METRO NASHVILLE/DAVIDSON COUNTY PLANNING DEPARTMENTMETRO

TDR for Music Row:

Case Studies, Implications, and Considerations

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8/4/2017

This report outlines a basic overview of how Transfer of Development Rights (TDR) programs function and examines specific programs in a handful of American cities. Broader implications of various strategies and policies associated with TDR programs are detailed, and specific considerations for a potential TDR program in Nashville are suggested.

Table of Contents:

Executive Summary:

"for a transferable development rights program to be successful, sufficient demand for development rights needs to be stimulated, opportunities for developers to circumvent the market by seeking variances and zoning changes need to be limited, and an efficient and transparent market structure needs to be established."

- Demand is the primary determinant of potency: TDR programs have achieved the most effective results in cities with high demand for additional floor area, height, and/or density. The most successful historic preservation TDR programs in the country are in New York City and San Francisco. Both cities are characterized by their geographically restrictive locations on peninsulas, which sets a natural limit on developable space. Both cities have strong public and legislative support for historic preservation, and their historic buildings are difficult to demolish.
- Demand is not the only determinant success: Not every city with booming real estate markets administers a flourishing TDR program. This is true of both Seattle and Portland, where the structure, maintenance, oversight, and implementation of the TDR programs was successful in some ways but incomplete in others. The availability and economic superiority of alternative bonus density options combined with inadequate public awareness of those cities' TDR programs caused them to underperform.
- Key Recommendations:
    1. *Engage the public:* Make sure stakeholders understand how TDR programs work generally and how one would work in Nashville specifically. Make such information readily available on Metro's website.
    2. *Manage the program proactively:* Create a TDR Bank and an online TDR marketplace. Keep track of TDR transactions meticulously so that the program can be studied with greater accuracy and insight in the future.
    3. *Understand the economics:* Invest in professional economic analysis when necessary so that the program can be structured and refined in accordance with changing market conditions.
    4. *Integrate the program cohesively:* Adjust the TDR program and existing zoning regulations to accommodate each other. Take care to ensure that bonus height and density options in the DTC do not disproportionately reduce demand for historic TDR.
    5. *Ensure that Receiving Sites are suitable for* growth: To avoid controversy and long term planning consequences, ensure that additional density in receiving sites will complement the surrounding community and spur desirable economic activity.

Introduction:

The Transfer of Development Rights (TDR) is an exchange mechanism whereby property owners trade the unused development potential on their land for monetary revenue. After selling TDR to a different party, property owners forfeit the development potential of their land, while the purchaser gains additional development rights for a project in a separate location. TDR have been used in a variety of ways and for a multitude of purposes. Most commonly, TDR programs are created to provide preservation incentives to rural land and historic property owners. For the former, TDR can restrict unwanted development and sprawl onto lands the public deems worthy of conservation, while helping boost development in locations the public deems suitable for growth. For the latter, TDR offer property owners a means of compensation for preserving a property of distinct and intrinsic cultural or historic value, while providing urban developers an opportunity to achieve height and density levels that baseline zoning would normally prohibit. It is TDR for historic properties that will constitute the focus of this report.

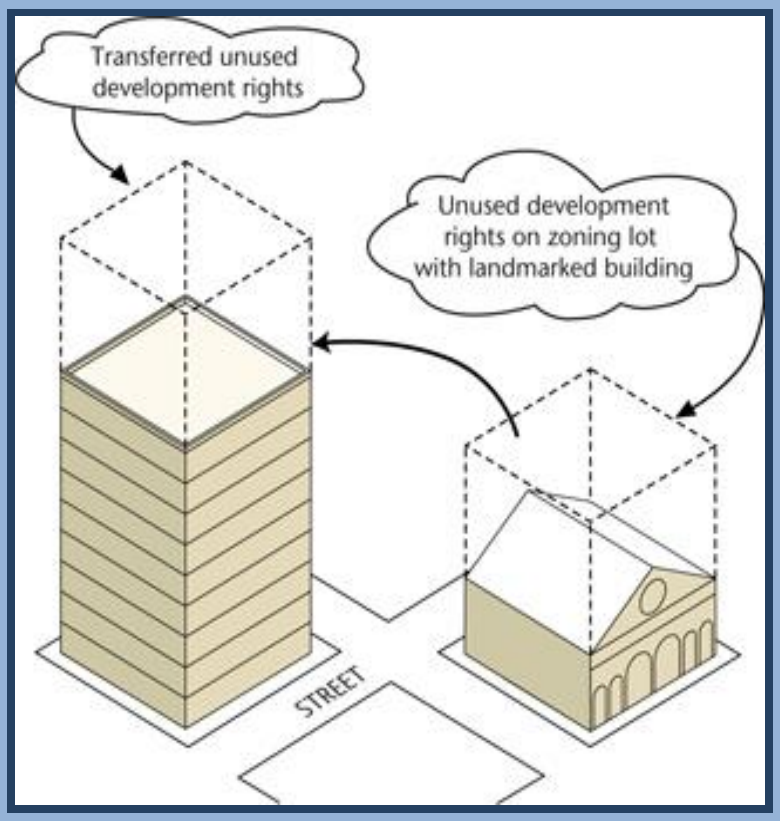
In a historic property TDR program, historic properties constitute "sending sites" while the location absorbing development rights constitute the "receiving sites." After a TDR transaction occurs between a sending site and receiving site owner, a restrictive easement is placed on the sending site. A restrictive easement will always prohibit development in excess of the remaining unused development potential of the sending site, but will also often prohibit building demolition, require maintenance or rehabilitation, and mandate a specific building use.

TDR programs are not silver bullets for historic preservation. Instead, TDR serve as a compromise between free-market forces and government regulation. Properly administered, they can ultimately benefit all parties involved: the public retains a property of cultural significance; the property owner receives returns on his or her asset; the developer is allowed special privileges to build at a higher scale; and the government is enabled to steer development toward desirable zones of the city. This is how New York City's original TDR program—the first in the country—summarized the potential advantages of TDR:

> *The owner of a designated landmark building can realize an economic gain by selling his unbuilt, but allowable, development rights; the buyer of these rights, in return, can acquire additional floor area he would otherwise not have; the neighborhood, meanwhile, can retain an essential amenity, a revitalized landmark, plus new development harmonious with the character of the area and of a quality unattainable under previous conditions; the city, most importantly, can benefit by new tax revenues from what was previously untaxable.*[1]

[1] See A Survey of Transferable Development Rights Mechanisms in New York City, Page 9.

Figure 1:



Above is a simple illustration of transferred development rights. Unused development potential from a sending site is sold to a developer seeking additional height or density on the receiving site. Both parties benefit from the process.

Figure 2:

TDR allow historic property owners to gain compensation for the undeveloped space on their property while contributing toward invaluable landmark preservation.

Figure 3:

TDR can save important public resources from stale redevelopment.

Figure 4:

With TDR, Developers are able to implement additional floor space into their projects and often achieve similar if not greater returns on their investment than if they had demolished and replaced the sending site.

Figure 5:

TDR provide the government with an opportunity to steer development toward areas where greater height, density, and economic activity are desired.

TDR have been used to salvage century-old theaters in New York City to iconic hotels in San Francisco, and prevent sprawling development in the wilderness of the Jersey Pinelands to the rolling hills of Collier County, Maryland. Without TDR, those treasured historic and natural assets would be permanently lost to an alternative use that, in almost every case, the community would deem less valuable.

While the theoretical advantages of a TDR program are numerous, the practical implications of implementing one are complex and variable. TDR programs have been most successfully implemented at the County level as a means of limiting sprawl and conserving rural land. For cities, where the moving parts and individual parties are more abundant and less predictable, TDR programs become much more difficult to design and sustain.

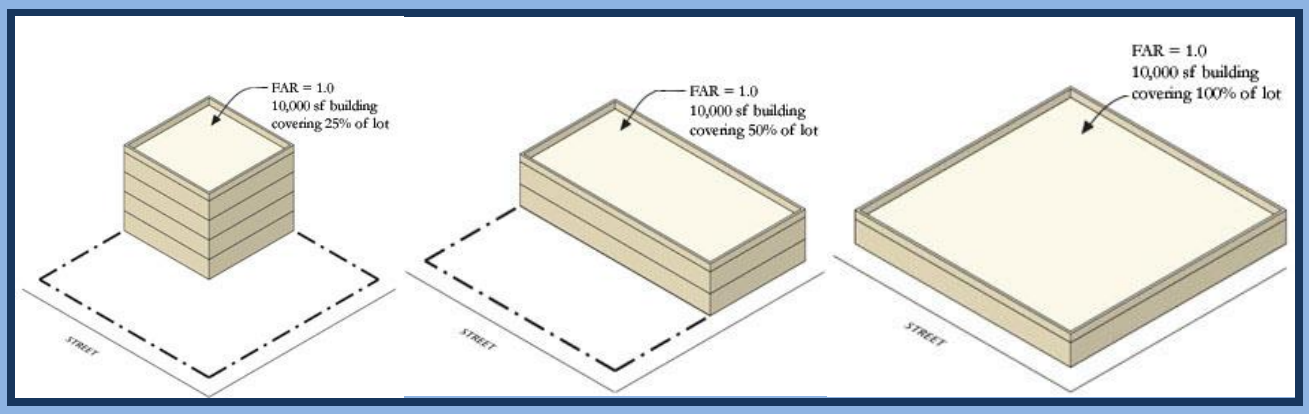
This report first summarizes basic TDR terminology and presents fundamental TDR concepts. It then provides a brief overview of Nashville's previous TDR programs, introduces the city's Downtown code, and discusses its current bonus density programs. Next, it identifies a handful of American cities that have designed TDR programs in order to preserve historic or culturally significant landmarks and discusses their contexts, policies, successes, and shortcomings. Finally, it recommends a list of considerations for Metro Nashville/Davidson County as it contemplates a TDR program of its own.

Section I: TDR Overview

This section outlines basic TDR vocabulary as well as the fundamental attributes of successful TDR programs.

- Sending Site:
  - The sending site is the location from which development potential is transferred. In the context of Nashville, it includes historical buildings in the Music Row Study Area.
- Receiving Site:
  - The receiving site is the location that accepts sending sites' unused development potential and implements the additional height/density into a development project.
- Floor Area Ratio (FAR):
  - FAR represents the relationship between lot size and the development potential permitted by area zoning. A 10,000 sq. foot lot with an FAR of 3:1 would maximize its development potential by building three, 10,000 sq. ft. floors, amounting to 30,000 sq. feet.
  - FAR is the most commonly used denominator for TDR programs, but other metrics, such as height in stories, can work just as well under the same basic logic.

Figure 6:



A few examples representing 1:1 FAR.

