another approach, also unrelated to Article 6, is used. For change of zone requests to a multi-family residential density above the existing zoning, the redemption of Pine Barrens Credits is required at a rate of 20% of the total number of units above existing zoning density. For example, if a change of zone yielding 300 multi-family units is proposed where 100 units are allowed under existing zoning, then 40 Pine Barrens Credits must be used (20% of 200).

⁸ Source: Suffolk County Department of Health Services, *Standards For Sub-Surface Sewage Disposal Systems For Other Than Single Family Residences*, Table 1: Project Density Loading Rates & Design Sewage Flow Rates (12/1/2009).

These types of projects require advanced sewage treatment in the form of an on-site sewage treatment plant or location within a municipal sewer district. Hence, adherence to Article 6 density limitations of the Suffolk County Sanitary Code is not applicable, and the equating of a development right (Pine Barrens Credit) to a full unit of wastewater (300 gpd) is not necessary. Development rights are essentially a floor area bonus equating to roughly 20% of square footage of a typical detached single family home.

As TDR programs evolve, the use of a development right will also evolve. The Central Pine Barrens Joint Planning and Policy Commission has contemplated other uses for Pine Barrens Credits (PBCs) as an alternative to transferring density. Instead of converting PBCs into residential units or building floor area, one alternative involves the redemption of PBCs to rectify vegetative over-clearing violations. This concept has not been ratified.

In time, it is possible that Suffolk County's 10 towns and 33 villages will develop differing floor area incentives for the redemption of TDRs. This may make the TDR process more unpredictable.

5. The TDR process can be unpredictable.

Market conditions are independent of municipal land use plans and zoning. A developer seeking to take advantage of market forces may want to submit a change of zone application to a municipality in order to develop a site. Most change of zone applications request an increase in intensity or density beyond what is allowed by existing zoning. The change of zone process is a legislative process with no specific time frame for processing of a zoning change petition. The TDR tool is often considered as a way to justify the increase in density. For these cases, TDR is not considered as-of-right and is can be entangled and confused with the lack of timetable for the petition request and TDR can become the target of local opposition against the zoning change.

For TDR programs established as-of-right, the process of locating and securing development rights is not difficult. For example, the [Central Pine Barrens Program webpage](#) lists Pine Barrens Credit holders and those wishing to purchase credits. Sufficient information is posted to link the two parties. However, locating and securing development rights in the various towns in Suffolk County is more challenging. The availability of information about development rights varies by town.

Since most TDR programs are private mechanisms driven by supply and demand, negotiations must be conducted between a seller of a development right and a purchaser (who presumably has a proposed development project where the rights will be utilized). Builders have indicated that using TDR is a smooth process until it is time to secure development rights on the open market. Negotiations can break down if one or both parties are holding out for a particular price for the development right. This problem is most acute when a builder has a temporary approval subject to securing development rights. Sellers holding out for a desperate buyer to pay an exorbitant price for development rights risk scuttling the deal and the proposed development. An inability to strike a deal may lead builders to claim that there are no development rights available when in fact there are. Delays resulting from the lack of a deal may result in one or both parties complaining that acquiring a development right is an unpredictable process.

This issue has led the Central Pine Barrens Credit Clearinghouse Board to sometimes purchase and bank Pine Barrens Credits and act as a seller of last resort for development projects. Therefore, development rights are always available for use through the program. However, none of the other TDR programs in Suffolk County consistently attempt to bank development right credits, although some programs do currently have unsold credits.

6. Development rights can be expensive.

The success of a TDR program can sometimes have negative effects on the program itself. When many of the TDR programs in Suffolk County began, the cost of a development right was low compared to the return on investment in a development project. In addition, the value of a development right was not well understood. However, this condition changed as development rights were soon bought and sold by people who were initially anxious to buy or sell, and those development rights were removed from circulation. True to the economic theory, as the supply of development rights tightens, the cost of the development right increases. Therefore, remaining development rights generally become more valuable as they become more scarce.

In Suffolk County today, builders sometimes indicate that it is cost prohibitive to utilize TDRs in development projects. The cost of a development right should theoretically be offset by the revenue generated by the additional unit or floor area granted by using that development right. For example, if a development right costs \$100,000 and allows an additional residential unit that sells for \$250,000, it would seem that a developer

would net \$150,000 on the sale of that unit. However, there are costs associated with constructing the development, plus other costs such as taxes, mortgage interest, permit fees, and consultant fees. The cost of constructing a sewage treatment plant or providing the infrastructure for connection to an existing treatment facility also adds to the cost of construction, as do the costs of on-site amenities such as a pool, clubhouse, or tennis courts.

Development projects that will have significant impact are often required to provide impact mitigations (such as roadway improvements, traffic signalization, and wetland restoration) or provide community benefits in the form of recreational open space. Regulatory entities may also require features such as energy efficiency or affordable housing. Developers may argue that the costs of these required mitigations and public benefits, in addition to the purchase of development rights, would cause the development to be unprofitable.

7. There is no pressing demand for the use of TDRs.

Many times, requests for change of zone for increased density are granted by a municipality without any consideration for the use of TDR. The negotiation between a municipality and a developer over the public benefits that a developer of a proposed development will be required to provide can be a time consuming process. When the utilization of development rights is not mandated, local residents may object to the TDR concept of additional density being shifted to their community from outside the community, and may not appreciate the benefits associated with TDR such as the creation of open space, focusing of development where there is existing infrastructure, or providing affordable housing near transit. Therefore, the use of TDR as a public benefit is often abandoned for more tangible public benefits that can be traded for the increase in development intensity. Local residents often prefer that the developer be granted increased density in exchange for financing local recreational facilities, community buildings, or contributions to local fire or ambulance districts. When conflicts arise between local residents and developers, the regulating municipality often abandons the use of TDR in order to please local residents and move an economic development project forward.

However, in areas served by municipal sewers, the Sanitary Code is not a limiting factor. There are many municipal sewer districts in Suffolk County; the largest is the Southwest Sewer District which covers much of the Towns of Babylon and Islip and extends into some of Brookhaven Town and southern Huntington Town. In areas that are sewered,

the Sanitary Code does not apply and it is likely that high density development projects are permitted by zoning without TDRs. In these instances, there is currently no reason for density to be connected to a development right. A developer can often build at high density as-of-right.

8. Uncoordinated TDR programs can lead to a patchwork pattern of open space.

There is little coordination between TDR programs in Suffolk County. If a builder were to inquire of Suffolk County or one of its town governments about seeking transferable development rights to utilize in conjunction with a proposed development project, the builder would likely be pointed toward vacant parcels where environmental considerations or open space policies make the land desirable for open space preservation. However, builders seeking transferable development rights do not always contact the Town or the County for information about possible land parcels with transferable rights. Instead, when a builder is in search of vacant parcels from which to transfer development rights, the builder may simply seek out inexpensive vacant parcels. A scattered patchwork pattern of preserved land parcels does little to advance environmental protection or open space preservation goals, because these lots are not contiguous to an existing assemblage of open space parcels and provide little habitat protection. These lots might even be located amidst developed properties.

Moreover, these inexpensive sterilized lots are often located in economically distressed communities⁹. In economically distressed areas, economic development and revitalization efforts can become more complicated when the development pattern contains a mix of sterilized and developed lots. In Suffolk County, of the 18 census designated places identified as economically distressed, 11 of them have existing railroad stations. These communities may be suitable for transit oriented development, rather than acting as sending areas transferring development rights out of these communities. This challenge is addressed later in this report by **Recommendation 5** (“Explore the feasibility of creating a public/private open space Master List TDR program”), an orderly and predictable acquisition of open space properties identified by local government.

⁹ Pursuant to Suffolk County Resolution 102-2006, the Suffolk County Division of Planning & Environment was directed to identify economically distressed areas in Suffolk County. Eighteen communities throughout the County were identified as economically distressed, based on income, poverty, and public assistance statistics, educational attainment statistics, unemployment rates, and housing values.

Summary of Problems with TDR

Government-operated TDR programs raise many legal and financial concerns. There appear to be six primary areas of concern:

- Strategic zoning challenges
- Anti-trust challenges
- Authority challenges
- Legitimate public purpose requirements
- Municipal revenue problems
- Valuation difficulties

The ideal government-operated TDR program will anticipate and protect itself against each of these six issues. In most cases, this can be accomplished by the legislation creating a TDR program.

A TDR bank created by a municipality is authorized by legislation to perform its necessary functions including the power to buy, sell, hold, and acquire TDRs generated by the preservation program. Enabling legislation would also include a clearly stated public purpose to ensure that any beneficial byproducts (to a private party or to the government) are recognized as incidental to the greater public good. In this way, constitutional indemnification is assured and the likelihood that the legislation is overturned will be reduced.

VIII. Recommendations

Recommendation 1: Explore the feasibility of developing an accessible database of County TDRs.

A database that sets forth the location of County TDRs could provide the necessary information to link buyers and sellers of TDRs. Connecting a willing seller of a development right to a buyer should take as little time as possible. If a builder has a preliminary or conceptual approval based on the utilization of TDRs, this database could assist in identifying the availability of County TDRs. Reducing the search required to find a development right could improve the timing of the process for builders. Developers, municipalities, and the public generally support the development of this database.

Recommendation 2: Explore the feasibility, interest, cost, and revenue potential to create a countywide TDR clearinghouse and bank with local towns and the Pine Barrens Commission.

Further research and discussion is necessary to determine if a Suffolk County TDR clearinghouse could serve as the administrative body for the varied TDR programs throughout the County. The goal of the Suffolk County TDR clearinghouse and bank would be to first expedite TDR transactions and second to guarantee purchasers of TDRs a stable price per development right. The implementation of this recommendation will require input and collaboration with local towns. Some municipalities that implement TDR banks may find that establishing and operating a TDR bank is cost prohibitive, while other municipalities may find that allowing TDRs to sit in a bank untaxed results in a loss of potential tax revenues.

Currently, a buyer of TDRs usually undertakes lengthy appraisals and other market evaluations to determine the monetary value of a TDR and the costs and benefits of utilizing TDR in the proposed development. The buyer must seek a seller (or multiple sellers) in order to acquire a sufficient number of TDRs, and then engage in negotiations and purchases. A clearinghouse would help to match buyers with sellers and assist with transactions. A clearinghouse would also be an information resource, maintaining and instantly updating the regional TDR database with the most up-to-date information for users. A reduction in the number of notifications between a town, the Suffolk County Department of Health Services, and the Suffolk County Department of Economic Development & Planning would streamline government functions and reduce costs. By expediting transactions and improving timing, a TDR Clearinghouse can help reduce transaction costs and improve administrative efficiency.

The bank could be authorized to purchase and sell TDRs to further the objectives of the Suffolk County regional TDR program. A TDR bank can create a market of TDRs that benefits not only individual buyers and sellers of TDRs, but also the community as a whole. The goal of the Suffolk County TDR clearinghouse bank would be to guarantee purchasers of TDRs a stable price per development right, which could serve to resolve speculative value issues as well as to close the timing gap that might result from the lack of an immediate seller. The bank could serve as the purchaser of last resort to alleviate hardship to a landowner if a match cannot be made through the database. A government-operated TDR bank can guarantee an owner something of value in exchange for unused development rights. The TDR bank would ensure that a minimum price will be paid for a TDR, thereby establishing parameters for valuation in the open

market. In addition, by pooling development rights, a bank enables small holders to receive a competitive price for their TDRs and makes it easier for purchasers to buy large numbers of TDRs in a single transaction. Without an entity to buy and *hold* the TDRs, transactions could only take place if a sellers and buyer are simultaneously ready.

Additionally, the TDR bank could generate funds so that the TDR program becomes self-sustaining. The Suffolk County TDR bank could be designed to raise funds through the sale of publicly owned TDRs, such as the WHDRs currently held in the Suffolk County database. The bank would then continue to finance program costs through the sale of TDRs that it may have purchased from property owners in sending districts or from other TDR programs developed by the County. In Maryland's TDR program, if TDRs are purchased, the bank is authorized to hold them until appropriate receiving areas are identified, then the holdings are liquidated and the proceeds are returned to the county treasury. Revenue generated by the TDR bank should be reinvested in Suffolk County's open space preservation program and should not be used to offset unrelated government costs.

