

ARTICLE VII
TDR

701 Purpose.

The primary purpose of establishing a TDR program is to permanently preserve prime farmland, sensitive natural areas, and rural community character that would be lost if the land were developed. In addition, this Article is intended to protect property rights by allowing landowners in the sending area defined below to transfer their right to develop to other areas of Hereford Township deemed appropriate for higher density development based on the availability of community facilities and infrastructure. These rights to develop are referred to for convenience as TDRs.

702 Basic Concept and Authorization.

- A. The provisions of this Zoning Ordinance which permit TDRs allow landowners in areas of Hereford Township proposed for conservation, called “sending areas,” to sell the right to develop all or a portion of their land to landowners in areas of Hereford Township proposed for additional development, called “receiving areas.” The creation of TDRs and the ability to sell and purchase them as described below are specifically authorized under Sections 603(c)(2.2) and 619.1 of the Pennsylvania Municipalities Planning Code, under the terms of which TDRs are acknowledged to be severable and separately conveyable from a sending area to a receiving area.
- B. When landowners in the sending area sell their right to develop all or a portion of their land, they must proportionately restrict the land from which TDRs are sold against any future development as provided in this Ordinance, although the land may still be developed to the extent of remaining TDRs and/or used for purposes that do not involve residential, commercial, industrial or institutional development, such as agriculture or forestry for example. When landowners in the receiving area buy the TDRs from landowners in the sending area, they receive the right to increase density and/or development as provided below more than they would have been allowed had they not purchased TDRs.
- C. Deed restrictions imposed in the sending area will not prohibit the landowner's sale of the land after the TDRs have been severed, although such land cannot thereafter be used for residential, commercial, industrial or institutional development purposes to the extent TDRs are severed and transferred. The deed restriction on the land from which the TDRs have been severed shall run in favor of the Township or a bone fide conservation organization such as but not limited to Berks County Conservancy, the Nature Conservancy etc .
- D. The owner of the tract in the sending area from which the TDRs are severed or any subsequent purchaser or purchasers of the TDRs may declare the TDRs for sale, may hold the TDRs or may resell the TDRs. Notwithstanding anything to the contrary, the Township shall have no obligation of any kind to hold, purchase, or own TDRs.

703 Sale of TDRs from Sending Area.

Owners of tracts which meet the following requirements may sever and sell or transfer their TDRs:

A. Sending Area Qualifications

1. The sending area tract of land shall be located within either the AP-Agricultural Preservation District or the RC-Rural Conservation District and shall comply with the following minimum size requirements:
 - a. In the AP-Agricultural Preservation District, the sending tract shall comprise at least ten (10) net acres in area or shall have a Net TDR Area of ten (10) acres or more as defined herein;
 - b. In the RC-Rural Conservation District, the sending tract shall comprise at least fifteen (15) net acres in area or shall have a Net TDR Area of fifteen (15) acres or more as defined herein.
2. The sending area tract from which TDRs are severed, shall be restricted from future development in accordance with Section 703.E, below, and, to the extent so restricted, may not be used to calculate permitted density nor compliance with any minimum open space requirements, including under the Conservation Design Option.

B. Calculation of Available TDRs

1. Establishment of Net TDR Area.

For purposes of establishing the amount of tract area used to calculate available TDRs, the “Net TDR Area” shall include all areas within the legal property lines of the portion of a tract from which TDRs shall be severed, excluding the following:

- a. Any existing area that has been set aside as a permanent right-of-way or easement for a public or private street, or for aboveground or underground utilities other than for local services;
- b. Any existing area comprising permanent drainage or stormwater management easements;
- c. Any existing area comprising sewage disposal facilities serving any property not part of the subject tract;
- d. Any area within the FH - Flood Hazard Overlay District as defined in Article XIV;
- e. Any area comprising Alluvial Soils;

- f. Any area where slopes exceed 25%;
 - g. Any area defined as a Superfund hot spot.
2. For purposes of this Section, the extent of Alluvial Soils and soils with slopes greater than 25% may be determined based on the Soil Survey of Berks County. Alternatively, the extent of slopes greater than 25% may be derived from USGS mapping or, at the discretion of the Applicant, on actual photogrammetric or field survey.
 3. As an alternative, Net TDR Area may be established as equal to actual determination of Net Lot Area or Net Acreage, as defined in Article II of this Ordinance, upon submission to the Township of plan(s) and other documentation verifying such determination and acceptable to the Township.
 4. The total number of TDRs available on a sending tract shall be determined by multiplying the Net TDR Area by the following multiplier as stipulated for the pertinent base zoning district:

AP-Agricultural Preservation District: 0.5

RC-Rural Conservation District: 0.25
 5. Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for calculation of TDRs unless and until such time as said covenant, restriction or easement is dissolved, rescinded, or appropriately modified, with agreement of all beneficiaries of such covenant, restriction or easement.
 6. Any sending tract shall retain sufficient TDRs to support each principal use pursuant to the regulations in the base zoning district, plus at least one additional TDR for a potential future principal dwelling where no principal dwelling already exists, unless the tract is joined in a single deed with an adjacent tract or tracts with retained or remaining development right(s) sufficient to support existing uses and one principal dwelling. All remaining TDRs may be severed from the tract.
 7. Where calculations result in fractional numbers, a fraction of 0.5 or higher shall be rounded up to the next whole number and a fraction of less than 0.5 shall be rounded down to the next lowest whole number.
 8. All land held under a single tax parcel number shall be considered a single Tract for purposes of applying this section, regardless of the number of separately described parcels it may contain.

C. **Declaration of Transferable TDRs and Certification by Township**

Any owner in the sending area may elect to declare the TDRs that may be severed from a tract of land, based on application of the provisions of subsection 703.B, and may request a written certification from the Township of the number of rights that may be severed, which certification shall not be unreasonably withheld upon receipt by the Township of all information necessary for the Township to accurately determine the same.

D. **Severance of TDRs**

1. Severance of TDRs shall be effected by duly recording a Deed of Transferable Development Rights in the Office of the Berks County Recorder of Deeds. The Deed of Transferable Development Rights shall specify the tract(s) of land from which TDRs have been severed and the party(ies) who own the TDRs upon their severance, whether retained by the owner(s) of the tract from which the rights have been severed, or transferred to any other party.
2. Simultaneously with the recording of any Deed of Transferable Development Rights, or prior thereto, restrictive covenant(s) or conservation easement(s), which shall permanently restrict development of the sending tract as provided in Section 703.E below, also shall be recorded in the Office of the Berks County Recorder of Deeds. Subsequent sale or transfer of any recorded Deed of Transferable TDRs shall clearly indicate the deed record of the pertinent restrictive covenant(s) or conservation easement(s) and shall be in form and substance satisfactory to the Township Solicitor.
3. Notwithstanding anything to the contrary, the Township shall have no duty to recognize any Deed of Transferable Development Rights for any purpose and shall not credit, enhance, or increase density or development capability of any land in the receiving area based on any Deed of Transferable Development Rights that does not contain the signed endorsement of the Township. All Deeds of Transferable Development Rights and restrictive covenants or conservation easements shall be endorsed by the Township no later than 10 days after receipt by the Township of all of the following:
 - a. A commitment to Insure, or certification satisfactory to the Township Solicitor from a Title Insurance Company licensed to do business within the Commonwealth of Pennsylvania establishing that the TDRs being severed exist and/or are available to be severed from the sending area tract without restriction and reasonably establishing that the same exist and will be so severed upon recording of the Deed of Transferable Development Rights. Alternatively the Township may accept a formal legal opinion of counsel for the Seller certifying the same to the Township, or such other proof acceptable to the Township Solicitor in his(her) sole discretion.
 - b. A Deed registry fee of Ten Dollars (\$10.00).

- c. The fees of the Township Solicitor for review and approval of the documentation required above, and
 - d. A certification under oath in form approved by the Township from the owner(s) of the land from which the TDRs originate stating the total number of TDRs originating from the Tract, the total transferred to date, and the total if any remaining upon recording of the Deed submitted for Township endorsement.
4. At any time subsequent to severance of transferable TDRs, the owner of property from which transferable TDRs have been severed may re-attach TDRs subject to the following requirements and following the identical procedures set forth above:
- a. No more TDRs may be re-attached than had originally been severed;
 - b. TDRs to be re-attached must originate in the same zoning district as the property to which they are being attached;
 - c. The deed of Transferable Development Rights for the re-attached rights shall reference prior deeds severing TDRs from the Tract in such a way to establish compliance with the provisions of this section.
 - d. Restrictive covenant(s) applicable to the property to which transferable TDRs are re-attached may also be modified to the extent applicable to reflect the re-attachment and shall be re-recorded in the Office of the Berks County Recorder of Deeds, subject to endorsement by the Township.