- Zoning:
  - In the context of a TDR program, zoning determines the baseline FAR, height, and density restrictions on sending and receiving sites. Zoning is instrumental to the vitality of TDR programs, as it arranges the economic constraints and practical considerations to which developers must adhere.
- Demand:
  - For a market-driven program, it should come as no surprise that the primary determinant of success is demand for additional FAR. Without developer demand, owners of sending sites have no way to sell their unused development potential.
- Supply:
  - The supply of purchasable TDR at any given time after a program has been initiated can significantly impact the health of the program. Too much supply and individual stakeholders are forced to sell TDR at prices which may not meet their expectations. Too little supply and transactions will be difficult to execute. Most cities with successful TDR programs exercise a certain degree of control over the rate at which TDR enter the marketplace. Metro, too, will have to decide the extent of control it needs to maintain over TDR supply in order to foster a healthy and predictable program.
- Residual Value:
  - This is a term often used among Real Estate Developers. It represents what value may exist in a development after all development costs and expected returns are subtracted from projected revenues.
- Transfer Ratio:
  - Typically controlled by the city, transfer ratios represent the amount of additional FAR which developers receive per unit of TDR purchased. The simplest transfer ratio is 1:1—here, each unit of TDR represents one square foot. Transfer ratios might be altered in transactions to boost demand for TDR. If developers can gain 3 times as much space in their receiving site as would have been permitted on the sending site, for example, they will probably find the TDR transaction more enticing.
- TDR Bank:
  - The TDR Bank is a city-operated program that can purchase TDR from stakeholders, sell TDR to developers, and create TDR from publicly owned properties. It provides the city with an option to exert influence over the TDR marketplace—by purchasing and selling TDR, the city impacts TDR pricing. It can also facilitate historic preservation by purchasing and then retiring a certain amount of development rights each year.

- The real estate market:
    - A TDR program works within the constraints of the broader real estate market of which it forms a part. While demand for additional floor area within sending and receiving zones is the primary economic consideration for a TDR program, an understanding of how demand for real estate elsewhere in the city impacts demand in specific locations is also necessary. Fortunately, Nashville's real estate market is booming and the supply of existing floor area is far beneath demand. Such conditions make a TDR program much more likely to work with proper implementation and oversight.
- "A Bundle of Rights"
    - This is the legal paradigm that is used to understand private property in American law. The bundle of rights associated with private property ownership include building upon one's land for economic purposes, enjoyment of one's land, conveying one's land, and privacy. Historic designation and the accompanying limitations placed upon a stakeholder's development potential explicitly interfere with one of several rights in the bundle. By creating TDR for affected property owners, however, cities can mitigate the opportunity cost historic property owners suffer when their land's development potential is limited, and thereby avoid takings claims.
- Landmark Supreme Court Decisions:
    - *Penn Central Transportation Co v. City of New York*: After the public outcry that ensued after the destruction of Penn Central Terminal in New York, the city stepped up its commitment toward historic preservation. In designating Grand Central Station a historic landmark, the city prevented its owners from building a proposed skyscraper on top of the terminal, but offered TDR certification as compensation for deflated property value. The owner of Grand Central Station promptly sued the city in a case that was eventually adjudged in the Supreme Court. Siding with the city, the Court ruled that designating Grand Central as a historic landmark and limiting the site's development potential did not constitute discriminatory zoning, and that the owner's option to certify and sell TDR sufficiently mitigated the economic opportunities forgone by historic designation.
    - *Suitam v. Tahoe*: After the city of Tahoe restricted development on surrounding environmentally sensitive lands, it created a TDR program intended to help compensate stakeholders and steer development toward the urban core. One disenchanted property owner—Bernadine Suitam—sued the city on the grounds that it had removed all economic value of her land and, because she was not obligated to pursue the certification and sale of her TDR, had therefore

committed an unjust taking. After siding with the plaintiff, the Supreme Court sent the case back down to the lower courts for adjudication. The case weakens the position of municipalities relying on TDR as the sole means of protection against takings claims.

- Simplicity, Clarity, and Certainty:[2]
    - These terms can be understood as the primary criteria by which the design of a TDR program should conform. The TDR program should be easily understood and readily accessible—developers and stakeholders should be able to understand exactly what they're gaining from participating in the program, and the measures used to determine the fair market value of TDR must be as consistent as possible. Its purpose should be clearly articulated and the processes it enables or prohibits should be apparent. Finally, developers and stakeholders alike need to know what they're getting through the program. If developers are unable to predict the efficiency with which a TDR transaction will take place, they are likely to pursue alternative avenues.
- Cohesion with a broader planning agenda:
    - A successful TDR program complements the city's broader planning goals. Because historic preservation represents one of multiple planning priorities, the incentives created through a TDR program must be weighted in tandem with other important goals. The implications of other bonus density programs, in particular, must be well understood.

[2] These are also the three qualities that stakeholders, developers, and planners identified in Portland. See Johnson Gardner's 2007 report on the city's density bonus and TDR programs.

Section II: Nashville's Previous TDR Program, DTC, and Bonus Density Options

2007 TDR Ordinance:

In 2007, the Nashville City Council passed Ordinance No. BL2007-1369, which permitted the transfer of development rights from Historic Landmark Districts and Historic Preservation Districts in Downtown Nashville to other locations within the downtown area (the ordinance demarcated downtown with Jefferson Avenue to the north, I-24 to the east, I-40 to the south, and I-65 to the west).[3] The specific receiving site boundaries included parts of the Core, SoBro, the Gulch, Sulfur Dell, and Lafayette.

Figure 7:

The TDR receiving areas as defined by the 2007 TDR ordinance.

[3] See the following link for the Tennessee legislation that permitted municipalities to create TDR programs: http://www.tn.gov/sos/acts/102/pub/pc0265.pdf

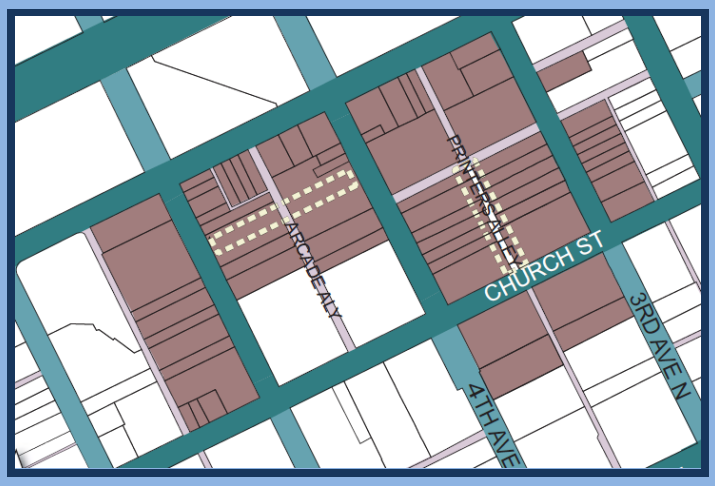
Metro designated itself as a receiving site so long as TDR were donated, and implied that upon donation TDR would be retired. Prices were to be determined by free market negotiation between sending and receiving site owners.

The Planning Department was charged with the responsibility of certifying sending site TDR and validating TDR transactions. Once TDR were exchanged from the sending to the receiving site, the development rights of the sending site were to be considered retired in perpetuity (notably, density, FAR, and square footage were permanently capped, but demolition was not prohibited).

To date, Nashville's TDR downtown historic landmark TDR program has not been used. Robin Zeigler, member of the Historic Commission, provided this comment regarding the efficacy of the program in the midst of other bonus height options: "the zoning has always been lenient enough that no one has needed additional density/height or there have been are other tools in place that are easier or are perceived as easier such as an SP and now the DTC Bonus Height program."

Downtown Code: Nashville's Downtown Code provides a comprehensive and modern arrangement of planning guidelines, regulations, and best practices for the city's central areas. It divides downtown Nashville into 16 subdistricts, each with its own specifically tailored zoning regulations. Within the Core Subdistrict is a special Historic district, in which the theoretical sending sites of the city's Landmark TDR program exist.

Figure 8:

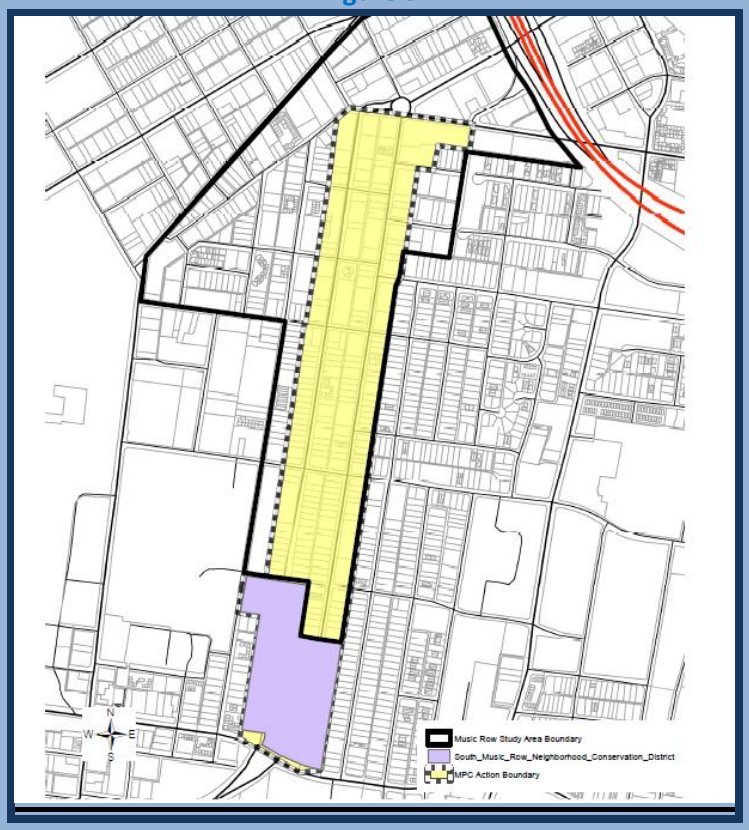


The Downtown Core Historic District

Bonus Density Options:

Nashville offers a variety of bonus height options in order to incentivize holistic community planning and smart growth. Bonus height is offered upon the satisfactory contribution to or achievement of the following building qualities and/or public amenities: Leadership in Energy and Environmental Design (LEED) certification of individual buildings, LEED for Neighborhood Development, pervious surface, Historic Building Preservation, publicly-accessible Open Space, Inclusionary Housing, Civil Support Space, upper level garage liners, and underground parking. In particular, the Historic Preservation Bonus follows a similar logic as TDR programs: "The number of square feet of Bonus Height shall be equal to the development rights being forfeited by the preservation of the building, calculated as follows: the number of by-right stories permitted minus the number of stories of the historic building, multiplied by the square feet of the historic building footprint.