Recommendation 3: Explore the feasibility of requiring the use of TDRs for increases in development density or intensity.

The concept of requiring the retirement of credits when granting approvals for density increases should be explored to gauge regional and local support. A requirement to use TDRs may generate demand for TDRs and reduce the uncertainty that developers face when negotiating a change of zone on a project site for additional density. A mandate to retire credits under a defined formula should no longer be considered a public benefit in the usual way but rather a fee (similar to a park fee or a payment in lieu of affordable housing requirements of the Long Island Workforce Housing Act). Negotiations between a developer, the public, and the Town over public benefits are likely to continue in the future, but if a mandate is in place the retirement of TDRs would no longer be a variable at the end of negotiations. The retirement of TDRs would already be understood at the beginning of the process.

If existing TDR programs were to be expanded or new TDR programs are created, the number of potential development rights could be expanded. Expanding the potential number of development rights could ensure that there will always be a supply of TDRs to utilize. The redemption opportunities for Suffolk County's Workforce Housing Development Right (WHDR) Program were expanded in 2011 to provide an additional public benefit for using WHDRs. Appendix 3 contains the Suffolk County legislation that altered the WHDR program. The WHDR program could be amended to expand the redemption opportunities to economic development projects. This change would require a public referendum. This expansion would increase WHDR credit redemption opportunities and therefore would increase the demand for WHDRs. Expanding the WHDR program in this way would encourage better participation in TDR programs and encourage development right utilization in designated growth zones. The program could also be amended to allow the County to sell WHDRs. This change would create a revenue stream that could be help pay for future open space acquisitions.

A Tax Default Development Right (TDDR) Program is a possible new County TDR program that would allow for a TDR procedure related to the separation of development rights from tax defaulted parcels. When a property owner fails to pay property tax, the parcel in tax default is eventually transferred to Suffolk County ownership. The tax defaulted parcels targeted for this program would be transferred into the Suffolk County parks inventory, or sold to local municipalities for open space purposes. In a TDDR program, the development rights for each of these parcels would be calculated, banked, and made available for transfer for certain economic

development projects. A TDDR program would be funded solely by the private sector, would preserve open space at no cost to the public, and would create a minor revenue stream for the County. This program would allow the creation of a small but steady flow of TDRs to the County, increasing the supply of TDRs and reducing the price of development rights overall. Appendix 4 contains a draft report outlining how such a program could operate in Suffolk County.

Recommendation 4: Explore local support for standardizing TDR floor area equivalents.

TDR programs in the various municipalities in Suffolk County have differing floor area bonuses. In areas located in municipal sewer districts, a standard table of floor area bonuses should be created and utilized for the redemption of all TDRs. Standardizing the floor area bonus equivalent for development rights may bring more certainty to large scale projects within municipal sewer districts or with on-site sewage treatment plants. In recent decades, development in Suffolk County has generally been governed by the requirements of the Suffolk County Sanitary Code. For this reason, it would be reasonable to start by using the multipliers detailed in Article 6 of the Sanitary Code. Further discussions with local municipalities will be necessary to secure local support before standard floor area equivalents are proposed countywide.

The County should work with the towns to see if there is support for the creation of standard TDR equivalents. Standardizing the floor area bonus for TDRs would make it easier for TDRs to move throughout the County and would improve the opportunities for implementation and coordination between local land use decisions and regional land use goals.

Recommendation 5: Explore the feasibility of creating a public/private open space Master List TDR Program.

Revenue streams for the acquisition of open space in Suffolk County have diminished over time. Because of this change, creative approaches to preserving environmentally sensitive land will need to be utilized. A Master List TDR program would be a public/private partnership, where the private sector builder purchases TDRs off of open space acquired from the Suffolk County Master List, and a municipality (or municipalities) purchases the remaining title to the land. Public/private partnerships have been formalized for various governmental functions in the past, and the promotion of the health, safety, and welfare of the public by these arrangements has generally been accepted by the public.

If a builder is seeking vacant parcels from which to transfer development, the builder may simply seek out the least inexpensive vacant lots. However, these inexpensive lots may be located in economically distressed communities and economic development and revitalization efforts can be hampered by a development pattern that contains a mix of sterilized and developed lots. Therefore, the Suffolk County Department of Health Services should direct an applicant seeking land for wastewater credits or other TDRs to [Suffolk County's Master List](#) of proposed open space acquisitions for identification of suitable properties. This policy can help ensure that various County TDR programs will not create a patchwork of open space or impede economic revitalization efforts.

Implementation of Recommendations

Appendix 5 contains model legislation that includes broad statutory language designed to help craft specific legislation incorporating the recommendations of this report. While these recommendations and this model legislation provide broad suggestions for a county TDR program, this is only the beginning of the process. The model legislation would need to be tailored to the unique circumstances of a municipality and the collective vision of its citizens.

VII. Public Outreach

Several key stakeholders were essential to the development of this report. These stakeholders include town and village representatives, property owners, affordable housing advocates, community groups, and environmental and farm protection organizations. This study encompasses a large and diverse assortment of residential, commercial, and industrial areas and TDR impacts a significant population in Suffolk County. As such, engaging the community in understanding the mission and goals of the study and to allow for input and review at major study milestones was critical to the successful outcome of this study and its recommendations. For this purpose, the Suffolk County Department of Economic Development and Planning designed and implemented a three-pronged community engagement program that included interactive web-based content, opportunities for civic dialogue, and one-on-one and small group discussion. Key to this engagement was the Steering Committee established during 2012, which received input from stakeholder constituents and provided comments to the Suffolk County Department of Economic Development and Planning.

The diverse complexion of Suffolk County poses specific communication challenges that any engagement plan would necessarily address. The study area stretches across all of Suffolk County, including 10 towns and 33 villages, 911 square miles of land, and 1.5 million people. Numerous County and State legislative districts encompass the County and the County's population is diverse, including many residents for whom English is not their first language.

Beginning in 2012, Suffolk County staff began meeting with key stakeholders and County legislators to provide an opportunity for dialogue with people who are actively involved with and knowledgeable about their specific communities. These stakeholders could therefore provide meaningful input. During these meetings, the study was outlined and participants were able to voice comments concerning potential issues, benefits, and recommendations of a regional TDR study.

A. Community Advisory Committee

In the course of gathering information for this study, numerous meetings were conducted with professionals and stakeholders. Functioning as the Community Advisory Committee, the assemblage of individuals at each meeting provided a cross-section of opinion regarding the use and transfer of TDRs. Appendix 6 contains a listing of meeting

dates and participants involved in the deliberation and formulation of this Suffolk County Transfer of Development Rights (TDR) Study.

B. Establishment of Website

A [website that describes this study](#) has been established by the Suffolk County Department of Economic Development and Planning. This report, the *Suffolk County TDR Study, Analysis of Existing Programs and Recommendations*, will also be posted on the website.

C. Community Meetings

In addition to governmental participation, public education and outreach activities were specifically targeted to residents, business owners, contractors, real estate brokers, and preservationists. Presentations about the project were made at the Suffolk County Planning Federation meetings in 2012 and 2013, as well as to the Suffolk County Planning Commission at its public meeting.

X. Conclusion and Next Steps

This document is the second report in a study reviewing all of the TDR programs utilized by the Suffolk County and the 43 incorporated towns and villages within its borders. This regional TDR study examined existing TDR programs at the local, county, and regional level, and proposed several recommendations. These recommendations are intended to:

1. Encourage better participation within existing TDR programs,
2. Coordinate development right absorption within identified growth zones in the County while discouraging development in environmentally sensitive areas, and
3. Improve implementation and coordination between local land use decisions and regional transportation policies.

There are several important issues and initiatives in Suffolk County that may be addressed by Transfer of Development Rights programs. These include the preservation of open space, preservation of groundwater quality, mass transit infrastructure funding, transit oriented development, advancements in wastewater technology, effects of climate change, and sustainable economic growth.

As a next step, further discussion and deliberation is warranted to examine addressing the problems associated with TDR by implementing the recommendations contained in this report. To continue this dialogue, the County will make this report available to County and Town officials and other interested stakeholders. Varied organizations may find this report helpful. These include the Suffolk Planning Federation, American Planning Association, smart growth and equity groups, affordable housing organizations, environmental groups, trade associations, blogs, regional leadership groups, and the County Planning Commission. Through its day-to-day operations, the County will continue to be a resource clearinghouse to provide information to local communities on best practices related to Transfer of Development Rights. A copy of this report will be available online and in the Arthur Kunz Memorial Library within the Department of Economic Development and Planning.

BIBLIOGRAPHY

Ag Prospects. [Transfer of Development Rights: A Feasibility Study for Skagit County, Washington](#). (Bellingham, WA) 2006.

American Farmland Trust. [Transfer of Development Rights Fact Sheet](#). (Washington, DC) 2008.

Central Pine Barrens Joint Planning and Policy Commission. [Central Pine Barrens Comprehensive Land Use Plan Volume 1: Policies, Programs and Standards](#). (Great River, NY) 1996.

Central Pine Barrens Joint Planning and Policy Commission. [Overview of the Central Pine Barrens Jurisdiction and Responsibilities](#). (Westhampton Beach, NY) 2013.

Design Community & Environment. [Beaufort Area TDR Implementation Study](#). (Ventura, CA) 2011.

Horsley Witten Group, Washington County Regional Planning Council. [Washington County Transfer of Development Rights Study: Final Report](#). (Providence, RI) 2012.

Long Island Regional Planning Board, Koppelman, Lee. *The Long Island Comprehensive Waste Treatment Management Plan (208 Study)*. (Hauppauge, NY) 1978.

New Jersey Pinelands Commission. [The Pinelands Protection Program](#). www.nj.gov/pinelands. (New Lisbon, NJ).

New Jersey Pinelands Commission. [The New Jersey Pinelands Development Credit \(PDC\) Program](#). (New Lisbon, NJ).

N.Y.U. Law Review, Stevenson, Sarah J. [“Banking on TDRS: The Government’s Role as Banker of Transferable Development Rights.”](#) (New York, NY) 1998.

Pace Law Review, Stinson, Joseph D. [Transferring Development Rights: Purpose, Problems, and Prospects in New York](#). (New York, NY) 1996.

The Planning Center DC & E. [Transfer of Development Rights Program Market Study for the City of Tacoma](#) (Santa Ana, CA) 2012.

Resources for the Future, Walls, Margaret. [Markets for Development Rights](#), (Washington, DC) 2012.

Seifel Consulting Inc., C.H. Elliott & Associates, San Francisco Planning Department. [TDR Study: San Francisco's Transfer of Development Rights Program](#). (San Francisco, CA) 2013.

State of Massachusetts. [Transfer of Development Rights Case Study](#).

State of Rhode Island, Division of Planning, Kopin, Daniel. [Coastal Transfer Development Rights in Rhode Island](#). (Providence, RI) 2013.

State of Washington Department of Commerce, Puget Sound Regional Council, FORT&RRA. [Regional Transfer of Development Rights in Puget Sound](#). (Olympia, WA) 2012.

Suffolk County Department of Economic Development and Planning. [Comprehensive Master List Update – 2012](#). (Hauppauge, NY) 2012.

Suffolk County Department of Economic Development and Planning. [Suffolk County Transfer of Development Rights \(TDR\) Study, Inventory of Existing TDR Programs](#). (Hauppauge, NY) 2014.

Suffolk County Department of Health Services. [Suffolk County Sanitary Code, Chapter 760](#). (Hauppauge, NY) 2011.

South Country Watersheds Technical Planning Assistance Project, Taintor, Rick. [Transfer of Development Rights Report](#). (Providence, RI) 2001.