E. **Sending Area Restrictive Covenant**

Any sending tract from which TDRs are severed must be permanently restricted from future development by a conservation easement or other restrictive covenant which shall be recorded in the office of the Berks County Recorder of Deeds , meeting the following requirements:

1. The restrictive covenant shall permanently restrict development of the sending tract such that a specific amount of the acreage within the tract meeting the definition of Net Lot Area, or “Net Acreage,” shall be excluded from future calculation of residential development density or toward meeting minimum lot area or open space requirements, except where otherwise provided in the applicable base zoning district.
 - a. For the purposes of this section, “Net Lot Area” and “Net Acreage” shall be interpreted as defined in Article II of this Ordinance.

- b. The amount of Net Acreage so restricted shall be equal in acres to the Net TDR Area needed to calculate the number of TDRs which are severed, pursuant to Section 703.B above.
 - c. If at the time of any future subdivision or land development submission, it should be determined that Net Lot Area or Net Acreage calculations differ from original calculations at the time of TDR severance, based on calculation of Net TDR Area, the amount of acreage meeting the definition of Net Lot Area which shall be excluded, shall, at a minimum, remain as originally established on the basis of the amount of Net TDR Area needed to calculate the number of TDRs which have been severed.
 - d. The following example is provided to illustrate calculation and intent for restricted Net Acreage under this Ordinance:
 - Sample gross Tract area: 100 acres in the AP District
 - Sample Net TDR Area: 70 acres (30 acres excluded per Section 703.B above)
 - Available TDRs: 35 (70 X 0.5 in the AP District)
 - Sample number of severed TDRs to be recorded in a deed of Transferable Development Rights: 20 (15 potentially available TDRs retained and proportionate acreage NOT excluded from future Net Lot Area calculations)
 - Net TDR Area needed to calculate severed TDRs: 40 acres (20 ÷ 0.5)
 - Net Acreage to be excluded from future Net Lot Area calculation: 40 acres

 - Sample future subdivision submission, actual Net Lot Area: 68 acres (calculations based on actual surveys result in variation from Net TDR Area calculation based on generalized mapping)
 - Net Acreage excluded from Net Lot Area calculation remains 40 acres
 - Net acreage available for density calculation under Conservation Design Option: 28 acres (68 - 40)
2. The restrictive covenant shall be in such form as approved by the Township, substantially consistent with the sample restrictive covenant incorporated into this Ordinance as Appendix A.
 3. The restrictive covenant shall designate Hereford Township, and/or a bona fide conservation organization acceptable to the Township at its sole discretion, as the beneficiary/grantee, but shall also designate the following parties as having separate and independent enforcement rights with respect to the restrictive covenant(s):
 - a. All future owners of any portion of the sending tract, and

- b. All future owners of any portion of any tract to which the TDRs shall be permanently attached.
4. The restrictive covenant shall apply to the tract of land from which TDRs are severed (sending tract), and shall specify the number of TDRs to be severed as well as any to be retained, and the amount of Net Acreage to be restricted as provided above.
5. In addition to specifying the amount of Net Acreage to be restricted, as an option, the restrictive covenant may incorporate surveyed plans indicating the specific location(s) of such Net Acreage to be excluded from calculation of Net Lot Area.
6. Where the applicable restrictive covenant specifies the amount of restricted Net Acreage as provided herein, without specifying the specific location(s) of such restricted Net Acreage, any future subdivision or land development for other than agricultural purposes shall be required to specifically designate the location(s) of the restricted Net Acreage, and provide for the permanent maintenance of same as open space in contiguous parcel(s) comprising, at a minimum, the Net Acreage restricted pursuant to this section. In such case, the open space so designated shall be specifically indicated on the approved subdivision or land development plans.
7. All owners of all legal and beneficial interest in the tract from which TDRs are severed shall execute the Restrictive Covenant(s). All lienholders of the tract from which TDRs are severed shall execute a joinder and/or consent to the Restrictive Covenant(s).
8. Final approval for any subdivision or land development plan utilizing transferred TDRs shall not be granted prior to the recording of appropriate restrictions at the Berks County Recorder of Deeds.

704 Receiving Area Qualifications and Calculations.

TDRs severed from sending area tracts may be transferred and received for development on other tracts in the following situations:

- A. Tracts of land eligible for development under the Conservation Design Option in the RC-Rural Conservation District may increase the density of development through receipt of TDRs subject to the following:
 1. The base density of development under the Conservation Design Option shall be established as provided in Article VI, set at Net Lot Area times 0.2.
 2. Final plan approval for any increment of additional density above the base density shall be conditioned upon demonstration of severance and receipt of sufficient TDRs recorded in a Deed of Transferable Development Rights.