Figure 9:



Here, the Music Row Study Area boundary is defined by the thick black line; the purple zone represents the conservation district and the yellow zone represents the MPC action boundary.

Section III: Case Studies

This section identifies 4 cities: New York, San Francisco, Portland, and Seattle, as places with instructive TDR scenarios. Although the parallels that can be drawn between Nashville and the first two cities listed are restricted due to their divergent densities, they nonetheless provide important insight into TDR program design, logistics, and potential complications. The latter two cities are more similar in size and organization to Nashville, and they have both sought to use TDR programs as a means to preserve historic landmarks.

New York City:

New York City is a special case within the cities selected for analysis within this research. First, the city was the first to establish a TDR program. Second, the city established a TDR program specifically for its Theater District, which bears numerous similarities with Music Row. Third, New York's exceptional density, limited developable space, and expensive real estate market make the parameters and logic of its TDR programs unique. The lessons and parallels that can be gleaned from TDR programs spawned in an environment so drastically different from Nashville, therefore, are limited. On a conceptual basis, however, both New York's original (1968) TDR program as well as its Theater District TDR program provides useful lessons about TDR program design, policy, economics, and management. This case study, like the ones that follow, will be organized into three sections: Program History, Program Structure, and Key Lessons. For greater clarity, this particular section has divided New York's original TDR program and its Theater District TDR program into separate segments.

Program History (1968 Landmark TDR):

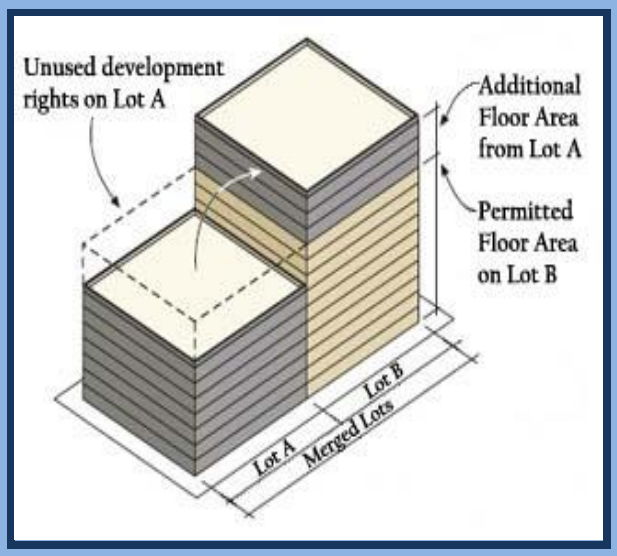
After the demolition of Penn Station in 1964, New York City activists sought to create new mechanisms to aid historic preservation. Four years later, the original NYC Landmark TDR program became codified, and offered a new, market-driven incentive for historic property owners to maintain their buildings. The purpose of New York's first TDR program was twofold: the city needed a way to compensate historic property owners who could not sell or redevelop their properties, and it needed to mitigate the risk of takings claims. The landmark case that legitimized TDR came through Penn Central v. City of New York in 1968, which justified the city's efforts to prevent the development of a skyscraper on top of Grand Central Station.

Although the Landmark TDR program hatched an inventive and promising way to foster historic preservation, only eleven successful transfers were completed between 1972 and 2009. Meanwhile, the total number of historic sites in the city reached 1,300. The program's limited success was due largely to three factors: the superiority of an existing bonus density mechanism known as Zoning Lot Merger (ZLM), an "uncertain public review process" that

occurred subsequent to the purchase of development rights, and the geographical restrictions on transfers. All three of those specific issues represent pervasive flaws in American TDR programs—identified simply, those issues include an economically superior alternative for developers, an overbearing and/or inefficient bureaucratic process for TDR certification, and inflexible limitations to potential receiving sites.

First, the ZLM option in NYC proved more economically enticing than the TDR program because of the relative ease with which it accomplished the same end (that is, accruing additional floor space). Through the ZLM option, developers could combine the development potential on abutting properties to achieve a higher density than was permitted on either one of them individually. The existence of an economically superior alternative to TDR ensured that developers rarely utilized them.

Figure 10:



A couple of basic illustrations of the Zoning Lot Merger. Though it provides less opportunity for height and scale than does the TDR option, ZLM in New York City are much less regulated and provide a quick and simple means for developers to gain a few extra stories of floor space. Created in 1916, developers originally exploited the ZLM option, which did not place height restrictions on 25% of the lot, to exceed baseline FAR. The Empire State Building is the most famous consequence of that loophole.

Next, NYC's TDR program required an "uncertain public review" that represented an unjustifiable risk to developers (this is called the Uniform Land Use Review Procedure "ULURP"). Subsequent to the purchase of TDR, developers were forced to obtain a special permit before they could implement their additional floor space to proposed developments. The process of public review could take months to years and often cost developers as much as $750,000. Unsurprisingly, the burden of uncertainty and cost became a decisive deterrent for developers.

Last, the TDR program restricted transferred development to contiguous or adjacent properties. Initially, "contiguous or adjacent" meant any property that was situated directly next to a site, on the same street within the same block, or across the street. Thus, the original geographical parameters of the program were strict. The receiving site constraints defined in the TDR program severely limited the economic viability of TDR, as the only acceptable receiving sites often proved to be prohibitively expensive.

Program Structure[4]:

- The 74-79 Landmark TDR program is just one of numerous TDR programs in the city. Each has its own stipulations and planning purposes. Other programs include Special District Transfer mechanisms (one of which is the Theater Subdistrict TDR program) and Large-Scale Development Plans (these are not discussed in this report).[5]
- TDR are calculated in the typical manner, with the maximum allowable floor area permitted under sending site zoning minus already-utilized sending site floor area being what is transferable. TDR sell at a 1:1 ratio.
- Receiving sites cannot exceed their baseline FAR by more than 20% with the use of TDR—height restrictions still apply.
- Application of TDR on receiving sites is subject to further requirements—under the discretion of the Planning Commission—to include public amenities and other public benefits.
- A restrictive easement is placed permanently on the sending site after a transfer occurs.
- At the discretion of the Planning Commission, TDR implementation on receiving sites is disallowed from incurring negative effects on the surrounding community. If negative effects are incurred, the receiving site must implement accommodations or amenities that offset those effects in the opinion of the Planning Commission.

[4]Information for this section is taken largely from ordinance Section 74-79; additional information—especially program history—is supplied by "A Survey of Transferable Development Rights Mechanisms in New York City." http://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art07c04.pdf?r=0517

[5] Descriptions of each Subdistrict TDR program can be found in the city's Survey

- Sending and Receiving site owners submit their application for TDR certification and transfer to the City Planning Commission with information such as all developments and enlargements to be made on the receiving site, a program for the maintenance of the landmark, and a report from the Landmarks Preservation Commission.
- Landmark TDR cannot be used in conjunction with other Bonus Density options.
- There is no TDR Bank, although a group of land use professionals has proposed the creation of one.

Key Lessons:

- Between 2003 and 2011, there were only two occasions on which Landmark TDR were transferred. Nineteen other Historic Landmark sites used the ZLM option instead (for those properties, the ultimate preservation goal was also achieved, so this fact is not necessarily a negative one).
- The Zoning Lot Merger transfer mechanism accounted for 90% of floor area transfers between 2003 and 2011. ZLM are preferred in New York City primarily because they require fewer administrative processes. By their nature, moreover, most ZLM require transfer of lesser floor space than do TDR, which are typically reserved for larger projects (larger projects tend to accumulate TDR from several sending sites and compile them into a particularly tall building). Some projects, especially south of Central Park, used ZLM to build super-tall structures that many residents felt disrupted the community character and built environment of the area. If the ZLM option was more tightly regulated in New York City, it is likely that developers—especially of smaller projects—would solicit the Landmark TDR option more frequently.[6]
- Several organizations have expressed concern over the lack of organization and oversight to the city's various density transfer programs (this does not really apply to the Landmark program, but nonetheless illustrates a planning issue that arises from insufficient oversight). In particular, the unbalanced implementation of TDR into specific areas of the city has led to aesthetically undesirable consequences—in other words, some developers have accumulated a significant amount of TDR and condensed them into a single development, which has resulted in buildings with a height and scale that disrupts the character of their surrounding environment.

In a real estate market like New York City, one would expect demand for Landmark TDR's to be high despite any cumbersome processes it requires. This has not been the case. The Landmark program has been seldom used by developers even during real estate booms, and has mostly

[6] ZLM have been discussed in detail in this section because they have historically constituted a major competitor to the Landmark TDR market and have thus influenced the potency of the program. They provide a useful example of how alternative means of acquiring bonus density can reduce the marketability of TDR.

been shunned in favor of more efficient and less costly mechanisms for gaining additional density. If anything, the fact that cumbersome administrative processes could impede even New York's TDR program is demonstrative of the necessity for TDR programs to be streamlined, predictable, efficient, and lacking in viable alternatives.

Theater District TDR Program History:

New York's Special Theater Subdistrict was created in 1967 to help protect the area's physical and cultural character and maintain its performing arts function. During the first 15 years of the Subdistrict's existence, inadequate regulations enabled the redevelopment of historic properties, and several old theaters were destroyed. In 1982, the city began to restrict redevelopment in the area and offer several historic theaters the option of selling unused development rights through a TDR program. Few theaters were able to complete any transfers, however, due to the program's restrictive receiving area stipulations. The receiving area restrictions placed a burden on theater owners, who seldom transferred any unused development potential and were consequently often unable to procure sufficient funding for basic maintenance. Finally, in 1998, the city revamped the TDR program for the Theater District in three crucial ways: first, it greatly widened the receiving areas by allowing listed theaters to transfer floor area anywhere within the district (previous stipulations restricted transfer to across-the-street or directly adjacent lots); second, it reduced the procedural requirement from Special Permit to less discretionary, more streamlined processes; third, it created a Theater Subdistrict Fund to promote theater use and preservation. Thanks to the TDR program, the Theater Subdistrict has since been revitalized and serves as a major economic hub for the city.

Program Structure:

- Between 2001 and 2016, 22 TDR sales to 15 different development sites occurred (the remaining five sites transferred development potential via the ZLM option); 22 of the 27 transfers during the period were from landmark theaters. In total, theaters in the Subdistrict transferred 470,000 square feet of space between 1998 and 2016.
- An additional 5 transfers of development rights in the Theater District occurred through the Zoning Lot Merger mechanism, with an average price of $289.
- Average TDR sale prices (where 1 TDR equals one square foot of developable space) ranged from $126 - $692, with an average price of $363.
- Hotels (14 of 27) constituted the majority of receiving site developments; other receiving site uses included mixed hotel residential (four), residential condominiums (two), office developments (five), and residential rentals (two).