Winzelberg, David. ["Pine Barrens Credits Again a Hot Investment,"](#) *Long Island Business News*. (Ronkonkoma, NY) February 15, 2013.

APPENDIX

Appendix 1

Intro. Res. No.1797-2013
Introduced by Legislators Hahn and Browning

Laid on Table 9/12/2013

**RESOLUTION NO. 1210 -2013, DIRECTING THE DIVISION OF
REAL PROPERTY ACQUISITION AND MANAGEMENT TO
CANVASS THE OWNERS OF MASTER LIST PROPERTIES**

WHEREAS, from 2004 through 2006, the County established Master Lists I - IV, comprised of environmentally sensitive lands the County wishes to preserve; and

WHEREAS, since 2004, the County has acquired approximately 1,411 acres of land identified on the lists; and

WHEREAS, an additional 1,187 acres of land on the Master Lists were preserved by other municipalities during that time; and

WHEREAS, in 2012, the Planning Division reviewed the properties on all four Master Lists, removed those that are not available for preservation, and ranked the remaining properties to prioritize the sites and assemblages targeted for preservation; and

WHEREAS, the County should now determine if the owners of properties on these revised Master Lists are interested in selling their property to the County; now, therefore be it


1st RESOLVED, that the Division of Real Property Acquisition and Management is hereby authorized, empowered and directed to send canvass letters to the owners of properties on the revised Master Lists whose parcels receive a rating of 50 points or higher to determine if they would be interested in selling their property to the County; and be it further

2nd RESOLVED, that the Division of Real Property Acquisition and Management will send the canvass letters within 180 days of the effective date of this resolution; and be it further

3rd RESOLVED, that this Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this resolution constitutes a Type II action pursuant to Section 617.5(c)(20), (21) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection, and the Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this resolution.

DATED: December 17, 2013

APPROVED BY:



County Executive of Suffolk County

Date: 12/26/13

Appendix 2

Development Rights Yield from Master List Properties

Open Space Master List File #	Town	Site/Assemblage	Rating	Parcels to Remain on Master List	Acreage to Remain on Master List	Calculated Development Rights Yield
14-01	Southampton	Hubbard County Park Addition	92	12	97.72	35
14-02	East Hampton	Northwest Harbor Headwaters Addition	92	3	9.43	2
14-03	Southampton	Long Pond Greenbelt	83	22	65.37	17
14-04	East Hampton	Montauk County Park Addition	82	5	24.59	4
14-05	Southold	Goldsmith Inlet Addition	80	4	32.63	8
14-06	Brookhaven	Wading River Wetlands Addition	77	26	195.10	28
14-07	Southampton	Noyack Greenbelt/Great Swamp	76	12	71.22	14
14-08	Riverhead	Peconic River Greenbelt Addition	75	26	114.65	69
14-09	East Hampton	Accabonac Harbor Addition	73	12	10.45	5
14-10	Southold	Peconic Dunes Addition	73	3	18.39	4
14-11	Brookhaven	Southaven County Park Addition	71	28	30.35	29
14-12	Brookhaven	Carmans River Watershed	69	5	184.21	Deleted From List
14-13	Islip	Sans Souci Lakes Addition	66	5	97.99	25
14-14	Southold	Wickhams Creek	66	6	54.81	1
14-15	Shelter Island	Ram Island Spit Eastern & Western Additions	65	15	31.92	5
14-16	Riverhead	Saw Mill Creek Addition	65	13	76.24	66
14-17	Southampton	Seatuck Creek Watershed	65	4	40.57	8
14-18	Smithtown	Lake Ronkonkoma	64	9	4.25	6
14-19	Southold	Corey Creek	63	12	38.43	5
14-20	East Hampton	Camp Blue Bay Addition	62	1	172.38	27
14-21	Smithtown	Nissequogue River Addition	62	12	22.26	26

Open Space Master List File #	Town	Site/Assemblage	Rating	Parcels to Remain on Master List	Acreage to Remain on Master List	Calculated Development Rights Yield
14-22	Southold	Pipes Cove Addition	62	17	89.59	44
14-23	Shelter Island	Fresh Pond/Dickerson Creek	61	4	25.21	15
14-24	Southold	Laurel Lake Addition	61	1	4.65	1
14-25	East Hampton	Airport Preserve Addition	59	3	48.38	8
14-26	Southold	Hashamomuck Pond/ Hashamomuck Pond Addition	57	10	107.95	39
14-27	Brookhaven	Mud Creek/Robinson Pond	57	4	19.00	1
14-28	Riverhead	Nassau County 4 H Addition	57	1	92.50	37
14-29	Islip	Orowoc/Doxsee's Creek Addition	57	4	9.45	2
14-30	Brookhaven	Swan River	57	7	33.38	9
14-31	Huntington	Fresh Pond Addition	56	2	1.49	0
14-32	Brookhaven	Mastic/Shirley Conservation Area	56	228	42.68	Not Analyzed
14-33	Southampton	Meadow Lane Wetland	55	15	30.48	2
14-34	Southampton	Peconic River East	55	8	53.12	12
14-35	Brookhaven	Tuthills Creek/Pine Lake	55	26	29.90	18
14-36	Brookhaven	Abets Creek Addition	54	2	4.89	1
14-37	Babylon	Carlls River Watershed Addition	54	31	20.26	9
14-38	Brookhaven	Patchogue River Wetlands Addition	53	32	6.93	9
14-39	Southampton	Bullhead Bay	52	1	54.51	0
14-40	Brookhaven	Forge River Watershed Addition	52	56	102.46	56
14-41	Smithtown	Smithtown Greenbelt	52	10	3.17	0
14-42	Babylon	Santapogue Creek Wetlands Addition	51	11	41.99	1
14-43	Riverhead	Broad Cove Addition	50	4	107.90	84
14-44	Huntington	West Hills County Park Addition	50	2	14.84	5
					TOTAL	737

Appendix 3

Intro. Res. No. 1772-2011

Introduced by Legislators Kennedy, Schneiderman and Cilmi

Laid on Table 8/16/2011

**RESOLUTION NO. 812 -2011, ADOPTING LOCAL
LAW NO. 51 -2011, A CHARTER LAW TO AUTHORIZE
THE USE OF DEVELOPMENT RIGHTS FOR
MUNICIPAL FIRE, AMBULANCE AND POLICE
DISTRICTS IN SUFFOLK COUNTY**

WHEREAS, there was duly presented and introduced to this County Legislature at a meeting held on August 16, 2011, a proposed local law entitled, "**A CHARTER LAW TO AUTHORIZE THE USE OF DEVELOPMENT RIGHTS FOR MUNICIPAL FIRE, AMBULANCE AND POLICE DISTRICTS IN SUFFOLK COUNTY;**" now, therefore be it

RESOLVED, that said local law be enacted in form as follows:

**LOCAL LAW NO. 51 -2011, SUFFOLK COUNTY,
NEW YORK**

**A CHARTER LAW TO AUTHORIZE THE USE OF
DEVELOPMENT RIGHTS FOR MUNICIPAL FIRE,
AMBULANCE AND POLICE DISTRICTS IN SUFFOLK
COUNTY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE
COUNTY OF SUFFOLK**, as follows:

Section 1. Legislative Intent.

This Legislature hereby finds and determines that the County's Save Open Space (SOS) and New Drinking Water Protection Program authorized the transfer of development rights from lands acquired under these programs for the purpose of providing workforce housing.

This Legislature also finds and determines that few of the development rights that have been banked under these programs have been utilized to create housing.

This Legislature further finds and determines that in addition to workforce housing, these development rights could be used to further other policy goals, including the creation and expansion of the facilities of municipal fire, ambulance and police districts.

This Legislature finds that municipal fire, ambulance and police districts need to expand periodically to meet the demand for increased services in growing districts, including the need to store new or additional equipment and personnel.

This Legislature determines that transferring development rights for municipal fire, ambulance and police districts would allow for the growth of these organizations, which provide vital services protecting the health and safety of the residents of Suffolk County.

Therefore, the purpose of this law is to amend Article XII of the SUFFOLK COUNTY CHARTER to authorize the transfer of development rights to promote the growth of municipal fire, ambulance and police districts.

Section 2. Amendment.

Section 12-2(A)(2)(c) of the SUFFOLK COUNTY CHARTER is hereby amended to read as follows:

(c) The County of Suffolk hereby reserves the right to dedicate and transfer development rights from land acquired under this law (exclusive of transactions involving farmland development rights, active parkland, hamlet parks, and historic parks), and hold for use for the [sole] purpose. § of providing workforce housing, as defined in Article XXXVI of the Suffolk County Administrative Code, or the creation and expansion of the facilities of municipal fire, ambulance or police districts. [pursuant to a program established by the Suffolk County Department of Planning and via subsequent duly enacted resolution of the County of Suffolk.] In each individual use or sale of such development rights for the purpose of providing workforce housing, such use or sale shall be subject to approval by duly enacted resolution of the County of Suffolk and shall be consistent with Resolution No. 412-2005, as amended. A program to govern the transfer of development rights for the creation or expansion of municipal fire, ambulance or police districts shall be established by the Department of Planning via subsequent duly enacted resolution of the County of Suffolk and each individual use or sale of development rights for these purposes shall be subject to approval by duly enacted resolution of the County of Suffolk.

Section 3. Applicability.

This law shall apply to development rights that are derived from land acquisitions occurring on or after the effective date of this law.

Section 4. Severability.

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

Section 5. SEQRA Determination.

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

Section 6. Form of Proposition.

The question to be submitted to the electorate pursuant to Section 7 of this law shall read as follows:

Shall Resolution No. -2011, Adopting A Charter Law to Authorize the Use of Development Rights for Municipal Emergency, Fire and Public Safety Corporations, Be Approved?


Section 7. Effective Date.

This law shall not take effect until the first day of the first calendar year after its approval by the affirmative vote of a majority of the qualified electors of the County of Suffolk voting upon a proposition for its approval in conformity with the provisions of Section 34 of the NEW YORK MUNICIPAL HOME RULE LAW.

[] Brackets denote deletion of existing language.

___ Underlining denotes addition of new language.

DATED: October 11, 2011
APPROVED BY:


County Executive of Suffolk County

Date: **NOV 10 2011**

After a public hearing duly held on October 25, 2011
Filed with the Secretary of State on December 28,
2011

**SUFFOLK COUNTY
TAX DEFAULT DEVELOPMENT RIGHT
TRANSFER PROGRAM**

**A DEVELOPMENT RIGHT TRANSFER PROGRAM
TO SUPPORT SUSTAINED ECONOMIC DEVELOPMENT
IN SUFFOLK COUNTY**

Prepared by:

**Suffolk County Department of
Economic Development and Planning**

DRAFT

**March
2013**

Suffolk County Department of Economic Development and Planning

Joanne Minieri
Deputy County Executive and Commissioner

Vanessa Pugh
Deputy Commissioner

Division of Planning and Environment

Sarah Lansdale
Director

Andrew Freleng
Chief Planner

Peter Lambert
Principal Planner

Ted Klein
Senior Planner

Christine DeSalvo
Senior Clerk

Andrew Amakawa
Research Technician

SUFFOLK COUNTY TAX DEFAULT DEVELOPMENT RIGHT TRANSFER PROGRAM

TABLE OF CONTENTS

INTRODUCTION	1
STEP ONE: Creating the Tax Default Development Right Credits	
Overview – Figure 1	4
Action by the Legislature	5
Calculation of Yield for Tax Default Development Rights (TDDRs)	6
STEP TWO: Creating the TDDR Registry and Banking the Tax Default Development Right Credits	
Overview	9
Suffolk County Tax Default Development Right Credit Transfer Program Registry (TDDR Registry)	9
Annual Report	10
STEP THREE: Using the Tax Default Development Right	
Overview	11
General Policies Regarding the Use of Tax Default Development Rights	11
Starting the Use Process	12
Division of Planning and Environment TDDR Utilization Analysis Report	13
Authorized Use by the Commissioner of Economic Development and Planning	13
Utilization Rating System – Figure 2	14
Flow Charts	15

Introduction

When a property owner fails to pay property tax, the parcel in tax default is eventually transferred to Suffolk County ownership. These properties are the subject of this transfer of development rights program. The tax defaulted parcels targeted for this program will be transferred into the Suffolk County parks inventory, or conveyed (sold) to local municipalities for open space purposes pursuant to Section 72-h of the New York State General Municipal Law. The development rights for each of these parcels will be calculated, banked, and then made available for transfer for certain economic development projects.