3. Residential dwelling units greater than the number permitted in accordance with the base density may be developed at the rate of one dwelling per received TDR.
 4. The maximum total density, as increased above the base through receipt of TDRs, shall not exceed Net Lot Area times 0.33, including base density. The product of any such calculation shall be rounded to the nearest whole number; a fraction equal to 0.5 or greater shall be rounded up.
 5. For each 7.5 percent increase in gross density over the otherwise applicable base density, the applicable minimum open space requirement may be reduced 2.5 percent, measured as a percentage of gross tract area. In no case shall the minimum required open space be reduced below fifty (50) percent of gross tract area.
 6. Except where provided otherwise herein, all design standards applicable to the Conservation Design Option shall apply.
- B. Any lot or tract in the MU-Mixed Use District may increase the density or intensity of permitted development through receipt of TDRs subject to the following:
1. For any single principal use not part of a Multi-use development or Multiple-residential development, additional building or lot coverage or additional building height may be approved, as provided in Section 903.A, through receipt of TDRs as follows:
 - a. Subject to the limitations established in Section 903.A, any building coverage or lot (impervious) coverage, exceeding the base permitted coverage and measured separately in each case, shall require the receipt of one TDR for each 4,000 square feet or fraction thereof.
 - b. In addition to any received TDRs utilized to provide for additional building coverage or lot coverage or both as provide above, and subject to the limitations established in Section 903.A, any building area exceeding the base permitted height also shall require the receipt of one TDR for each 4,000 square feet of such building area or fraction thereof.
 - c. Final plan approval where building or lot coverage or building height is increased above that otherwise permitted shall be conditioned upon demonstration of severance and receipt of sufficient TDRs recorded in a Deed of Transferable development Rights .
 2. For any Multi-use development excluding Multiple-residential development, a minimum number of TDRs shall be received as a qualifying condition for approval of such development, as set forth in Section 903.B.1. In addition to TDRs used to meet the qualifying condition for Multi-use development, received TDRs may be used to provide for increased building or lot coverage or additional

building height, as provided in Section 903.B, at a rate of one TDR for each 4,000 square feet or fraction thereof, in the same manner as provided in Section 703.B.1 above. Final plan approval shall be conditioned upon demonstration of severance and receipt of sufficient TDRs, recorded in a Deed of Transferable Development Rights, to comply with the minimum qualifying condition set forth in Section 903.B.1 and to justify any increase in building or lot coverage or building height above that otherwise permitted, as applicable.

3. For any Multiple-residential development, residential density may be increased through receipt of TDRs as set forth in Section 903.C. Final plan approval for any increment of additional density above the base density shall be conditioned upon demonstration of severance and receipt of sufficient TDRs recorded in a Deed of Transferable Development Rights . Residential dwelling units greater than the number permitted in accordance with the base density may be developed at the following rates per received TDR, measured separately for each permitted dwelling unit type:

- a. 1.25 single-family detached dwellings;
- b. 1.75 single-family attached or two-family dwellings (twins and townhouses); and
- c. 2.25 apartments (excluding apartments provided on floor(s) above ground or first floor area devoted to permitted non-residential uses as provided in Section 903.B).
- d. The number of units calculated separately in the case of each of the multipliers set forth in subsections a – c above may be increased by an additional 50% where part of a continuing care retirement community (CCRC).

- C. Any lot or tract in the I-Industrial District may increase the intensity of permitted development through receipt of TDRs subject to the following:

1. For any single principal use not part of a Multi-use development, additional building or lot coverage or additional building height may be approved, as provided in Section 1003.A, through receipt of TDRs as follows:
 - a. Subject to the limitations established in Section 1003.A, any building coverage or lot (impervious) coverage, exceeding the base permitted coverage and measured separately in each case, shall require the receipt of one TDR for each 4,000 square feet or fraction thereof.
 - b. In addition to any received TDRs utilized to provide for additional building coverage or lot coverage or both as provide above, and subject to the limitations established in Section 1003.A, any building area exceeding

the base permitted height also shall require the receipt of one TDR for each 4,000 square feet of such building area or fraction thereof.