- The city stipulated that developers who purchased TDR from Theaters in the special Subdistrict would have to designate a certain fraction of the expense toward a maintenance fund—this became an additional $10 per square foot purchased. The idea was useful in theory, and developers were willing to contribute the expense. But incredibly, the city failed to create a fund to hold that money and as late as 2006, it was incapable of accepting such contributions.[7]

Figure 11:

The Broadhurst Theater (left), built in 1917, transferred most of its development rights to the West 45th Street Hyatt (right) in 2007.

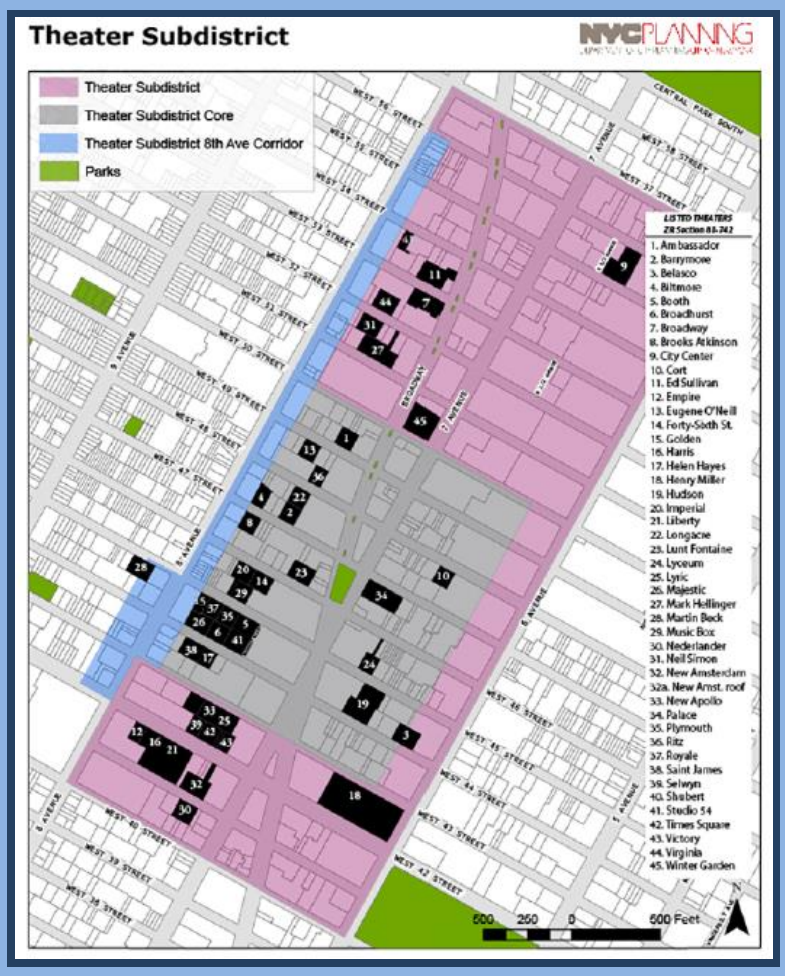
Key Lessons:

- Notably, the NYC Theater Subdistrict served an irreplaceable economic function for the city, mainly due to tourism. Typical historic landmarks lack similar economic importance for their respective regional economies. Music Row, while certainly an important feature of Nashville's tourism industry, is proportionately dissimilar in the level of economic boon it provides to the city.

[7] http://www.nytimes.com/2006/08/06/nyregion/06broadway.html

- Theater preservation received intense support from both the private and public spheres. Broad support for preservation proved to be an important factor in the program's success. [8]
- The preservation goals of the Subdistrict were not accomplished until after 1998, when the city loosened receiving site criteria and broadened the acceptable range of locations to which development rights could be transferred.

Figure 12:



As is evident in the graphic above, the Theater Subdistrict encompasses a wide enough receiving zone to provide viable transfers to sending sites while also restricting permissible receiving sites to an area that is strictly confined and proximate to the theaters themselves.

[8] See the following link for a table of sending and receiving sites for the Theater Subdistrict TDR program: https://www1.nyc.gov/assets/planning/download/pdf/zoning/districts-tools/theater-subdistrict-table.pdf?r=1

San Francisco:

Program History:

The San Francisco TDR program is among the most successful market driven historic preservation efforts in the nation**.** Initiated in 1985 during a real estate boom, the original TDR program sought to preserve historic properties, which increasingly faced redevelopment pressure. To make the TDR program especially potent and immediately feasible, the city downzoned the entirety of its downtown C3 district, which capped FAR at 9:1. The only way that developers could gain additional density after the downzoning took place was through purchase of TDR. Due to the limited means of acquiring additional density, developers have long seen TDR as an economically advantageous way of building bigger and taller. Consequently, nearly 100 historic buildings around the city have sold their TDR and are restricted from future development.

Program Structure:

- Responsibilities of the Planning Department:
  - Approval/certification of applications (this service requires a fee)
  - Oversight of TDR transfer, use, and cancellation of use
  - Updating and maintaining a TDR database
  - Review of preservation plans and status reports
- TDR sell at a 1:1[9] ratio, although unit price fluctuates on a deal-to-deal basis
- Until recently, the city restricted TDR program eligibility to its downtown C-3 district, but has expanded it to include "P zoned" lots in adjacent areas.
- Developers cannot gain bonus floor area from on-site features such as site design and architectural details.
- TDR supply has remained relatively constant—around two million available every year—with the city exerting control over the number of TDR that become available at a given time.
- The city restricts the amount of TDR that can be used on a particular project
- Until 2013, TDR could only be transferred between properties within the C3 downtown zoning district; that policy has since been amended to broaden the city's receiving areas.[10]
- Unused or expired TDR now re-enter the market.[11] Until recently, it was unclear what the official policy was regarding TDR that had been purchased but never actually incorporated into the development project for which they were intended.

[9] A TDR unit here is thus equivalent to one square foot of floor space.
[10] See TDR Transfer and Limits; Page I-5 of the Seifel Team's report.

- Unlike other cities' TDR programs, San Francisco has allowed speculative investment. Reluctance to enable that practice in other cities stems from concern over TDR monopolization and concomitant price gouging, but the feature has proven useful to the city's program.
    - One potential advantage of enabling TDR accumulation among investment firms is the reduction in the number of necessary transactions developers need to make in order to procure a quantity of TDR that satisfies their development need. A TDR bank can fulfill a similar purpose (that is, streamlining the transaction process to improve efficiency), but requires public funds to operate.
    - Although investment firms own a significant percentage of the total supply of certified TDR, a large fraction (30%) remain with sending site owners in small quantities (on average, sending site owners retain 25,000 TDR). That quantity is insufficient for essentially any development project in the city. The situation presents a significant obstacle for developers, who are forced to individually contract with multiple parcel owners in order to procure a sufficient supply of TDR.
- The city allows non-profit organizations to sell the total FAR permitted on their site regardless of the amount of floor space already used. This means that a non-profit using eight floors in a nine floor zone could still sell TDR representing all 9 floors. Non-profits that utilize that option, however, are forced to ensure that a non-profit organization continues to occupy the building.

Key Lessons:

- As of 2013, 5.3 million units of TDR had been certified and 2.7 million units had been sold in San Francisco. There were 112 sending parcels, with 83 of them having transferred all available TDR and the rest transferring most or some of their available TDR. A total of 34 development projects and 32 buildings have used TDR in the program's 30 year history (that is considered very successful). Only 30% of all certified TDR in the city remained with sending site property owners. Over half were used, and investment firms owned a significant portion.

[11] See Page II-10 "80 Natoma" and "First and Mission" of the Seifel Team's report. These short paragraphs detail a complicated scenario involving multiple parties, where TDR were cancelled and transferred multiple times.

Figure 13:

The Millennium Tower was built after its developer purchased over 400,000 TDR in 2005. It provides an example of both the economic potency of the TDR market in San Francisco (the ultimate value of the tower's FAR was much higher than the cost of acquiring TDR) and of a major issue with the TDR program: in order to secure the desired amount of FAR, the developers of Millennium Tower were forced to initiate and complete 5 separate transactions with sending site owners—an expensive and inefficient process which is generally unavoidable for large project developers in the city.

- After the TDR program's original receiving area became saturated with height and density (making transfers to the zone increasingly uneconomical and untenable), the city passed an ordinance that expanded the receiving zone to less developed areas. The receiving area modification shows how cities can adapt their TDR policies to the demands and constraints of an ever-evolving real estate market.[12]
    - Like any major city, San Francisco has also evolved and readapted its master plan. New stipulations regarding height and density within certain corridors of the city have been passed, and they carry significant implications for the TDR market. Both the Central Corridor Plan Area and Proposition M place new height, density, and development restrictions on specific zones of the city. Developers in such areas are now forced to purchase TDR, which has consequently increased demand.
    - Maximum FAR in those areas is now 6:1, and if the city upheld that requirement in all cases, total TDR demand would be expected to rise to 7.5 million units. The city chose not to uphold the baseline FAR requirement in all cases, however, and

[12] See Page I-9 in the Seiful Team's report for further elaboration.