This report contains a proposed procedure that will allow for a transfer of development right (TDR) program related to the separation of development credits from these tax defaulted parcels. This program was developed in consultation with the Suffolk County Departments of Health Services, Law, Economic Development and Planning, and Parks Recreation and Conservation. It is a new three step process that builds upon existing County practices and policy.

Figure 1 – Three Steps of the Suffolk County Tax Default Development Right Transfer Program

1	CREATE CREDITS Credits are calculated and collected as tax defaulted parcels are either transferred into the Suffolk County parks inventory or conveyed from the County to the local municipality for open space purposes (pursuant to Section 72-h of NYS GML).
2	BANK CREDITS Credits will be recorded and held in a designated credit bank (database) for future use.
3	USE CREDITS Certain economic development projects are evaluated using established guidelines, including groundwater management requirements, and proximity to economic development zones, downtowns, and public transportation. Credits can only be used when a receiving site meets criteria.

The program is described in greater detail in the following three sections of this report and a flowchart of the proposed process is located in the Appendix.

The purpose of this report is to provide a policy framework by which development rights that are severed from tax default parcels (that are to be transferred into the parks inventory or conveyed to the local municipality as open space) can be banked and later utilized to contribute to economic development projects that are considered beneficial to the community. These development right credits can be transferred elsewhere for economic development purposes. The specific **goals of the program** are to:

1. Reduce sprawl;
2. Revitalize downtowns;
3. Encourage desirable economic development and community development projects;
4. Facilitate Connect Long Island, Bus Rapid Transit (BRT), Transit Oriented Development (TOD), and innovation zones;
5. Create affordable workforce housing as defined in Article 36 of the Suffolk County Administrative Code; and
6. Continue or expand groundwater preservation initiatives.

The Tax Default Development Right Transfer Program advances these goals because the program will result in no net increase to density; the tax defaulted parcels will be preserved as open space under the stewardship of the Suffolk County Department of Parks, Recreation and Conservation or local municipalities; and their future development potential can be directed to the most appropriate locations in the County for housing and other economic development and community development projects.

The use of development rights generated from this program shall result in no net increase in the overall density of housing nor any additional generation of wastewater flow, compared to what would occur if the tax defaulted property were to be developed as of right.

The development right that is removed from a tax defaulted parcel owned by the County shall be referred to as a Tax Default Development Right (TDDR). Development rights may be transferred to receiving parcels only under certain conditions. These conditions will ensure the preservation of environmentally sensitive lands and the protection of groundwater and surface waters, while adding to the economic development potential within the County.

Step one of this three step process establishes the mechanism by which the potential development yield (number of credits) become TDDRs. The focus of *step two* is Banking TDDRs and provides the process to create a registry database for holding the credits until they are used. *Step three* of the process focuses on Use of the TDDR and the process by which a TDDR can be utilized in a development project. These steps are described in detail in the following sections of this report.

Step One: Creating Tax Default Development Right Credits

Overview

Suffolk County owned tax defaulted properties that are determined to be surplus will either be sold at auction, transferred into the County parks inventory, or conveyed (sold) to the local municipality for open space purposes at the request of the local municipality, pursuant to Section 72-h of the New York State General Municipal Law. Only those tax defaulted properties transferred into County parks or conveyed to the local municipality for open space purposes (not those sold at auction) will be discussed in this report.

Pursuant to New York State General Municipal Law 72-h, the local municipality passes its own resolution to acquire a tax default parcel owned by the County. The municipality must be willing to acquire the parcel for open space purposes only, and compensate the County for its investment in the parcel (unpaid real estate taxes and expenditure of money and resources).

The transfer of a parcel of land to the Suffolk County Parks Department or conveyance of a parcel of land to the local municipality for open space purposes requires legislative authorization. The County resolution must indicate, with the local municipality's understanding, that the parcel is permanently sterilized and cannot be developed, and its development rights have been severed. The resolution will also authorize the calculation of Tax Default Development Rights (TDDRs) and the placement of the resulting TDDRs in the Suffolk County Tax Default Development Right Transfer Program Registry (TDDR Registry). The resolution must be approved by both the Legislature and the County Executive.

If the tax defaulted parcel(s) are to be transferred from the Division of Real Property Acquisition and Management into the County parks inventory or conveyed for open space to the municipality in which the parcel is situated, the parcel(s) must be analyzed prior to the time of their transfer or conveyance to determine the number of TDDRs that can be transferred from the property to be utilized elsewhere for economic development purposes. The number of TDDRs from these parcels will be determined by the Division of Planning and Environment in consultation with the Department of Health Services and the Department of Parks, Recreation and Conservation. The number of TDDRs will be calculated in conformance with the Article 6 Sanitary Code requirements.

Action by the Legislature

A parcel in tax default is referred by the Division of Real Property Acquisition and Management to the Division of Planning and Environment (DPE) for a recommendation for the disposition of the property. If the property is recommended for a transfer to the County parks inventory, this recommendation is prepared into a resolution that is sent as a request to the County Executive, who would then authorize the County Division of Real Property Acquisition and Management to begin the development right removal process prior to transfer. This resolution is introduced by the County Executive and approved by the County Legislature's Parks Committee which would authorize the transfer and order that the property's development rights be severed, in order to make them available for transfer elsewhere.

If the parcel is recommended for conveyance pursuant to Section 72-h of the NYS General Municipal Law, then the County Legislature's Ways and Means Committee would authorize the conveyance. The local municipality adopts its own resolution to acquire the parcel(s) of tax defaulted land from the County by a resolution introduced to the local Town Board. After approval, this resolution is sent as a request to the County Executive, who would then authorize the County Division of Real Property Acquisition and Management to begin the development right removal process and to commence negotiations for reimbursement of the County's investment in the parcel.

Whichever the disposition of the tax defaulted property, the Division of Real Property Acquisition and Management would request that the **Division of Planning and Environment analyze the potential TDDR yield from the parcel** included in the resolution. (Prior to requesting review by the Division of Planning and Environment for the analysis of their TDDR yield calculation, the Division of Real Property Acquisition and Management should verify with absolute certainty that the development rights remain intact and that these parcel(s) have not already been sterilized for development.)

This resolution will then become the basis for the Tax Default Development Right Transfer Program Registry in the Division of Planning and Environment for the subject parcel. The following is suggested language:

Whereas, Resolution No. ____-2013 entitled the *Tax Default Development Right Transfer Program* authorizes the removal of development rights from the County's inventory of tax defaulted parcels for the purposes of economic development;

Resolved, that the Director of the Division of Planning and Environment, in consultation with the Department of Health Services, is authorized to interpret and report the number of TDDRs that may be yielded from the tax defaulted property in accordance with Suffolk County Resolution ____-2013;

Calculation of Yield for Tax Default Development Rights (TDDRs)

Many TDR programs already exist throughout Suffolk County and at the town and village level to balance environmental preservation with sustainable development and smart growth. As a tool to mitigate private sector development impacts, the Suffolk County Department of Health Services allows the sterilization of property for the transfer of wastewater credit (a form of

development right) to a receiving parcel in need of variance relief from New York State and Suffolk County health regulations.

To determine development right yield, the Department of Health Services currently accepts either a yield map or a mathematical yield calculation from a project applicant. Development yield is the number of housing units or economic units (building square footage) that can be legally built on a parcel of land. Each housing or economic unit is equal to one development right or a certain number of gallons of wastewater flow generated from a proposed use. For the purpose of this program, it is reasonable to assume that tax defaulted parcels that will be subject to this program will be vacant land (or as if vacant), and therefore analyzed on a square foot basis.

A yield map is a scale map which depicts roadways, solutions to drainage, environmentally sensitive and other unbuildable areas, and ultimately buildable areas. The yield map is typically based on local zoning and sanitary code requirements, particularly minimum lot area and dimensional setback requirements. The yield map is the most detailed depiction of the total number of possible building lots and their configuration.

In the absence of a yield map, the yield calculation of a parcel will be based on the Department of Health Services Article 6 Sanitary Code requirements of the Groundwater Management Zone in which the parcel is located. This mathematical yield calculation assumes that 25% of each subject parcel will be utilized for roadways and drainage. Yield is then calculated on the remaining 75% of the land available for development, but the calculation further excludes areas considered to be environmentally sensitive or unbuildable, and excludes areas that may be utilized by the Department of Parks, Recreation and Conservation for restrooms, parking, and other improvements.

As a general rule, a parcel held under single and separate ownership that is at least 5,000 square feet in size is the threshold for a parcel to be considered buildable by the Department of Health Services and therefore equivalent to a full development right credit. This is usually the case when the parcel meets most local zoning requirements, vehicular access and utilities are readily available to support development, and the parcel is surrounded by development of other similarly sized parcels.

The Department of Health Services has also approved fractions of a credit when deemed by the Department's Board of Review to be reasonable and appropriate. In certain cases, a parcel of land may be approved to transfer (send) a fraction of a full development right credit to another (receiving) parcel. Generally, 0.10 of a credit is the smallest fractional development right credit that could be created and sent to another parcel. Based on the full credit benchmark having an equivalent of 300 gallons wastewater, a parcel that was analyzed to yield 0.10 credits would equal 30 gallons of wastewater credit that in turn would be available for transfer to another parcel to satisfy Article 6 Sanitary Code requirements within that Groundwater Management Zone. Depending on the size of the parcel and its Groundwater Management Zone location, the yield calculation would be based on the same underlying assumptions.

The Department of Health Services will approve the method and assumptions utilized to calculate the yield of a tax default parcel. When calculating the allowable number of development right credits that are to be severed from tax defaulted properties, the Division of Planning and Environment staff will utilize the Department of Health Services' requirements and

procedures for review. Unless local zoning is more restrictive on yields, the Groundwater Management Zone requirements are the deciding factor in the calculation of yield with respect to creation of TDDRs. The Division of Planning and Environment would consult a prepared yield map or sketch that is in accordance with the Groundwater Management Zone requirements for the parcel that demonstrates the potential yield of TDDRs, if such a map is provided or made available.

The use of development rights generated from this program shall result in no net increase in the overall density of housing nor any additional generation of wastewater flow, compared to what would occur if the tax defaulted property were to be developed as of right.

Authorizing Resolution (Action by the Legislature)

The transfer or conveyance (sale) of a parcel of land by the County is subject to the approval of the County Legislature and the County Executive. Following deliberation by the Legislature, the County Executive then offers final approval or disapproval subject to override by the Legislature. An approval is in the form of an authorizing resolution. **In accordance with the Suffolk County Tax Default Development Right Credit Transfer Program, the authorizing resolution should be amended** and may read as follows:

Resolved, that as this property is not to be developed and is being sterilized through the *Tax Default Development Right Transfer Program* in accordance with Suffolk County Resolution ___ of 2013, ___ (the number of) TDDRs shall be removed and placed in the Suffolk County Tax Default Development Right Transfer Program Registry pursuant to the Tax Default Development Right Transfer Program as developed by the Division of Planning and Environment and approved by the County Legislature and the County Executive.

The parcel, whether transferred to the County parks inventory or conveyed via a 72-h sale to a municipality, will then be permanently sterilized by a legal covenant and must remain as open space. Language shall be added to the deed indicating that the property was sterilized in accordance with a specified Suffolk County Resolution and that the development rights were severed for economic development purposes. The number of such rights shall be indicated. The Authorizing Resolution becomes the basis for TDDR file creation and tracking.