- c. Final plan approval where building or lot coverage or building height is increased above that otherwise permitted shall be conditioned upon demonstration of severance and receipt of sufficient TDRs recorded in a Deed of Transferable development Rights .
2. For any Multi-use development, a minimum number of TDRs shall be received as a qualifying condition for approval of such development, as set forth in Section 1003.B.1. In addition to TDRs used to meet the qualifying condition for Multi-use development, received TDRs may be used to provide for increased building or lot coverage or additional building height, as provided in Section 1003.B, at a rate of one TDR for each 4,000 square feet or fraction thereof, in the same manner as provided in Section 703.C.1 above. Final plan approval shall be conditioned upon demonstration of severance and receipt of sufficient TDRs, recorded in a Deed of Transferable Development Rights, to comply with the minimum qualifying condition set forth in Section 1003.B.1 and to justify any increase in building or lot coverage or building height above that otherwise permitted, as applicable.

D. Design Requirements and Modification of Area and Bulk Standards.

Any development using TDRs must comply with all requirements and design standards otherwise applicable to the subject development, except as specifically provided in this Article. For any development where at least twenty (20) TDRs are received, applicable area and bulk requirements may be modified up to twenty-five (25) percent subject to Conditional Use approval by the Board of Supervisors. Any conditional use approval to permit such modification(s) shall be subject to the following criteria:

1. The design and modifications shall be consistent with the purposes and the land-use standards contained in this Ordinance.
2. The design and modifications shall not produce lots or street systems that would be impractical in terms of layout or circulation or detract from the appearance of the development or surrounding community and shall not adversely affect emergency vehicle access.
3. Minimum lot width shall not be reduced to less than fifty (50) feet except where individual lots are provided for attached structures.
4. The applicant shall demonstrate to the Board that the proposed modification(s) will produce equal or better development design, including open space conservation results where applicable, than could be achieved without the requested modification(s) and that they represent the minimum modification necessary.

5. If the Board determines that the Conditional Use approval is appropriate, it may grant modification(s) of the requirements herein. In granting modifications, the Board may impose such conditions as will, in its judgment, secure the objectives and purposes of this Ordinance.

705 Plan Submittal Process.

- A. All applicants for use of transferable TDRs shall submit conditional use application as provided in Section 1504 and applicable subdivision/land development plans as required under the Hereford Township Subdivision and Land Development Ordinance for the use to which TDRs will be added. Any and all plans and proposals for the use of TDRs shall, in addition to meeting all other applicable provisions, include submission of the following:
 1. A Deed of Transferable Development Rights or an agreement of sale for TDRs proposed to be purchased from the sending area site(s). The applicant must prove ownership or equitable ownership of the appropriate number of TDRs, up to the maximum additional increment calculated as above.
 2. Note(s) on the plan indicating the total number of uses or dwelling units and the building coverage, lot coverage and building height(s) proposed on the receiving area site, the extent of development permitted without receipt of TDRs, and the incremental difference between that permitted through receipt of TDRs and that permitted without, as applicable.
 3. If the TDRs originate from a Tract where other TDRs have previously been severed, a copy of all prior Deed's of Transferable Development Rights shall be submitted.
 4. A title search of the tract from which the TDRs will be transferred sufficient to determine all owners of the tract and all lienholders and all those with an interest in the TDRs.
- B. In order to receive final plan approval, the applicant must provide documentation that appropriate restrictive covenants have been recorded for all sending area lands whose TDRs are being used by the applicant. These restrictive covenants must meet all requirements of this Ordinance. The restrictive covenant on the sending area land shall be recorded prior to or simultaneously with the Deed of Transferable Development Rights in accordance with the provisions of the Pennsylvania Municipal Planning Code, as amended, which transfers the TDRs from the sending area landowner to the receiving area landowner.

706 Public Acquisition.

Hereford Township may but shall not be required to receive, hold, purchase, and/or sell TDRs created and transferred in accordance with the provisions of this Ordinance

707 Amendment and/or Extinguishment.

The Township reserves the right to modify, amend, and/or repeal any of the provisions of this Ordinance regarding TDRs at any time in the future. The Township expressly reserves the right to change the manner in which the number of TDRs shall be calculated for a tract in the sending area and the manner in which TDRs can be conveyed and used at receiving sites. The Township further expressly reserves the right to terminate the TDR program entirely at any time. No owner of the land or owner of TDRs shall have any claim against the Township for damages resulting from a change in this Ordinance relating to the regulations governing the calculation, transfer and use of TDRs or the abolition of the transferable TDRs program. If the TDR program is abolished by the Township, no developer may attach TDRs to any tract in the receiving area after the effective date of the ordinance abolishing the TDRs program unless an application in conformity with the provisions of this Article was filed prior to the effective date of such ordinance and thereafter is promptly processed to approval, and, following such approval, a complete subdivision and/or land development application complying such rights is thereafter filed within six (6) months from the date of such approval.