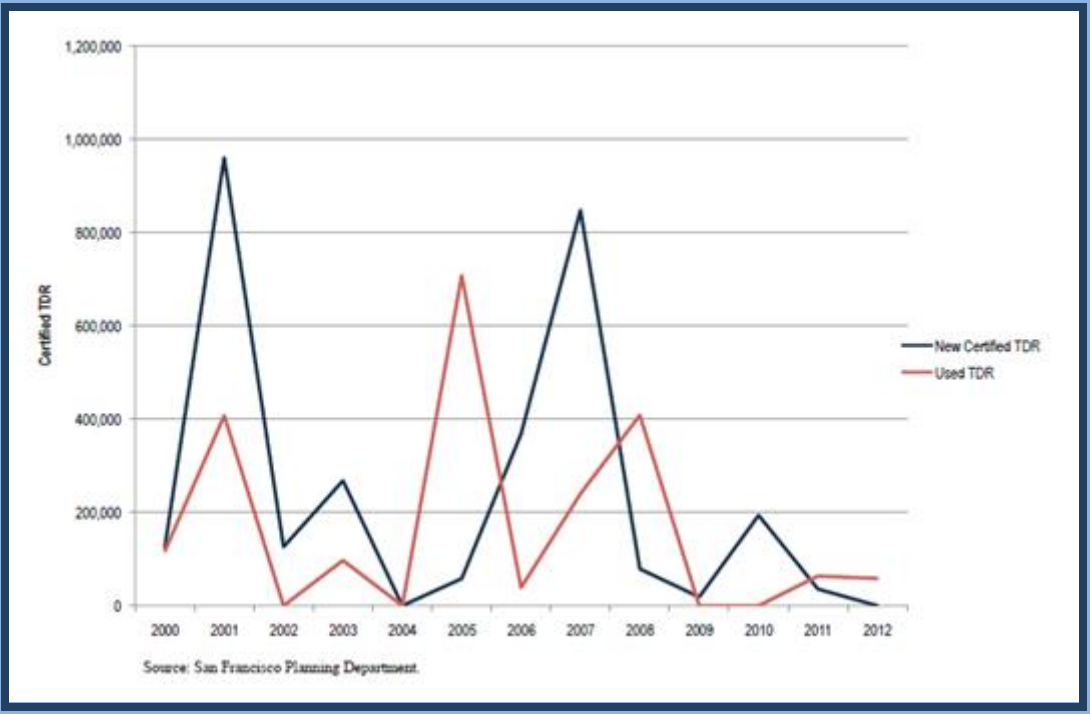
so the increase in TDR demand caused by those projects amounted to 1.06 million units.[13]

- On a handful of occasions, historical sites that existed outside of the city's designated TDR sending area (the C3 downtown district) attempted to gain TDR certification. The city responded to such scenarios by rezoning the properties, which have successfully transferred a significant fraction of their available TDR to date. If Nashville, like San Francisco, begins with a strictly defined sending area, it will likely have to make similar adaptations in the future in order to preserve historic properties elsewhere in the city.
- The city did not require the recordation of TDR sales prices until 2010. Failure to record TDR transactions obscured market analysis of the TDR program and contributed toward administrative difficulties. At least until recently, moreover, the city failed to provide an adequate medium through which potential buyers and sellers could exchange TDR or quickly research TDR pricing and availability. While the city's supply of TDR remained relatively constant over time, several potential participants were unaware of that fact and were consequently deterred from initiating numerous transactions.
- In addition to obfuscating market analysis, the city's lack of statistical data regarding TDR market activity also stirred confusion over unused TDR. Unused TDR resulted from failed or incomplete development projects for which developers purchased TDR but had not implemented them onto their sites. Without a comprehensive database of TDR exchanges, the city encountered regulatory difficulty with regard to the development capacity of projects with TDR that remained unused several years after the initial sending/receiving site transaction occurred. To curtail that issue, the Siefel Team recommended a simple Notice of Use procedure, which entailed documenting the physical implementation of TDR, and a TDR expiration date, which would retire unused TDR after a specified amount of time.
- Like Nashville, San Francisco has increasingly focused its attention on maintaining affordable housing options. To fund such initiatives, the city created alternative bonus height and/or density options and has even subtracted the TDR requirement for certain developments. While those measures have certainly impacted the TDR market, they have not rendered it ineffective. Keeping in mind that Nashville, too, maintains priorities (such as affordable housing) that may interfere with TDR supply and demand, balancing the TDR program with alternative bonus options will be an ongoing struggle.
- Notably, historic buildings are exceptionally difficult to demolish in San Francisco, which can designate historic status to properties without the owner's consent. This provides another layer of incentive to property owners to participate in the city's TDR program.

[13] See page III-11 of the Seifel Team's report.

- The consultation group that the city hired to evaluate its TDR program resolved that the primary determinant of TDR price was the city's overall real estate economy. The graphic below displays fluctuations in TDR price and demonstrates that the majority of TDR transactions occurred during three, distinct annual peaks: 2001, 2005, and 2008.

Figure 14:



Further details of San Francisco's TDR code can be found here

Portland:

Portland's TDR program began in 1988 and was meant to work in tandem with several other bonus density programs. From 1988 – 2007, the city adopted 18 bonus density options and six transferable density options, which were intended to provide a range of tailored choices for developers seeking additional FAR. The city altered the program significantly in 2015, when it reduced the menu of bonus density options from 18 to six and the transfer options from six to two (with one being for Historic Landmarks).

Like Nashville, Portland has tried to structure several planning priorities into its bonus programs. The range of Bonus Density options has significantly impacted the effectiveness of the Historic Landmark TDR program—just as we might expect similar bonus incentives to impact a Historic Landmark preservation program in Nashville. Therefore, much of the subsequent analysis of Portland consists of examining the overall structure of the city's bonus density menu and how the Historic Landmark TDR program has operated within the constraints of its broader context.

Information for this case study derives from a 45 minute conversation that took place between the Metro Planning Department and Portland Senior Planner Rachael Hoy, an email exchange with Portland Historic Planner Brandon Spencer, a 2007 Johnson Gardner market analysis of Portland's Bonus Density Menu, and a 2015 Economic and Planning Systems (EPS) report on the city's Bonus Density Menu. The EPS report is particularly useful for gleaning insights about the Portland program and foreshadows what the Planning Department might expect from the team's economic analysis on Music Row.

Program History:

As of 2015, there were four transfer types, including six specific options, in the Portland TDR program: intra-project transfer (where abutting lots could transfer FAR between each other), cross-district transfer (which was the option reserved for Historic landmarks and residential transfers), sub-district transfer (which applied to one area of the city), and the central city master plan transfer. There were an additional 18 other bonus density options, which allowed developers to implement desirable onsite features, make cash contributions to affordable housing, among a long list of other public benefits. This optionality was intended to provide flexibility to developers and ensure that the city's comprehensive and wide-ranging planning agendas were all met. The structure of the bonus density menu combined with complex zoning regulations, however, generated the opposite effect. Bonuses that were incentivized for particular sites frequently contradicted the economics of development on that site, and some options were significantly cheaper and easier to implement than others. The result was that most of the density bonus options were seldom used and some were used more extensively

than intended. The Residential Bonus Option, for example, was by far the most utilized bonus density option due to two factors—the first was increased demand for residences in central locations (a natural, market-driven demand); the second was the bonus ratio (an artificial incentive), which provided by far the most cost efficient mechanism for gaining additional density (an automatic 3:1 boost in FAR). Notably, the Historical Landmark TDR program did not produce the results that were anticipated for it. Owners of historic properties remained largely unaware of how the program worked, and few developers sought landmark TDR for a range of practical reasons.

Program Structure:

- There are five historic districts and several historic landmarks in Portland;[14] landmarks are notably hard to demolish. Most historic landmarks in the city are located within the downtown area.
- The city is not involved in the transfer process until after a transaction takes place—the sending site and receiving site owners must gain approval from the planning department.
- A restrictive covenant is signed by both the sending and receiving site owners after TDR is transferred; this prohibits destruction on the site in the future
- Peculiarly, Portland allows sending site owners to purchase TDR back, although this type of transfer seems unlikely to ever happen
- Base density and building height in Portland's Central City is kept at a below-market threshold to force developers to participate in its bonus density programs. The city has also provided artificial incentives for its Landmark TDR program by creating a 3:1 FAR transfer ratio. This means that when developers purchase 1 unit of Landmark TDR, they acquire 3 square feet of space for their project.
- The Portland program lacks both a TDR online "marketplace" and a TDR Bank. The absence of both features individually complicates oversight and monitoring of the program. Lack of an online TDR "marketplace" prevents buyers and sellers from communicating with one another and reduces transparency regarding pricing (a marketplace can significantly aid the city's tracking of TDR transactions, which can be instrumental to future revisions in program design). Lack of a TDR Bank prevents the city from exerting influence over the pricing of TDR—the City Planner who described their program to us expressed that a TDR Bank is highly desired, but other priorities have prevented its design and application thus far.

[14]See the following link for more information regarding Portland's Historic Districts: https://www.portlandoregon.gov/bps/article/130727

Key Lessons: *"Bonuses were created on policy grounds, rather than market needs*[15]*"*

Figure 15:

Predicted Density Bonus Values

	Base Entitlement							
	3:1	4:1	5:1	6:1	8:1	9:1	12:1	15:1
Site Configuration								
	3	4	5	6	8	9	12	15
Lot Size (sqft)	10,000	10,000	10,000	10,000	10,000	10,000	10,000	10,000
Building Envelope at 85% Coverage	8,500	8,500	8,500	8,500	8,500	8,500	8,500	8,500
Gross Building Area (sqft)	30,000	40,000	50,000	60,000	80,000	90,000	120,000	150,000
# Floors	4	5	6	7	9	11	14	18
Density Bonus Floor Area (DFBA)								
Maximum "Supportable" DBFA	70%	25%	5%	10%	100%	75%	30%	5%
DBFA (sqft)	21,000	10,000	2,500	6,000	80,000	67,500	36,000	7,500
Additional # Floors	2	1	0	1	9	8	4	1
Gross Building Area w/ DBFA	**51,000**	**50,000**	**52,500**	**66,000**	**160,000**	**157,500**	**156,000**	**157,500**
# Floors	6	6	6	8	19	19	18	19

Source: Economic & Planning Systems

The chart above demonstrates the amount of bonus density per base entitlement zone that a developer can expect to incorporate given the availability of bonus density options/TDR.

- One of the more valuable economic insights about Portland's bonus density programs involves the relative "contextual" value of bonus density in specific development projects in specific zones of the city. Put simply, the value of bonus density changes from project-to-project. Certain amounts of bonus density, moreover, do not always represent an economical option for a development. This is because there are certain development "thresholds," where the expenses associated with implementing additional floor space are actually less economical than going without it. A five story building is much less expensive to construct than a seven or nine story building because of the large disparity in the cost of construction materials necessary to use for the respective projects. Thus, in a scenario in which a developer planning a five story building (even in a zone where demand for additional density is present) is offered an opportunity to purchase TDR that would bring an additional two stories to his project,

[15] Johnson Gardner Page 10; this part of the report summarizes key issues with Portland's bonus and transfer density options as they existed in 2007. Many of the same issues were present in 2015.

the developer is unlikely to be adequately incentivized. The broader takeaway from this discussion is that Nashville's TDR program should be flexible enough to accommodate similar scenarios and ensure that economical options are possible when the standard bonus density option conflicts with a development threshold.