Step Two: Creating the TDDR Registry and Banking Tax Default Development Right Credits

Overview

Because TDDRs will be relatively rare and their number will be finite, they will be a valued asset. Such an asset must be monitored and the process by which TDDRs are banked must be accountable. The Tax Default Development Right Transfer Program will be administered by the Division of Planning and Environment and the Division will be responsible for the accounting of the pool of TDDRs and their tracking. The TDDR credits will be deposited in the Suffolk County Tax Default Development Right Transfer Program Registry (TDDR Registry).

Suffolk County Tax Default Development Right Transfer Program Registry (TDDR Registry)

The TDDR Registry will be kept separate from any other development rights program administered by or participated in by the Suffolk County. A detailed spreadsheet will be established and maintained by the Division of Planning and Environment to track TDDRs from their creation from tax defaulted properties to their utilization for economic development. The table below lists the information the spreadsheet will contain for properties yielding (sending) or utilizing (receiving) TDDRs. The information contained in the spreadsheet can be analyzed or sorted by any category, including Legislative District, School District, or Groundwater Management Zone. The spreadsheet will be backed up both electronically and by hard copy files that will be maintained by the Division of Planning and Environment.

The Suffolk County Tax Default Development Right Transfer Program Registry will include the following information:

For each tax default (sending) parcel:

- Suffolk County Tax Map Number
- Area of parcel in acres
- Town and hamlet or incorporated village
- Name of road fronting the parcel
- School District
- Legislative District
- Groundwater Management Zone
- Special Groundwater Protection Area (if applicable)
- Number of Tax Default Development Rights generated by the parcel
- Authorizing resolution number
- Department file number

For each receiving parcel:

- Name of property owner
- Project name (if any)
- Suffolk County Tax Map Number
- Area of parcel in acres
- Town and hamlet or incorporated village
- Name of road fronting the parcel
- School District
- Legislative District
- Groundwater Management Zone
- Special Groundwater Protection Area (if applicable)
- Project type (subdivision, condominium, planned unit development, downtown revitalization or economic development project)
- Local zoning of parcel at the time of the authorizing resolution
- As-of-right yield
- Additional number of units or square footage
- Number of Tax Default Development Rights to be retired in project
- Authorizing resolution number
- Department file number

Annual Report

The Department of Economic Development and Planning will produce an annual report detailing the activities of banked TDDRs. The report will account for all of the development rights created and utilized both annually and cumulatively. A list of all of the pertinent information relative to transactions of the County with respect to the creation and use of the TDDRs will be included in the report. The report will be provided to the offices of the Suffolk County Executive and the Suffolk County Legislature.

Step Three: Using Tax Default Development Right Credits

Overview

Suffolk County has a comprehensive policy to enable the County to provide economic development opportunities within the County through its own programs and through local municipalities. The use of development right credits generated from this program is one of several economic development programs the County can use to facilitate economic development projects in the County.

Requests to utilize TDDRs for economic development projects are directed to the Department of Economic Development and Planning. After consultation with the Suffolk County Department of Health Services (Division of Wastewater Management), the Division of Real Property Acquisition and Management, and the Division of Planning and Environment, the Commissioner of Economic Development and Planning prepares an authorizing resolution on behalf of the County Executive for adoption by the Legislature.

Request to the Commissioner of Economic Development and Planning

Requests to utilize (retire) a TDDR shall be formally made to the Office of the Commissioner of Economic Development and Planning. The Commissioner will review the request and consult with the appropriate agencies before authorizing the use. Upon receipt of a request to utilize a TDDR, the Commissioner will forward the request and any preliminary analysis and comments to the Division of Planning and Environment, which will then prepare a TDDR Utilization Analysis Report.

Division of Planning and Environment TDDR Utilization Analysis Report

For the initial stages of the program, TDDRs should be utilized within a Groundwater Management Zone and within a Town only. Utilization of TDDRs between Groundwater Management Zones or between Towns may require the consent of other jurisdictions.

This program was established specifically to contribute to economic development projects that are considered beneficial to the community. A proposed development requesting utilization of TDDRs must provide economic development or community benefits. In reviewing potential TDDR project uses, **the project must provide at least one of the following benefits:**

1. TDDRs may be used toward the development of certain economic development projects that provide a community benefit.
2. TDDRs may be used to facilitate County policies relating to “Connect Long Island”
3. TDDRs may be used to facilitate Bus Rapid Transit (BRT) initiatives.
4. TDDRs may be used to facilitate Transit Oriented Design (TOD).

5. TDDRs may be used to facilitate Innovation Zones as determined by the Suffolk County Industrial Development Agency (SCIDA) or the Department of Economic Development and Planning.
6. TDDRs may be used to facilitate Smart Growth and Sustainability projects.

The Division of Planning and Environment then reviews the utilization (retirement) of a TDDR based upon the principles of good planning, including Smart Growth. The fundamental premise of Smart Growth is to reduce development sprawl and to promote development where existing infrastructure and services (streets, public water, and other utilities) exist.

Development proposals that meet at least one of the six requirements outlined above will undergo a second screening by the Division of Planning and Environment using the TDDR Rating System. This rating system has been established to evaluate a proposed development that is requesting the utilization of TDDRs. The rating system awards points depending on the characteristics of the proposed development. The TDDR Rating System, displayed in Figure 2, will enable the rating and ranking of requests to utilize TDDRs.

Priority shall be given to projects that are:

- **Within an existing downtown**
- **In designated nodes of retail/commercial corridors, existing retail centers, hamlet centers**
- **On infill parcels and previously developed properties**
- **In areas targeted for mixed-use development or redevelopment such as Transit Oriented Development (TOD) or Traditional Neighborhood Development (TND)**
- **Economic development projects facilitating the policy of Connect Long Island through Bus Rapid Transit (BRT) and Innovation Zones.**

Development proposal requests achieving a passing grade would be approved for the utilization of TDDRs. In the eventuality that demand for TDDRs exceeds the supply, the limitation on available rights would necessitate awarding rights by grade as TDDRs become available.

Authorization of Use of TDDRs by the Commissioner of Economic Development and Planning

Upon considering reports by the SCDHS and the SCDPE the Commissioner of Economic Development and Planning shall authorize in writing the release of TDDRs from the database and authorize use with the designated Economic Development project.

**Figure 2. SUFFOLK COUNTY TAX DEFAULT DEVELOPMENT RIGHT CREDIT
RATING SYSTEM**

Municipal Considerations – 20 points

- 2 The local municipality's permit process is predictable and streamlined.
- 2 The local municipality will expedite permitting of the development proposal consistent with a Smart Growth plan.
- 4 The local municipality's permit process encourages community and stakeholder collaboration in development decisions.
- 4 The project developer has demonstrated community support.
- 4 The proposed use will strengthen the local economy.
- 4 At least twenty percent (20%) of the proposed residential units are workforce/affordable units.

Site Attributes – 20 points

- 4 The proposed site can adequately accommodate the proposed use in terms of buildings, parking, waste disposal systems, landscaping, and natural areas.
- 4 The proposed use will not adversely affect any environmentally sensitive natural habitats such as wetlands and watercourses nor impact any endangered or threatened species or ecological communities nor create a significant adverse impact to the environment in any other manner.
- 4 The proposed use will provide on-site amenities including recreational and/or social facilities.
- 4 The proposed use channels development into areas that are already disturbed.
- 4 The site is located within one-half mile of a hamlet center or downtown center.

Protection of Community Character and Appearance – 10 points

- 5 The proposed use includes an architectural and site design that is in context with the community.
 - 5 The proposed use provides for the preservation of important historic and cultural features.

Compatibility of Uses – 20 points

- 4 The proposed use has an appropriate or compatible scale compared to the immediate area.
- 4 The proposed use has compatibility of height with abutting facades.
- 4 The proposed use will cause an improved sense of community.
- 4 The proposed uses within the site are compatible where multiple uses are proposed.
- 4 The proposed use is an adaptive reuse of an abandoned or underutilized property.

Transportation - 20

- 2 The proposed use is within 2 miles of a Suffolk County Transit bus stop or LIRR train station.
- 2 The proposed use is consistent with a transit node/station area plan or the like.
- 2 The proposed use provides facilities with bus to rail transfers.
- 2 The proposed use has buildings oriented to a pedestrian network.
- 2 The internal circulation network includes multiple connections to adjacent land uses without the necessity to enter onto the major traffic arteries.
- 2 The proposed use provides networks for pedestrians and bicyclists at a level comparable to the network for motorists with shortcuts and alternatives to travel along high volume streets.
- 2 The proposed use provides for sufficient, but not excessive, motor vehicle parking.
- 2 The proposed use includes a decrease or stabilizing of traffic congestion.
- 2 The proposed use would result in a reduction in auto dependency.
- 2 The proposed use would encourage staggered work hours, facilitate car/van pooling or other employee commute options.

Connect Long Island – 10

- 5 The proposed use is located within one-half mile of a BRT station.
- 5 The proposed use is located within an Innovation Zone.

Total

Score:

Comments:

DRAFT

AF08/09/2013

Intro. Res. No. 0000-2013

Laid on the Table 00/00/2013

Introduced by Presiding Officer, on request of County Executive

Resolution No. -2013 To Establish a Suffolk County Tax Default Development Right Transfer Program to Support Open Space Preservation and Sustained Economic Development in Suffolk County

WHEREAS, Suffolk County's investment in preserving one of its most valued resources, its natural environment, by acquiring Pine Barrens, wetlands, beaches, open space, parkland, and other environmentally sensitive undeveloped lands has made Suffolk County one of the most desirable places to live because of the impact from such acquisitions on the aesthetics and quality of life in Suffolk County; and

WHEREAS, tax defaulted properties are parcels of land acquired by the County Treasurer for non-payment of real estate tax and transferred from the Suffolk County Treasurer to the County of Suffolk; and

WHEREAS, many of Suffolk County owned tax defaulted properties that are determined to be surplus will either be sold at auction to the public, transferred into the County parks inventory, or conveyed (sold) to the local municipality pursuant to Section 72-h of the New York State General Municipal Law; and

WHEREAS, Transfer of Development Rights (TDR) is a land use management tool that can utilize private market forces to accomplish two objectives. First, preserve open space; lands targeted for preservation (for such purposes as drinking water protection, agricultural, habitat, recreational, or other purposes) can have some or all of the development potential that would otherwise have occurred in these sensitive places transferred to more suitable locations and therefor is permanently protected. Second, promote economic development; other locations, such as downtowns, vacant infill parcels and underutilized properties, can benefit from an increase in density, become more vibrant and economically more successful as the development potential from the preserved open space areas is transferred to them; and

WHEREAS, the TDR tool can promote and facilitate County Executive and Legislative objectives on economic development, job creation and open space preservation by enabling compliance with the Suffolk County Sanitary Code Article 6 standards up to double density without cost prohibitive wastewater treatment improvements; using private funding for land preservation of sensitive environmental areas; being voluntary in the sense that landowners are never required to sell the development rights; and by allowing development rights owned by the County to be sold and/or transferred by the County for economic development purposes and allowing any funds generated to be used for additional open space preservation; and

WHEREAS, the Transfer of Development Rights by the County provides a mechanism to maximize the public benefit of open space preservation by allowing the development rights on lands acquired through Tax Default to be used to promote another intended public benefit, economic development; and

WHEREAS, the Department of Economic Development and Planning has prepared the, ***Suffolk County Tax Default Development Right Program-A Development Right Transfer Program to Support Sustained Economic Development in Suffolk County (March 2013)*** attached hereto as “Exhibit A” outlining the mechanism by which the potential development of a parcel of land becomes a TDDR (Tax Default Development Right) credit and then a program to make available for transfer the development rights or credits of tax defaulted parcels of land; now therefore be it

1st **RESOLVED**, the Suffolk County Executive in consultation with the Legislature accepts and approves the ***Suffolk County Tax Default Development Right Program-A Development Right Transfer Program to Support Sustained Economic Development in Suffolk County (March 2013)*** prepared by the Suffolk County Department of Economic Development and Planning, attached hereto as “Exhibit A” and made part of this resolution. This new program incorporates procedures deemed necessary for effective and proper open space preservation and economic development; and be it further