- The success of Portland's bonus and transferable FAR options has been variable. The long list (24 in total) of bonus density mechanisms ensured that some options—and thus planning priorities—were totally overlooked, while others were exploited due to unforeseen and unintended economic advantages for developers. While the city's transfer options have been used often enough to deem the TDR program as a success, they have been used at the expense of other bonus options (which often provide FAR bonuses for infrastructure improvement or other public amenities). The disproportionate use of TDR and the Residential Bonus option is the consequence of an inadequate understanding of the economic advantages and disadvantages attached to each of the city's bonus options. Developers seek to gain FAR through the most efficient and least expensive means possible, which all but excludes the majority of bonus options and the benefits they were intended to provide. Overall, greater simplicity in the program would have made use patterns more predictable, and the city would have maintained greater influence over the realization of its top priorities.
- Adding further complexity to the bonus option and TDR programs was the inconsistent availability of options in different neighborhoods. While such stipulations were likely created to prevent unwanted uses and developments, several of them seem to have been arbitrary.
- Some of the bonus options in Portland proved uneconomical to developers because the amenity that they specified was of little value to the development. Developers are more likely to use bonus options that are applicable and relevant to the development itself—rather than investing in some extraneous or incongruent feature. On-site art, for instance, is more likely to add value to the development than payment for a sidewalk elsewhere in the city.
- Several property owners in the Central City neither understood the basic concept of TDR nor that their unused FAR had market value—the result was that an insufficient number of Historic Landmark owners sought to participate in the program
- The bulk of recommendations provided in the 2015 EPS report revolved around making the program more simple, flexible, and predictable. Reducing the sheer number of bonus density and transfer options served as their primary recommendation. Portland has since whittled down their options significantly. Also recommended was loosening the receiving site restrictions so as to provide developers with expanded options. Because density bonuses vary in value on a project-by-project basis, the EPS report

advised that developers should retain a larger degree of control over how much additional density that they can implement into their respective projects.

- Quote from Portland Historic Planner Brandon Spencer:
    - "Although Portland's TDR program has been used by a select number of landmark properties and does provide an incentive option for some owners, it has not to-date been a panacea or equitable tool for achieving preservation goals. Fluctuations in the market for FAR, the lack of a dedicated FAR bank, and competing FAR bonus programs have made the program most useful for historic resource owners with the largest available amount of FAR and/or those owners who can transfer FAR to other sites that they own. Upcoming changes to the historic transfer program are hoped to increase its competiveness with other bonus options, but it is suspected that it will continue to be used only occasionally for those unique situations where an owner is pooling numerous incentives to advance a large rehabilitation project."

- Despite the shortcomings of Portland's TDR program, there have been a handful of successful TDR transactions involving historic sending sites:

Figure 16

The US Customs House (top) transferred FAR to the Broadway Tower (bottom), a project currently under construction in Portland's downtown.

Figure 17:

The John Palmer House (top) successfully transferred FAR to the Cook Street Apartments (bottom).

Seattle:

Program History:

Seattle began to develop its TDR program as a part of its broader urban revitalization effort in the 1990's. The primary purpose of the TDR program is to assist historic preservation efforts and maintain affordable housing options. The program remained unsuccessful for several years, with no transfers occurring until after 2006 (the city upzoned a large portion of its downtown area and implemented an incentive zoning structure that incentivized purchase of TDR). Since then, the TDR program has been an essential component in the city's broader restoration and preservation efforts as well as an instrumental feature of several high density downtown developments.

The city employs a handful of other methods in addition to its TDR program to incentivize historic preservation. After historic site property owners rehabilitate their property, the cost of rehabilitation is subtracted from their property taxes over the course of the following ten years. Seattle's historic preservation efforts have been aided by a statewide determination to preserve historic properties and the city's own designation of eight special Historic Districts. In 1985, the State Legislature passed laws that incentivized municipal preservation efforts.[16]

King County, which encompasses Seattle, has a separate TDR program charged with conserving rural land. Developers within Seattle are able to purchase TDR from King County in addition to engaging in TDR transactions with Seattle's various sending site properties.

The majority of information gathered here is derived from a conversation that the Planning Department held with Seattle Historic Planner Sarah Sodt.

Program Structure:

- TDR options are available for vulnerable masonry structures, open space, housing, and historic buildings.
- Zoning determines both eligible receiving and sending sites, and even specifies the type of TDR that a receiving site can use.
- Sending site TDR is equivalent to the maximum unused FAR allowed by zoning on that site
- Sending site landmarks from which any amount of TDR have been transferred must be maintained in accordance with the Landmarks Preservation Board.

[16]See the following link for more information regarding Washington's preservation laws: http://leg.wa.gov/CodeReviser/documents/sessionlaw/1985c449.pdf?cite=1985%20c%20449%20§%201.

- Sending Site houses from which TDR is transferred must be rehabilitated to provide decent living conditions for 50 years.
- Non-historic sites may be available to sell TDR if they "contribute to the historic architectural context of the neighborhood" and are "structurally at risk"; after transferring TDR, the structure must be rehabilitated and comply with all applicable codes. Down the road, the structure can be altered so long as the alteration does not detract from its historical character. The sending site owner must notify the Director of the Department of Neighborhoods when TDR have been transferred and rehabilitate the site within five years.
- Two Downtown areas—the Pioneer Square Preservation District and the International Special Review District—can provide sending sites for the South Downtown Historic transfer program. Specific structures within the districts that are considered eligible to sell TDR must be determined to be contributing structures.
- TDR transfers are recorded in the deed of the sending site.[17]
- TDR are priced according to square footage—each square foot of sending area space is priced the same, regardless of sending or receiving site use/function; sending and receiving site parties negotiate the ultimate cost of TDR transactions.
- The city uses a TDR Bank. Seattle Planner Sarah Sodt noted that the city has thus far only used the TDR Bank as a means of storing publicly owned TDR—by virtue of merely having some TDR in the Bank, legislation compels developers to buy TDR from historic landmarks. So far, the city itself has not purchased any TDR from historic sites, and the operation of the Bank is confined to a few spread sheets.

[17] The section of the ordinance detailing the regulations on the city's TDR program can be found at https://library.municode.com/wa/seattle/codes/municipal_code?nodeId=TIT23LAUSCO_SUBTITLE_IIILAUSRE_CH23.58AINPR_SUBCHAPTER_VPREXRENOFLAR_23.58A.042TRDEPOTDRITD

Figure 18:

Approximately half of Seattle's W Hotel was built with Historic Landmark TDR.

Other Density Bonuses:

Seattle has an abundance of elaborately designed bonus density mechanisms. Their top priority appears to be maintaining and expanding affordable housing options in the city. Other bonus measures, such as site landscaping, fees in lieu, or public amenities, are also available to developers in varying combinations. The approval process appears to be individually discretionary, with the city maintaining a high degree of control over acceptable combinations and implementations of bonus density into development projects.

- Seattle has implemented comprehensive incentives to maintain affordable housing in its urban core. Developers can gain significant height and density bonuses by including affordable residential units in their projects or providing a fee in lieu that serves as an equivalent subsidy toward establishing affordable housing options elsewhere.
    - The first increment of bonus FAR must be earned through LEED Silver certification.
    - 60% of the maximum potential bonus density for a site may be obtained through providing on site affordable housing.

    - The remaining 40% can be gained through providing other benefits.
- The city has raised $50.6 million from fee-in-lieu payments (as of 2015).

Key Lessons:

Based on the Planning Department's conversation with Sarah Sodt, the organization and effectiveness of the city's TDR program remains ambiguous. Contrary to what several online sources have suggested, the city's TDR program was not initiated until the 1990's. Until 2006, it was totally ineffective at incentivizing historic property owners to sell TDR. The essential change that occurred in 2006 was a city-wide upzone, which incorporated a new and expansive menu of incentive zoning of which Historic Landmark TDR was a part. Basically, developers are disallowed from reaching maximum FAR unless they purchase a minimum fraction of Landmark TDR. Since the change took place, there have been 38 uses of historic landmark TDR in development sites.

The Seattle representative noted that TDR by itself does not incur sufficient motivation for absentee property owners to rehabilitate historic properties—if they are not invested in maintaining their properties now, participation in the TDR program will not entice them to change their approach.

Also notable was the fact that Seattle's TDR program severely lacks administrative oversight, transparency, and organization. Two individuals from the entire metropolitan government have proficient understanding of the city's TDR program. While participants in the TDR program are encouraged to report any transactions in which they take part, a large fraction of transactions go unreported, leaving ample opportunity for developers to make under-the-table deals and exploit basic loopholes within the program.

Finally, the Sarah Sodt made particular note of the inherent economic complexity of designing, studying, and sustaining a TDR program. Specifically, she referred to the fundamental need for receiving and sending sites to be located within zones that are geographically proximate and (for economic and ethical reasons) fiscally similar. The more dissimilar receiving and sending sites are, the more difficult it becomes to discern a fair market price for TDR.

Section IV: Key Findings and Specific Considerations

The preceding Case Studies underscore several variables and factors that must be taken into account during the design of a TDR program for Music Row. This section outlines the most important questions and considerations for the city in the phases to come.

Economics:

TDR programs only work when sufficient incentives exist to compel property owners to sell and developers to buy. When TDR supply is overabundant or insufficient or when demand for bonus density is inadequate, TDR programs will not work. The city must understand and have a plan for each question or complication raised in this section.

1. Sending Sites:
    - Sending sites are defined as locations at which Metro will certify TDR. Specifically considered in this report is the designation of the Music Row Study Area as a collection of potential sending sites. More landmarked properties around the city may be added to the list of sending sites.
2. Receiving Sites:
    - Determining receiving sites raises several complicated economic and ethical questions:
        - To what extent do considered receiving sites already have infrastructure and important public amenities? If those qualities are already present, it will simplify the process and make the locations more enticing to developers.
        - Is there a disparity between development demand and existing density on proposed receiving sites? If so, what transfer ratios are needed to incentivize purchase of TDR?
    - *The Economics of receiving sites always differ from sending sites*. The economic differences become less predictable the farther away from the sending site the receiving site is.
    - Key Recommendation for Receiving Sites:
        - Ensure Economic compatibility and similarity with sending sites to the greatest degree possible; the closer receiving sites are to the sending sites, the easier this task will be.
3. The TDR Bank:
    - Metro should consider this option. A TDR Bank allows the city to purchase and accumulate TDR from sending site owners who desire more immediate compensation. Transactions between the city and individual stakeholders can

help set an annual market price for TDR, reduce anxiety for sending site owners, and potentially even provide an additional source of revenue for Nashville (especially if the city is able to resell TDR at a higher value than the purchase price).

- Planners from both Portland and Seattle bemoaned the absence of an effective TDR Bank. Seattle has one, but it has thus far only held TDR created on publicly owned property—Sarah Sodt (Seattle planner) informed us that the only purpose for the bank so far has been to compel developers to purchase Landmark TDR when seeking maximum density capacity on a receiving site. Other than the Bank's unique legal function, its existence is otherwise "confined to an excel spreadsheet," which only a couple of planners occasionally update. Portland lacks a TDR Bank entirely, and both planners with whom we spoke expressed that one is highly desired but currently unfeasible to implement.
- TDR Bank Examples:
  - For the Southstreet Seaport Subdistrict in New York City, a TDR Bank was created to avert a demolition crisis. In this case, private Banks accepted TDR from Historic buildings with overdue mortgage payments and considered their debts absolved. The Banks retained the TDR until the next development cycle, in which they sold them for a profit.
  - The New Jersey Pinelands TDR Bank functions as a buyer of last resort and provides property owners an outlet for TDR sale during market slumps. The Pinelands TDR Bank also serves as a marketing and educational tool, which helps maintain access to and understanding of the TDR program among potential buyers and sellers.
  - The King County (Washington State) TDR Bank purchased 90,000 acres of forest in one $22 million deal. Kind Country's TDR Bank has been the backbone of its TDR program, which has been highly successful.

4. Transfer Ratios:
   - While the basic, 1:1 FAR transfer has worked well in some instances (high demand cities like San Francisco and NYC provide the best examples of this), it is sometimes necessary to increase the ratio of bonus FAR to transferred FAR in order to spur demand.
5. Making Alternative Bonus Density Options Work Together:
   - It is often the case that the existence of several kinds of bonus density options fosters a competitive environment that causes the potency of all programs to suffer. For that reason, a Historic Landmark TDR program in Nashville must be designed with an understanding of how its incentives will impact and be impacted by pre-existing bonus density options.

- An example of how to integrate different options cohesively can be found in Seattle and the Special West Chelsea District (New York City), where the only way to achieve maximum density on a particular site is through purchasing a pre-arranged "menu" of bonus options—which includes both contributions to affordable housing as well as Historic Landmarks. EPS' report for Portland recommended a similar strategy, which they call "incremental bonuses." Employing that method would prevent developers from achieving maximum bonus density through any one means—affordable housing, public amenities, and Historic Landmark TDR could all represent a fraction of the total bonus density a developer could acquire. The city could align the percentage of bonus density associated with each option to represent its priorities.[18]

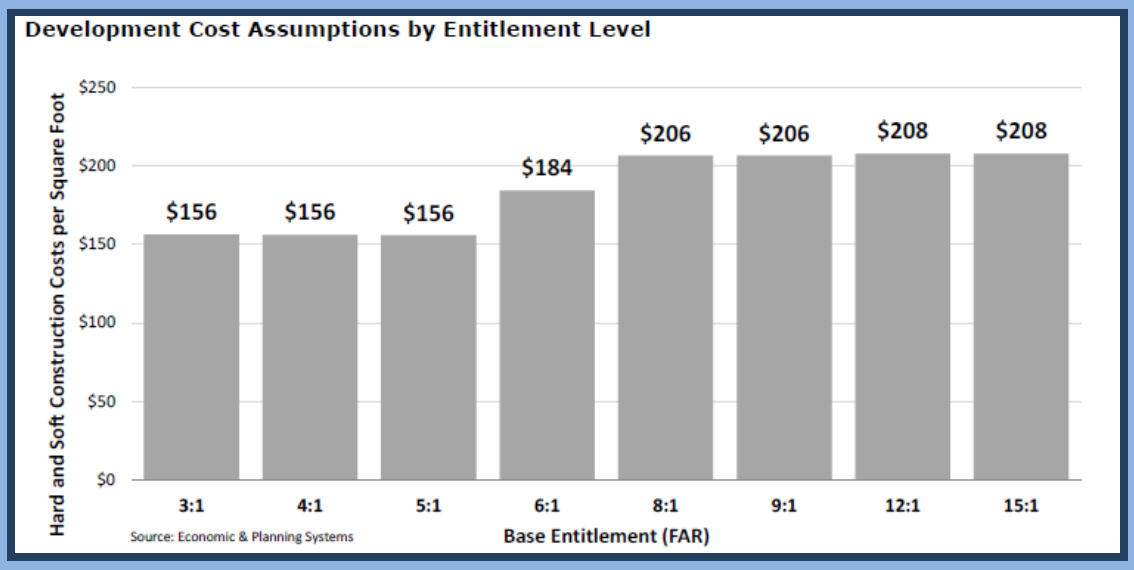
6. TDR Unit Price:
    - Unit price should represent the value of bonus FAR to the receiving site rather than the sending site. If it represents the sending site, then the price will likely outweigh the benefits of purchasing TDR.
    - The value of FAR is the function of achievable pricing, construction costs and land value; the details of each unique project determine the marginal value of additional FAR.
    - One of the key findings in the study on the San Francisco TDR program was that *TDR pricing correlated most with demand in the overall real estate market;* this means that the strongest predictor of TDR price in the city was not the specific economics of the sending or receiving site, but the overall state of real estate within the city.
    - Prices vary significantly city by city, from as low as $6 per square foot in Portland to $450 per square foot in NYC.
7. TDR Transaction Quantity:
    - Fewer transactions between developers and stakeholders create a more efficient TDR market for all parties. If developers have to individually negotiate with several property owners in order to procure a sufficient amount of TDR to satisfy the FAR demand of their projects, the program will have a greater propensity for inefficiency and therefore deter potential participants. TDR Banks and an online TDR marketplace can both serve as transaction facilitators.

[18] See Page 10 of the EPS Report on Portland's Bonus Density Programs; Items 8 and 9 provide their specific recommendation of how to implement this. The first 50% of bonus density, for example, might be achieved through contributions to the city's affordable housing fund. The next 20% might be acquired through purchase of Historic Landmark TDR. The remaining 30% might be realized through other community benefits that the city chooses to prioritize.

8. TDR Taxation:
    - Several cities have taxed TDR transactions in order to gain additional source of revenue. While this policy might deter participation if too heavy, it is not unreasonable to think that a tax can be implemented without significantly impacting the marketability of TDR.
9. Public Building TDR:
    - To generate additional revenue, Metro might consider certifying TDR for certain public buildings. (This should only be a consideration if TDR demand is high). A distinct advantage of creating publicly owned TDR will arise in cases where developers require small amounts of bonus density in addition to what they already have. Instead of initiating small transactions with sending site property owners, they could efficiently purchase remaining TDR through the city.
10. Bonus Density has value thresholds:
    - At certain levels of development, bonus density can actually reduce the overall profits for the project. These stages represent "density thresholds," where the cost of installing additional FAR outweighs the economic benefit of free floor space. Significant increases in cost occur at 7 and 20 floors, for example, where more expensive materials are needed for construction. Therefore, a development project for five stories will typically not utilize a bonus density option that only grants an additional 2-3 floors—a 50% bonus density option for a five floor building, while seemingly valuable, would not be utilized.
11. Larger Developments Require Higher Profit Premiums:
    - Large developments are inherently more risky than smaller ones, and for that reason require greater incentives to utilize TDR. Transfer ratios may need to change in correlation with the scale of the development project in order to incur interest from larger projects.[19]

[19]See the E&P Planning Systems report on Portland's Bonus Density Menu, Page 13.

Figure 19:



In the graphic above, a drastic (~33%) increase in cost per square foot occurs between 5 story and 8 story buildings, and then stabilizes through 15 floors. This illustrates the need to accommodate bonus density options in a manner that is conscious of the residual value of bonus density to specific development projects.

12. Early Participation Bonuses for Stakeholders:
    - In this strategy, stakeholders who certify their TDR early on would be privileged in some manner down the road. (A precedent for this exists in Collier County, Florida)
13. Prohibit upzoning requests when possible:
    - Simply put, don't allow developers to gain additional density without making a contribution toward the TDR program. Nashville's downtown code, for example, sometimes allows developments to gain additional height by virtue of their architectural contributions alone:

        "If it has been determined that all reasonable efforts have been made to use the Bonus Height Program, the applicant shall hold a community meeting providing notices to property owners within 300 feet, and the Planning Commission shall review the modification request and may grant additional height for exceptional design, including but not limited

to unique architecture, exceptionally strong streetscape, and improvement of the project's relationship to surrounding properties."[20]

- To fully incentivize participation in the Music Row TDR program, loopholes like these must be tightened.

14. Downzoning can be useful, but can also provoke unwanted legal backlash:
    - The advantages of downzoning receiving sites are clear: where demand for bonus density may be insufficient under current zoning regulations, downzoning offers a mechanism of artificially boosting demand. The city of San Francisco used downzoning with extraordinary effect when it reduced the baseline FAR of its entire downtown district, making TDR the only means by which developers could achieve bonus density. The city must be cautious with this approach, however, as downzoning might provoke costly lawsuits against Metro. Unlawful takings claims may ensue if TDR are effectively nontransferable between sending and receiving site. If TDR in the receiving area prove too costly, moreover, developers may simply take their projects to different locations.
15. Historic Preservation Regulations:
    - The cities studied in this report all exist in states where historic properties receive more stringent protection than in Tennessee. Newly drafted Music Row Code applies a more rigorous approval process for demolition or alteration of historic structures in the area. This quality can aid the efficacy of the TDR program.

Administration:

16. Consistency and integration with broader plans:
    - It is recommended that TDR programs function cohesively within the framework of a city's broader planning agenda, rather than serving as an isolated mechanism for achieving a singular purpose. The San Francisco Planning Department provides the best example of that approach, as it made its TDR program a vital component of its entire planning approach. Portland's menu of bonus density options and transfer options, on the other hand, proved to be too complicated and elaborate to function cohesively.
17. Maintaining guidance over the program:
    - The city will have to evaluate the extent to which it wants to regulate the TDR market as well as determine the degree of influence it wants to maintain over factors such as pricing and TDR quantity (which could include adding more TDR to the market on an annual basis).

[20] See Page 14 of Nashville's Downtown Code.

- By including TDR from publicly owned properties in the market, for example, the city can maintain a steady supply of TDR and prevent potential scarcity issues.
- Annually setting the minimum TDR price could also provide clarity and efficiency to the market, but doing so would leave the city vulnerable to issues that might arise from significant fluctuations in the real estate market (suppose that the city set the TDR price during a calendar year at $20 per sq. foot, but that a spike in the real estate economy increased the real value of TDR to $30 per sq. foot).
- Creating a TDR Bank has already been explored, but serves as another way in which the city might maintain desirable influence over the scope and direction of the TDR market.

18. Reducing Hassle:
    - The TDR certification process must be predictable and efficient. The more discretionary the approval process is, the more time consuming and less consistent it will be. TDR certification must be as automatic as possible.
19. Creating maintenance and rehabilitation guidelines:
    - Historic preservation necessitates continuous care of sending properties; the TDR program should specify maintenance standards for sending site property owners once TDR have been certified. Other cities tend not to specify the percentage of TDR revenue that must be designated toward preservation, but rather simply institute guidelines of the nature outlined above.
    - For potential sending site properties with significantly less available TDR to sell, preservation mandates may deter participation in the program. For such properties, it may be necessary to loosen building maintenance requirements.
20. TDR expiration date:
    - Metro must decide whether imposing an expiration date on purchased TDR is useful and worthwhile. San Francisco relies largely on speculative investment for its TDR program, and thus does not impose an expiration date to transferred TDR. Other cities, like Los Angeles, maintain an expiration date for the opposite reason—negating any advantage of accumulating TDR over time and thus deterring speculative investment.
21. TDR Recertification:
    - When TDR have not been used for several years after they have been certified, it might be necessary to require sending site owners to recertify them. In Seattle, this practice is used so that historic buildings that have decayed or lost some degree of structural integrity cannot remain indefinitely eligible for the TDR program.