2nd **RESOLVED**, the tax defaulted parcels targeted for this program are those to be transferred into County Parks inventory, or conveyed (sold) to local municipalities for open space purposes pursuant to Section 72-h of the New York State General Municipal Law. The development rights for each of these parcels will be calculated, banked and then be made available for transfer for certain economic development projects in accordance with the ***Suffolk County Tax Default Development Right Program (March 2013)*** as prepared by the Suffolk County Department of Economic Development and Planning; and be it further

3rd **RESOLVED**, the use of development rights generated from this program shall result in a no net increase (one-to-one reuse of transferrable development rights) and/or the generation of more wastewater flow as compared to that which would occur if the tax defaulted property were to be built as of right; and be it further

4th **RESOLVED**, TDDRs (Tax Default Development Rights) are established for the purpose of creating open space and contributing to economic development projects that are considered beneficial to the community by increasing the intensity of a permitted use on a particular property via transferring additional development rights (TDDRs) while remaining in compliance with Article 6 Sanitary Code standards for its respective Groundwater Management Zone; and be it further

5th **RESOLVED**, the County of Suffolk hereby reserves the right to dedicate and transfer development rights from land acquired via tax default (exclusive of transactions involving farmland development rights), and hold for use for the sole purpose of providing economic development as defined herein; pursuant to a program established by the Suffolk County Department of Economic Development and Planning and via subsequent duly enacted Resolution of the County of Suffolk. In each individual use or sale of such development rights, such use or sale shall be subject to approval by duly enacted Resolution of the County of Suffolk; and be it further

6th **RESOLVED**, development rights that are severed from tax default parcels to be transferred into parks inventory or conveyed to the local municipality as open space, shall be used in a manner consistent with the following economic development or environmental purposes:

1. Enhancing regional planning and facilitate Connect Long Island, BRT, TOD and Innovation Zones;
2. Continuing and/or expanding groundwater protection initiatives;
3. Reducing sprawl

4. Revitalizing downtowns;
5. Contributing to economic/community development projects;
6. Creating affordable workforce housing as defined in Article 36 of the Suffolk County Administrative Code; and
7. Facilitating Smart Growth and Sustainability projects;

and be it further

7th **RESOLVED**, the management, administration and day-to-day supervision of this program shall be provided by the Division of Real Estate, in the Suffolk County Department of Economic Development and Planning, which shall coordinate with the Division of Planning and Environment and the Suffolk County Department of Health Services and be responsible for maintaining the official records of land acquisitions consummated and moneys received pursuant to each of the TDDR transactions; and be it further

8th **RESOLVED**, that Suffolk County, being the State Environmental Quality Review Act (SEQRA) Lead Agency hereby finds and determines that the adoption of this resolution constitutes a Type II Action pursuant to Title 6 NYCRR Part 617.5(C) (20) & (27) as this legislative decision involves routine or continuing agency administration and management. As such, this Legislature has no further responsibilities under SEQRA.

Model Transfer of Development Rights (TDR) Municipal Local Law

LOCAL LAW NO. ____ YEAR 2014, (MUNICIPAL ENTITY)

A LOCAL LAW ESTABLISHING A NEW CHAPTER OF THE (MUNICIPAL ENTITY) CODE ENTITLED “COMPREHENSIVE TRANSFER OF DEVELOPMENT RIGHTS PROGRAM”;

BE IT ENACTED BY THE (MUNICIPAL ENTITY) LEGISLATURE OF THE (MUNICIPAL ENTITY), as follows:

Section One (1). Amendment.

1. A new Chapter entitled “Comprehensive Transfer of Development Rights Program”; is hereby enacted to read as follows:

**CHAPTER 0000
COMPREHENSIVE TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**

Section 0000-1 Legislative Intent.

- A. The Legislature previously determined that the potential loss of rural, agricultural, and forested lands, open space, and natural resources (such as potable water, natural habitats and recreational lands), location and sufficiency of affordable housing, emergency services (including facilities therefor), economic development including the strategic location of business, commercial and industrial uses based upon availability of public utilities and infrastructure to serve same, and the beneficial uses of tax delinquent properties are all of legitimate public interest and concern. This has led to creative approaches to preserving these important lands and the determination that creation of certain transfer of development rights would be of benefit to the (Municipal Entity), towns and villages within the (Municipal Entity), and its residents. At this time the Legislature further finds that a general comprehensive transfer of development rights legislative scheme with a marketplace funded by the private sector would assist in preserving all of the foregoing interests, promoting economic development in downtown areas and transit hubs, creating and preserving affordable housing, emergency services facilities, and enabling otherwise restricted landowners of open lands to sell their development potential and receive fair compensation, thus permitting developers to transfer additional development rights to another project site.

- B. The Transfer of Development Rights, (defined at Section 0000-2 of this local law), is a land use management tool that can utilize private market forces to accomplish the objective of preserving open space targeted for preservation for such purposes as drinking water protection, agricultural, habitat, recreational, or other purposes), and can have some or all of the development potential that would otherwise have occurred in these sensitive places transferred to more suitable locations and therefore allow such sensitive locations to be permanently protected. Transfer Development Rights also promote economic development. Other locations, such as downtowns, vacant infill parcels and underutilized properties, can benefit from an increase in density, become more vibrant and economically more successful as the development potential from the preserved open space areas is transferred to them.
- C. A Transfer of Development Rights regulatory scheme can also promote and facilitate compliance with the (Municipal Entity) Sanitary Code standards without cost prohibitive wastewater treatment improvements; using private funding for land preservation of sensitive environmental areas;
- D. The Transfer of Development Rights Program contemplated herein is a market-based exchange mechanism funded by the private sector that encourages the voluntary transfer of development rights from sending areas with lower population densities to receiving areas with higher population densities. When development rights are transferred through a Transfer of Development Rights exchange, permanent deed restrictions are placed on the Sending Area properties to ensure that the land will be used only for approved activities, activities that may include, for example, farming, forest management, conservation, or passive recreation. Additionally, in a transfer of development rights exchange, the costs of purchasing the recorded development restrictions are borne by the developers who receive the transferred right in the form of a development building credit or bonus to be used in the Receiving Area.
- E. The Legislature has previously established specific transfer of development rights programs for the transfer of workforce housing development rights (Chapter XYZ of the (Municipal Entity) Code, for municipal emergency service facilities/districts (Local Law No. ABC), and at this time is considering a tax default development right transfer program to support open space preservation and sustained economic development by (Municipal Entity) purchase of selected tax delinquent properties, together with a transfer of development rights/waste water credit program to address wastewater treatment capacity issues.
- F. In addition, the legislature finds that such comprehensive program for the transfer of development rights as contemplated affect and benefit various types of properties and uses now or soon to be in operation and, as such, may absorb and assume administration of the programs highly utilized and may require special administration expertise and require extraordinary staffing needs.

- G. Villages and towns that elect to participate in this Transfer of Development Rights Program are encouraged to adopt comprehensive planning policies and development regulations to implement this program.
- H. Participation in this Transfer of Development Rights Program by all villages and towns is intended to be effected as smoothly as possible. Therefore, the Legislature has determined, as sound public policy, to build upon the existing (Municipal Entity) (aforementioned) and any other government transfer of development rights programs, pilot projects, and private initiatives that foster effective use of transferred development rights, through the creation of a market-based program that focus on the entire (Municipal Entity) region. The (Municipal Entity) Transfer of Development Rights Program shall be voluntary, and incentive-driven. And although separate, the program should also be compatible with existing local transfer of development rights programs.

Section 0000-2 Definitions

The definitions in this section 0000-2 apply throughout this Chapter unless the context clearly requires otherwise:

- A. “Department” shall mean the Division of the (Municipal Entity) which shall coordinate with the Divisions of Planning, Environment and the (Municipal Entity) Department of Health Services. Amongst other duties the Department shall be responsible for maintaining the official records of land acquisitions consummated and moneys received pursuant to each of the Transfer of Development Rights transactions.
- B. “Nongovernmental Entities” shall mean nonprofit or membership organizations with interest, experience and /or expertise in transfer of development rights, transfer of development rights programs or comparable experience and/or expertise. This shall include, without limitation, any not for profit corporation formed under Section 1411 of the Not for Profit Corporation law.
- C. “Receiving Area Ratio” shall mean the number of character of development rights that are transferred to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential or commercial density, additional building height, additional commercial floor area, or to meet other regulatory requirements.
- D. “Receiving Area” shall mean land within and designated by a village or town in which transferable development rights from the (Municipal Entity) program established by this Chapter may be used.
- E. “Sending Area” shall mean those lands within a town or village with the characteristics described at Section 0000-5, and from which certain or all development rights are transferred.

- F. “Sending Area Ratio” shall mean the number of development rights that a Sending Area landowner can transfer per acre.
- G. “Transfer of Development Rights” shall include methods for protecting land from development by voluntarily removing all of a specified part of the development rights from a Sending Area and transferring them to a Receiving Area for the purpose of increasing development density or intensity in the receiving area.
- H. “Transfer of Development Rights Program” or “(Municipal Entity) Program” or “(Municipal Entity) Transfer of Development Rights Program” shall mean the (Municipal Entity) Transfer Rights Program established hereunder in (Municipal Entity), including all villages and towns within (Municipal Entity).
- I. “Transferrable Development Right” shall mean a right to develop one or more residential or commercial units in a sending area that can be transferred for use consistent with a Receiving Area Ratio adopted for development in a designated Receiving Area consistent with the (Municipal Entity) Program.

Section 0000-3 Transfer of Development Rights Program.

- A. Subject to the availability of amounts appropriated or otherwise received for this specific purpose the Department shall fund a process to develop a Transfer of development Rights Program consistent with this Chapter and that:
 - 1) Encourages all villages and towns within the (Municipal Entity) to participate in the development and implementation of (Municipal Entity) framework and mechanisms that can make their, as well as the (Municipal Entity)’s, respective transfer of development rights programs viable and successful. The Department shall encourage and embrace the efforts of any villages and towns to develop local transfer of development rights programs. In fulfilling the requirements of this Chapter, the Department, shall subject to duly enacted resolution of the Legislature develop a process that satisfies the requirements of this Chapter. In the development of a process to create a Transfer of Development Rights Program, the Department, subject to duly enacted resolution of the legislature, shall develop policies to discourage, or prohibit if necessary, the Transfer of Development Rights from a Sending Area that would negatively impact the future economic viability of the Sending or intended Receiving area.
 - 2) Permits the Department to utilize recommendations of the interested local governments, relevant Nongovernmental Entities, and the Legislature to develop recommendations and strategies for a (Municipal Entity) Transfer of Development Rights marketplace with supporting strategies for financing infrastructure and conversation that represents the consensus agreement of the governmental and such nongovernmental parties engaged in the process of agreement between the parties cannot be reached, the Department shall make

recommendations to the Legislature that seek to balance the needs and interests of the interested governmental and nongovernmental parties. The Department may require expertise to accomplish any of the following tasks. Recommendations developed under this subsection must:

- a) Identify opportunities for villages and towns to achieve significant benefits through using Transfer of Development Rights Programs and the value in modifying the criteria by which its capital budget funds are allocated, including but not limited to, the existing state grant programs to provide incentives for local governments in implement Transfer of Development Rights Programs.
- b) Address challenges to the creation of an efficient and transparent Transfer of Development Rights market, including the creation of a (Municipal Entity) administered and publically accessible database of Sending and Receiving Areas and transactions. A Transfer of Development Rights bank, brokerage, and/or direct buyer-seller exchange should be established with local government units.
- c) Address the usual issues of uncertainty to buyers and sellers of development rights. Address and educate as to the long-term environmental benefits and the perceived inequities in land values and the permitting processes.
- d) Address the means for assuring that appropriate values are recognized and updated, as well as specifically addressing the need to maintain the quality of life in receiving neighborhoods and the protection of environmental values over time.
- e) Identify opportunities and challenges that, if resolved, would result in villages and towns throughout the (Municipal Entity) participating in a Transfer of Development Rights market.
- f) Compare the uses of a (Municipal Entity) Transfer of Development Rights Program to other existing land conservation strategies to protect rural and natural resource lands and implement growth management.
- g) Identify appropriate Sending Areas so as to protect future growth and economic development needs of the Sending Areas.
- h) Encourage, where possible, the standardization of floor area equivalents and a value or values of development rights. These need not be identical or “one-size fits all”, but can be established for certain areas by class or in a similar manner.