22. TDR Program Review:
    - In addition to closely monitoring the program, Metro should strive to study and evaluate it in a comprehensive manner at least every five years. Doing so could help refine and modify the program to accommodate changing market circumstances, stakeholder concerns, and developer preferences (it might be necessary at some point in time, for instance, to broaden receiving areas, alter transfer ratios, or modify alternative bonus density options).
23. Speculative Investment?
    - Some cities, like San Francisco, allow private entities to purchase and pool TDR in a manner similar to how stocks are traded. This method would only work in an environment with a proven strong demand for TDR, but would provide flexibility to stakeholders wishing to cash-in on their TDR before a developer sought their use. Allowing speculative investment would also help reduce transaction quantity for developers by allowing them to obtain their desired amount of TDR through one party.

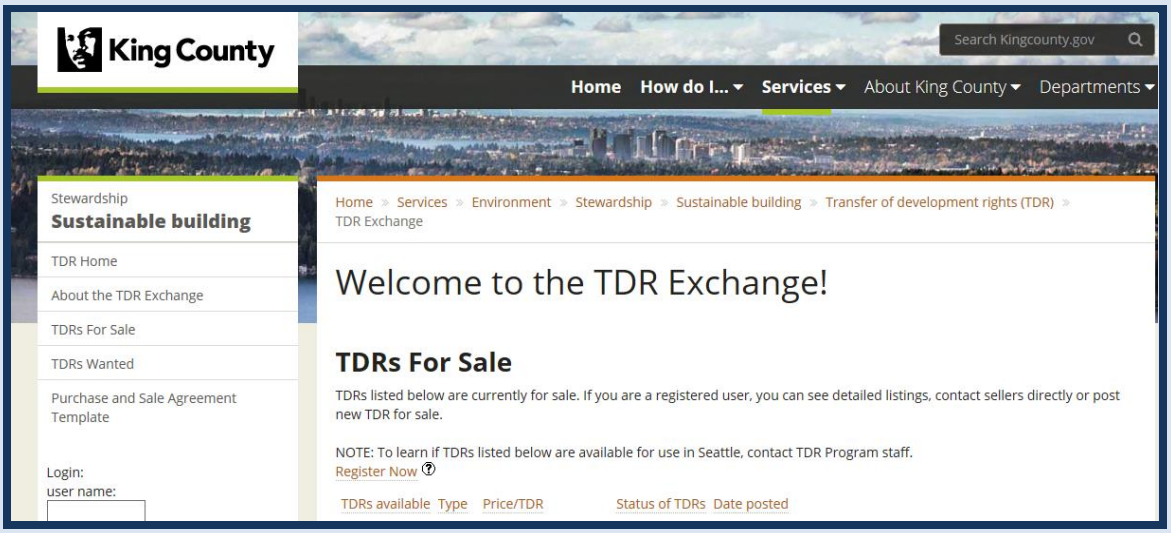
Community Engagement and Participation:

One of the most significant hindrances to TDR programs in cities across the country was their lack of clarity, consistency, and accessibility. Providing simple resources to foster community understanding (both for stakeholders and potential developers) will go a long way in helping the program operate effectively.

24. Create an easily accessible and identifiable TDR tab on the Metro website
    - Several cities with operational TDR programs do not provide a clearly designated digital resource for them on their Planning Pages. To maximize transparency, an individual TDR tab on the Metro Planning Page is recommended.
25. The TDR "Marketplace":
    - It is recommended that the city design a sophisticated but user-friendly online TDR "marketplace" with the following features:
        - A comprehensive list of Historic Properties with certified TDR
        - TDR transaction history and pricing
    - Stakeholders and developers alike should have access to the value of designated development rights in real time and be able to coordinate and communicate with one another through an appropriate medium. Creating a digital space in which TDR transactions can be arranged will help foster clarity for program participants and remove cumbersome obstacles for all involved. An online marketplace could also simplify the task of documenting TDR transactions, which is an important aspect of program oversight.

- King County, which encompasses Seattle but operates an independent TDR program geared toward land conservation, has created such a feature; by February of 2007, forty-eight market transactions had occurred, preserving two-thousand acres of land.

Figure 20:



The King County TDR Exchange provides a template for how a similar website might look and function in Nashville.[21]

26. Hire a third party to determine sending and receiving sites:
    - While this may be neither necessary nor feasible, it should be considered if stakeholder distrust and/or paranoia about government bias prove to be a significant obstacle in initiating the program.

[21] See the King County TDR Exchange at: https://green2.kingcounty.gov/TDR-Exchange/

Additional Considerations:

- What kind of development is compatible with the community designated to accept additional density?
- Will increasing density or building height negatively impact community character?
- How will more intense development impact property value, rents, and general economic activity in its vicinity?
- If the receiving site is proximate or adjacent to the sending site, will the aesthetic character of the sending site suffer as a consequence of its newfound proximity with high-density development?
- TDR or TDC's: Some cities have chosen to refer to their TDR as "Transferable Development Credits" (TDC's); while the two acronyms mean the same thing and choosing one rather than the other is unlikely to make a significant difference, stakeholders might be more receptive to the 'TDC' branding because of its more distinct alignment with the concept of currency (TDR are essentially a kind of currency/capital, and referring to them as credits might make that concept slightly more understandable).
- What are some of the zoning/land use/planning changes that we can anticipate right now and how might such changes impact the TDR program?
- TDR in receiving areas should not be understood as a *giveaway* above the maximum FAR, but rather as a means of *earning* maximum FAR. It is recommended that the TDR program be marketed to developers in that manner.[22]
- After TDR have been transferred from Historic properties, the city must ensure that sufficient incentives are in place for maintenance of the property (since much of its value has been depleted through sale of development rights).
- In a functional TDR program, Sending Site owners are likely to be approached for deals that ask for a certain percentage—rather than the entirety—of their available TDR. Developers will need a specific amount of TDR to satisfy their development goals, and those goals are unlikely to coincide perfectly with the supply that individual sending sites have to sell. To facilitate situations in which such discrepancies between sending site supply and developer demand exist, it may be advisable to offer an option for sending site owners to sell the remaining fraction of TDR below a certain percentage[23] to the city (this kind of solution would require a TDR Bank). By offering that service, the city can help retire more development rights on an annual basis and present sending site owners with another incentive to cooperate with the program.

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[22] See Johnson Gardner's Evaluation of Entitlement Bonus and Transfer Programs in Portland's Central City; Page 10.

[23] If a sending site sold 75% of its TDR—the owner could then sell the remaining percentage to the city at a price set by the TDR Bank.

Concluding Remarks:

Rick Pruetz, one of the country's leading TDR experts, recently published a literature review that outlined the ten most important attributes of successful TDR programs across the country. In order of importance, those attributes included:

1. Demand
2. Receiving Areas Customized to the Community
3. Strict Sending Area Development Regulations
4. Few or No Alternatives to TDR for Achieving Additional Development
5. Influencing Market Incentives by Altering Transfer Ratios and/or Conversion Factors
6. Providing Clarity and Certainty for Developers
7. Strong Public Support for Preservation
8. Simplicity
9. TDR Promotion and Facilitation
10. TDR Bank

The case studies reviewed in this report point toward each of those factors in some capacity. The primary factor—market demand for additional real estate—is present in Nashville, and provides strong reason to believe that a TDR program can work for Music Row. Metro is going to face particular challenges in how it determines receiving sites and how it aligns Historic Preservation incentives with preexisting bonus density options. The city must evaluate its planning goals and priorities and design its incentive policies in a manner that facilitates and encourages their implementation. One way of doing this is through creating a menu of incremental bonuses, where developers are forced to purchase Historic Landmark TDR in order to achieve maximum density on their site. This structure now exists in Seattle, and was officially recommended to Portland in EPS' study of that city's bonus density programs.

A TDR Bank and TDR "marketplace" are not high on the list above (the market place really factors into item 6—Providing Clarity and Certainty to Developers), but both should be considered in the design of a TDR program in Nashville. Both Portland (which does not have a TDR Bank) and Seattle (which has a TDR Bank that is poorly managed) have expressed regret over their inability to regulate TDR price and monitor TDR transactions between private parties (a "marketplace" can help serve that function).

Item 7, "Strong Public Support for Preservation" raises a couple of distinct concerns and considerations. Tennessee's historic preservation incentives do not seem to be nearly as strong as can be found in California, New York, Oregon, and Washington State. The TDR programs studied in those respective areas all relied in part on legislative barriers to demolishing historic

properties. By so doing, each state's historic landmark TDR program is more strongly incentivized. In designing a Historic Landmark TDR program for Music Row, therefore, the nature of Tennessee's and Nashville's preexisting preservation incentives must be well understood.

On a cultural level, the extent to which the broader Nashville community values the Music Row area needs to be evaluated. Because designing and regulating a high-functioning TDR program will cost the city time and money, the planning department must prove that saving Music Row is a worthwhile priority. Public outreach and general publicity about the historic and intrinsic value of Music Row, moreover, could go a long way into building support for a TDR program.

Item 8—simplicity—was referenced in all of the TDR overview studies examined during the writing of this report. It was also the key recommendation in the 2007 Johnson Gardener study on Portland's bonus and transfer density programs, which were notoriously complicated until 2015. Indeed, the Portland TDR program prioritized comprehensiveness over accessibility, and ultimately suffered underutilization due to the simple fact that too few stakeholders understood how the program worked.

The Music Row TDR program needs to strike a balance between comprehensiveness and transparency—but studies indicate that transparency is the more important of the two qualities: "Additional layers of complexity will never satisfy all affected parties and only serve to further complicate the administration of the program."[24] Potential participants in the TDR program need to understand both how the program works and what steps to take in order to sell or purchase TDR. Crucially, the basic concepts and operating mechanisms of transferable development rights must be boiled down in a way that is easily comprehensible: "Complexity is one of the most widely acknowledged drawbacks of TDR programs. Because the concept of a TDR can be confusing at first and most people do not have personal experience with a marketable permit system, an extensive public education campaign is generally required to explain the operation of the program."[25]

[24] Matthew Steenhoek: https://www.scribd.com/document/123072889/Transferable-Development-Rights-in-Major-US-Cities-History-Analysis-and-Best-Practices

[25] Messer; Transferable development rights programs: An economic framework for success; http://www.willallen.com/JCP/JCP_2007_V03_3_Messer.pdf

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