Section 0000-4 Program Established in (Municipal Entity).

- A. Subject to the availability of funds appropriated for this specific purpose or (an) other source(s) of funding made available for this specific purpose, the Department shall establish a Transfer of Development Rights program in (Municipal Entity), with a territory including all villages and towns within the (Municipal Entity). The program shall be guided by the Department's planning policies subject to duly enacted resolution of the legislature, and this Chapter.
- B. The purpose of the Program is to foster voluntary village and town participation in the Program so that interjurisdictional transfers can occur between villages and towns. Private transactions between buyers and sellers of transferable development rights are permitted and shall be encouraged under this program in fulfilling the requirements of this Chapter; the Department shall implement a program subject to a duly enacted resolution of the legislature.
- C. The Department shall encourage participation by all villages and towns in the program. The Program shall not be implemented in a manner that negatively impacts existing local programs. The Department shall encourage and work to enhance the efforts in any of these villages or towns to develop local Transfer of Development Rights programs or enhance existing programs.
- D. The Program shall be in addition to, but may absorb and administer as part of the Program, those existing or contemplated programs described at Section 0000-1E herein.
- E. Subject to the availability of funds appropriated for this specific purpose or another source of funding made available for this specific purpose, the Department shall do the following to implement the Transfer of Development Rights Program in (Municipal Entity):
 - 1) Offer technical assistance to villages, and towns planning for participation in the Transfer of Development Rights Program. The Department's technical assistance shall:
 - a) Include written guidance for local development and implementation of the (Municipal Entity) Transfer of Development Rights Program.
 - b) Include guidance for and encourage permitting or environmental review incentives for developers to participate. Such assistance may include, but not be limited to, provision for "by-right" or "shovel ready" permitting, generic environmental review of a subarea plan for the Receiving Area that includes the use of Transferable Development Rights, or adoption of categorical exemptions such as for infill densities in a Receiving Area.

- c) Provide guidance to villages, and towns to negotiate Receiving Area Ratios and foster private transactions.
 - d) Provide guidance and encourage planning for Receiving Areas that do not compete or conflict with comprehensive plan policies and development regulations that require or encourage affordable housing; and
 - e) Provide guidance and encourage planning for Receiving Areas that maximizes opportunities for economic development through the creation or retention of jobs
- 2) Work with villages and towns to inform elected officials, planning commissions, and the public regarding the (Municipal Entity) Transfer of Development Rights Program. The information provided by the Department shall discuss the importance and protection of rural, agricultural, and forested lands, open space, and natural resources and promoting economic development and affordable housing.
 - 3) Based on information provided by the villages and towns, post on website information regarding Transfer of Development Rights transactions and a list of interested buyers and sellers of Transferable Development Rights.
 - 4) Coordinate with and provide resources to state and local agencies and stakeholders to provide public outreach.

Section 0000-5. Designation of Sending and Receiving Areas – Inclusion of Certain Lands in Programs for Agricultural or Forest Land Conservation.

- A. Villages and towns shall use the following criteria to guide the designation of Sending Areas for participation in the (Municipal Entity) Transfer of Development Rights Program:
 - 1) Land designated as agricultural or forest land of long-term commercial significance;
 - 2) Land designated rural that is being farmed or managed for forestry;
 - 3) Land whose conservation meets other state and regionally adopted priorities; and
 - 4) Land that is in current use as a manufactured/mobile home park.
 - 5) Land in a Historic District or a building/place on the National Historic Registry.

Nothing in these criteria limits a village or town's authority to apply their own criteria to designate additional lands as a Sending Area for conservation under a local Transfer of Development Rights Program.

- B. Upon purchase of a Transferable Development Right from land designated rural, being farmed or managed for forestry, a village or town must include the land from which the right was purchased in any programs it administers for conservation of agricultural land or forest land.
- C. The designation of Receiving Areas is limited to Downtowns, Transit Oriented Development (TOD) and areas of adequate public infrastructure. Prior to designating a Receiving Area, a village or town should have adequate infrastructure planned and funding identified for development in the Receiving Area at densities or intensities consistent with what can be achieved under the local Transfer of Development Rights Program. Nothing in this subsection limits a village or town authority to designate additional lands for a Receiving Area under a local intra-jurisdictional Transfer of Development Rights Program that is not part of the program.
- D. Villages and towns participating in the (Municipal Entity) Transfer of Development Rights Program shall have discretion to determine which Sending Areas they receive development rights from are to be used in their designated Receiving.
- E. Designation of Sending and Receiving areas should include a process for public outreach consistent with the public participation requirements in applicable zoning and environmental review laws.

Section 0000-6 Intermunicipal Agreement for Transfer of Development Rights – Rules.

- A. To facilitate participation the Department may develop and adopt by rule standardized terms and conditions of intermunicipal agreements for Transfer of Development Rights between villages and towns. Villages and towns participating in the (Municipal Entity) Program have the option of adopting the rules by reference in their local regulations.
- B. This Section 0000-6 and the rules adopted under this Section 0000-6 shall be deemed to provide an alternative method to (General Municipal Law Article 5-G). for the implementation of a (Municipal Entity) Transfer of Development Rights Program, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in municipalities.
- C. Nothing in this section prohibits a city, village, or town from entering into an intermunicipal agreement under (General Municipal Law Article 5-G) to Transfer Development Rights under the (Municipal Entity) program.

Section 0000-7 Participation in (Municipal Entity) Transfer of Development Rights Program – Requirements – Incentives for Developers.

- A. Villages and towns that choose to participate in the (Municipal Entity) Transfer of Development Rights Program must:
- 1) Enter into an intermunicipal agreement or adopt a resolution adopting by reference the provisions in the Department rules authorized by Section 0000-6; and
 - 2) Adopt Transfer of Development Rights policies or implement development regulations that:
 - a) Comply with the municipality’s Comprehensive Plan
 - b) Designate Sending or Receiving Areas consistent with Section 0000-4 through Section 0000-7 hereof and
 - c) Adopt a Sending or Receiving Area Ratio in cooperation with the Sending or Receiving Jurisdiction.
- B. Villages and towns that choose to participate in the (Municipal Entity) Transfer of Development Rights Program are encouraged to provide permitting or environmental review incentives for developers to participate. Such incentives may include, but are not limited to, provision for “by-right” or “shovel ready” permitting, generic environmental review of a subarea plan for the Receiving Area that includes the use of transferable development rights, adoption of categorical exemptions for Receiving Areas and the like.

Section 0000-8 Quantitative and Qualitative Performance Measures – Reporting – Posting on Website.

The Department shall develop quantitative and qualitative performance measures for monitoring the Transfer of Development Rights Program. Performance measures may address conservation of land creation of compact communities; as well as other measures identified by the Department. The Department may request villages, and towns to report on these performance measures annually. The Department shall compile any performance measure information that has been reported by the villages and towns and post it on a website.

Section 0000-9 Transfer of Development Rights Clearinghouse.

A (Municipal Entity) Transfer of Development Rights Clearing house shall be established to be used exclusively for the acquisition, holding, management and disposition of interests or rights in real property pursuant to this Chapter. The (Municipal Entity) may, but is not obligated to, from time to time make appropriations for said Clearinghouse, provide moneys for said Clearinghouse by borrowing pursuant to the Local Finance Law to the extent permitted thereunder, and receive moneys for said Clearinghouse from any other lawful source, including receipts resulting from acquisitions, management and/or disposition of such interests or rights in real property, all in

accordance with applicable law. The (Municipal Entity) may invest moneys received for said Clearinghouse in accordance with and as permitted by law.

The Clearinghouse is authorized to:

- 1) Purchase and sell Transfer Development Rights to further the objectives of the (Municipal Entity) Transfer Development Rights Program.
- 2) Create a market of Transfer Development Rights that benefit not only individual buyers and sellers of Transfer Development Rights, but also the community as a whole.
- 3) Generate funds so that the (Municipal Entity) Transfer Development Rights Program becomes self-sustaining.

Section Two (2) Authority.

This Local Law is intended to be consistent with and is adopted pursuant to the authority granted to the (Municipal Entity) legislature of the (Municipal Entity) under the (New York State Constitution), and the Laws of the (State of New York), including but not limited to the following authorities: New York State Constitution Article IX, Section 2(c)(ii)(6)(10); Municipal Home Rule Law §10(1)(i), Municipal Home Rules Law §10(1)(ii)(a)(11)(12) and (14), Municipal Home Rule Law §10(2); Municipal Home Rule Law §10(3); Municipal Home Rule Law §10(4)(a), and (b); Statue of Local Governments §10(1),(6)*.

Section Three (3) SEQRA. Determination**

This Legislature, being the State Environmental Quality Review Act (SEQRA) Lead Agency, hereby finds and determines that this law constitutes a Type II Action pursuant to Section 617.5(c)(20), (21) and (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The (Municipal Entity) Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law and regulations.

Section Four (4) Severability.

If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstances shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law or in its application direct involved in the controversy in which such judgment shall have been rendered

and shall not affect or impair the validity of the remainder of this local law or the application to person, individual, corporation, firm, partnership, entity or circumstances directly involved in the controversy in which such order or judgment shall be rendered.

*Make applicable for appropriate State enacting legislation.

**Make applicable for appropriate State environmental quality review process.

Appendix 6. Outreach Meetings for Suffolk County TDR Study		
Meeting	Person/Title	Meeting Date
Town of Riverhead	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Rick Hanley/Director, Town of Riverhead Planning Department Kim Fuentes/Clerk, Town of Riverhead Planning Department Rick Hanley/Director, Town of Riverhead Planning Department	March 14, 2012
Town of Brookhaven	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Tullio Bertolli/Director, town of Brookhaven Planning Department	March 20, 2012
NY Central Pine Barrens Joint Planning Commission Staff	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning John Pavacic/Executive Director, CPBJP&PC Judy Jakobsen/CPCBJP&PC Jerry Tverdyj/CPBJP&PC	March 27, 2012
Town of Islip	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Dave Genaway/Director, Town of Islip Planning Department Richard Zapolski, Deputy Director, Town of Islip Planning Department	March 30, 2012
Town of Smithtown	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Frank DeRubeis/Director, Town of Smithtown Planning Department David Flynn/Deputy Director, Town of Smithtown Planning Department Allyson Murray/Planner, Town of Smithtown Planning Department	April 17, 2012
Town of Southampton	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Freda Eisenberg/Acting Administrator, Town of Southampton Planning David Wilcox/Director, Town of Southampton Planning Marty Shea/Chief Environmental Analyst, Town of Southampton Planning	April 23, 2012
Town of Shelter Island	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Paul Mobius/Chairman, Shelter Island Planning Board	May 12, 2012
Town of East Hampton	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning JoAnne Pahwul/Assistant Director, Town of East Hampton Planning Department Eric Schantz/Planner, Town of East Hampton Planning Department	May 17, 2012
Town of Southold	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning	May 17, 2012

Appendix 6. Outreach Meetings for Suffolk County TDR Study		
Meeting	Person/Title	Meeting Date
Town of Southold(con)	Heather Lanza/Director, Town of Southold Planning Department	May 17, 2012
Town of Huntington	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Anthony Aloisio/Director of Planning, Town of Huntington	May 21, 2012
Town of Babylon	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning AnneMarie Jones/Director, Town of Babylon Planning Dept. Denise Manoogian/Planner, Town of Babylon Planning Dept. Kristy Winser/Site Plan Reviewer, Town of Babylon Plann. Dept.	May 30, 2012
1st Steering Committee	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Joe Gergela/Executive Director, LI Farm Bureau John Pavacic/Executive Director, CPBJP&PC Kevin McDonald/Director of Public Policy & Functions, The Nature Conservancy AnneMarie Jones/Director, Town of Babylon Planning Dept. Steve Stern/Suffolk County Legislator, District 16 Mitch Pally/CEO, Long Island Builders Institute Craig Turner/Planner, Town of Huntington Planning Department Margo Myles/Coordinator of Historic Preservation, Town of Huntington Kara Hahn/Suffolk County Legislator, District 5	June 7, 2012
Town of Riverhead	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Rick Hanley/Director, Town of Riverhead Planning Department Jeff Murphree/Administrator, Town of Riverhead Building/Planning Dept.	August 10, 2012
Town of Southampton	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Kyle Collins/Administrator, Town of Southampton Planning Department David Wilcox/Director, Town of Southampton Planning	August 28, 2012
Town of Southold	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Heather Lanza/Director, Town of Southold Planning Department Melissa Spiro/Coordinator, Town of Southold Land Preservation	September 12, 2012
S. C. Planning Federation, TDR Poster Session	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning	November 29, 2012
2nd Steering Committee	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning	December 6, 2012

Appendix 6. Outreach Meetings for Suffolk County TDR Study		
Meeting	Person/Title	Meeting Date
2nd Steering Committee (cont.)	Eric Alexander/Executive Director, Vision Long Island Adrienne Esposito/Executive Director, CCFE Dianne Mazarakis/Principal Planner, Town of Brookhaven Planning Dept. John Pavacic/Executive Director, CPBJP&PC Mitch Pally/CEO, Long Island Builders Institute Craig Turner/Planner, Town of Huntington Planning Department Margo Myles/Coordinator of Historic Preservation, Town of Huntington Kara Hahn/Suffolk County Legislator, District 5 DuWayne Gregory/ Suffolk County Legislator, District 15 Kyle Collins/Administrator, Town of Southampton Planning Department David Wilcox/Director, Town of Southampton Planning	December 6, 2012
Remaining Vacant Land in Core	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Lauretta Fischer/Chief Environmental Analyst, S.C. Dept. of Planning Janet Longo/Acquisition Supervisor, S. C. Dept. Economic Development John Pavacic/Executive Director, CPBJP&PC Amy Carter	February 21, 2013
Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Sarah Lansdale/Director, Suffolk County Dept. of Planning Richard Koubek, Ph.D.	July 24, 2013
Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Dave Genaway/Commissioner of Planning, Town of Islip Craig Turner/Planner, Town of Huntington Bill Faulk/Executive Assistant, Town of Brookhaven Allyson Murray/Environmental Planner, Town of Smithtown Frank DeRubeis/Director of Planning, Town of Smithtown	July 26, 2013
Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning David Wilcox/Director, Town of Southampton Planning Marguerite Wolffsohn/Director of Planning, Town of East Hampton Heather Lanza/Director, Town of Southold Planning Department Kyle Collins/Administrator, Town of Southampton Planning Department Rick Hanley/Director, Town of Riverhead Planning Department	July 29, 2013

Appendix 6. Outreach Meetings for Suffolk County TDR Study		
Meeting	Person/Title	Meeting Date
Conference Call	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning Sarah Lansdale/Director, Suffolk County Department of Planning Jeffrey Lejava, Esq.	August 1, 2013
Conference Call	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning Sarah Lansdale/Director, Suffolk County Department of Planning Mitch Pally/CEO, Long Island Builders Institute	September 24, 2013
S. C. Planning Federation, TDR Poster Session	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning	October 17, 2013
Progress Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Sarah Lansdale/Director, Suffolk County Department of Planning Lauretta Fischer/Chief Environmental Analyst, S. C. Dept. of Planning Dennis Brown/County Attorney Jenny Kohn/County Attorney, Suffolk County Dept. of Law Walter Dawydiak/Director, Div. Environmental Quality, SC Health Carl Lind/Cartographer, Suffolk County Department of Planning Robert Braun/Deputy Bureau Chief, Suffolk County Department of Law Jill Rosen-Nikoloff/Director Affordable Housing, S. C. Dept. Economic Dev. & Planning Janet Longo/Acquisition Supervisor, Suffolk County Dept. Economic Development Patricia Floria/Associate Public Health Engineer, Suffolk County Dept. Health Services Walter Hilbert/Principal Public Health Engineer, Suffolk County Dept. Health Services Martin Trent/Chief Sanitarian, Suffolk County Dept. Health Services	October 29, 2013
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Dept. of Planning Sarah Lansdale/Director, Suffolk County Department of Planning Jill Rosen-Nikoloff/Director Affordable Housing, S. C. Dept. Economic Dev. & Planning Carl Lind/Cartographer, Suffolk County Department of Planning Frank Castelli/Environmental Projects Coordinator, S.C. Dept. of Economic Dev. Susan Filipowich/Planner, Suffolk County Department of Planning DeWitt Davies, Chief Environmental Analyst, Suffolk County Department of Planning Jenny Kohn/County Attorney, Suffolk County Dept. of Law Patricia Floria/Associate Public Health Engineer, Suffolk County Dept. Health Services Walter Hilbert/Principal Public Health Engineer, Suffolk County Dept. Health Services	January 7, 2014
Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning	January 21, 2014

Appendix 6. Outreach Meetings for Suffolk County TDR Study		
Meeting	Person/Title	Meeting Date
Meeting (cont.)	Carl Lind/Cartographer, Suffolk County Department of Planning DeWitt Davies, Chief Environmental Analyst, S. C. Department of Planning Walter Hilbert/Principal Public Health Engineer, Suffolk County Dept. Health Services Walter Dawydiak/Director, Div. of Environmental Quality, S.C. Dept. Health Services Frank Castelli/Environmental Projects Coordinator, S.C. Dept. of Economic Dev.	January 21, 2014
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning Carl Lind/Cartographer, Suffolk County Department of Planning DeWitt Davies, Chief Environmental Analyst, S.C. Department of Planning Walter Hilbert/Principal Public Health Engineer, S.C. Dept. Health Services Walter Dawydiak/Director, Div. of Environmental Quality, S.C. Dept. Health Services Frank Castelli/Environmental Projects Coordinator, S.C. Dept. of Economic Dev. Seth Forman/Chief Planner, Suffolk County Department of Planning	February 20, 2014
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning Carl Lind/Cartographer, Suffolk County Department of Planning Frank Castelli/Director Division of Water Quality, S.C. Dept. of Planning Susan Filipowich/Planner, Suffolk County Dept. of Planning DeWitt Davies/Chief Environmental Planner, Suffolk County Dept. of Planning Pat Floria/Suffolk County Dept. Health Services Jenny Kohn/Suffolk County Law Department Ted Klein/Senior Planner, Suffolk County Dept. of Planning Peter Lambert/Principal Planner, S. C. Dept. of Planning Janet Longo/Acquisition Supervisor, S.C. Dept. Economic Development Seth Forman/Chief Planner, Suffolk County Dept. of Planning	March 4, 2014
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning Jim Daly/Suffolk County DoIT George Fagan/Suffolk County DoIT Susan Filipowich/Planner, Suffolk County Dept. of Planning Lauretta Fischer/Chief Environmental Analyst, S. C. Dept. of Planning Pat Floria/Suffolk County Dept. Health Services Seth Forman/Chief Planner, Suffolk County Dept. of Planning Sarah Lansdale/Director of Planning, S.C. Department of Planning Jenny Kohn/Suffolk County Law Department	March 18, 2014
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning	March 18, 2014

Appendix 6. Outreach Meetings for Suffolk County TDR Study		
Meeting	Person/Title	Meeting Date
Staff Meeting (cont.)	Peter Lambert/Principal Planner, Suffolk County Dept. of Planning Carl Lind/Cartographer, Suffolk County Department of Planning Falguni Mistry/Suffolk County DoIT Carolyn Salemi/Suffolk County DoIT Debra Seminario/Suffolk County DoIT	March 18, 2014
Advanced Wastewater /TDR Tour	Sarah Lansdale/Director, Suffolk County Department of Planning Dorian Dale/Administration, S. C. Department of Economic Development Walter Dawydiak/Director, Div. of Environmental Quality, SC Dept. Health Services Walter Hilbert/Principal Public Health Engineer, S.C. Dept. Health Services Christopher Lubicich/Assistant Public Health Engineer, S.C. Dept. Health Services John Sohngen/Assistant Public Health Engineer, Suffolk County Dept. Health Services Boris Rukovets/Public Works Special Project Coordinator, S.C. Dept. Public Works	March 19-21, 2014
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning Jim Daly/Suffolk County DoIT George Fagan/Suffolk County DoIT	March 21, 2014
Staff Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning Sarah Lansdale/Director of Planning, Suffolk County Dept. of Planning Frank Castelli/Director Water Quality, Suffolk County Dept. of Planning DeWitt Davies, Chief Environmental Analyst, S.C. Dept. of Planning Carl Lind/Cartographer, Suffolk County Department of Planning Jenny Kohn/Suffolk County Law Department Peter Lambert/Principal Planner, Suffolk County Dept. of Planning Susan Filipowich/Planner, S Suffolk County Dept. of Planning Ted Klein/Senior Planner, Suffolk County Dept. of Planning Jennifer McGivern/Water Quality, Suffolk County Dept. of Planning Pat Floria/Suffolk County Dept. Health Services Jim Daly/Suffolk County DoIT Carolyn Salemi/Suffolk County DoIT	April 1, 2014
Harris Beach Meeting	Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning John Corral/Planner, Suffolk County Department of Planning Sarah Lansdale/Director of Planning, Suffolk County Dept. of Planning Ted Klein/Senior Planner, Suffolk County Dept. of Planning Walter Hilbert/Principal Public Health Engineer, S.C. Health Peter Hoffman/Suffolk County DoIT Thomas Garry, Esq./Harris Beach Keith Corbett, Esq./Harris Beach	April 3, 2014

Appendix 6. Outreach Meetings for Suffolk County TDR Study	
Meeting	Person/Title
Staff Meeting	<p>Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning</p> <p>John Corral/Planner, Suffolk County Department of Planning</p> <p>Pat Floria/Suffolk County Dept. Health Services</p> <p>Peter Hoffman/Suffolk County DoIT</p> <p>Carl Lind/Cartographer, Suffolk County Department of Planning</p> <p>Jill Rosen-Nikoloff/S.C. Community Development & Workforce Housing</p> <p>Janet Longo/Acquisition Supervisor, Suffolk County Dept. Economic Development</p> <p>Susan Filipowich/Planner, Suffolk County Dept. of Planning</p> <p>Jenny Kohn/Suffolk County Law Department</p> <p>DeWitt Davies, Chief Environmental Analyst, S.C. Dept. of Planning</p> <p>Seth Forman/Chief Planner, Suffolk County Dept. of Planning</p> <p>Lauretta Fischer/Chief Environmental Analyst, S.C. Dept. of Planning</p> <p>Frank Castelli/Director Division of Water Quality, S.C. Dept. of Planning</p> <p>Peter Lambert/Principal Planner, Suffolk County Dept. of Planning</p> <p>Sarah Lansdale/Director of Planning, S.C. Dept. of Planning</p> <p>George Fagan/Suffolk County DoIT</p> <p>Jennifer McGivern/Water Quality, Suffolk County Dept. of Planning</p>
Meeting	<p>Andrew Freleng/Chief Planner, Suffolk County Dept. of Planning</p> <p>John Corral/Planner, Suffolk County Department of Planning</p> <p>Kevin McDonald/Director of Public Policy & Functions, The Nature Conservancy</p> <p>Mitch Pally/CEO, Long Island Builders Institute</p>