

# Transfer of Development Rights



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Our cities entered a new process of regeneration, primarily due to disaster risks. In the new process, our cities will be re-blended with demolish and re-build approach. The introduction of Transfer of Development Rights, Development Bonus and Value Increase Share in legal regulations indicate that the financialization process is starting.

In this new era, the answer to the basic question will be important; will Additional Development Rights or Regeneration Bonuses be given by a holistic planning approach and equity principle?

In addition to existing land regulations methods such as Regulatory Partnership Share (RPS) and Public Participation Share (PPS) new methods should be considered in the new regeneration process; Project Participation Share (PPS), Sale of Development Rights (SDR) or Transfer of Development Rights (TDR).

TDR Program necessitates the definition of two areas. First one is Sending District, places where cultural, natural and historical values are to be preserved and development should be restricted. The second one is Receiving District, which is designated for development and intensification through a purchase of development rights or transfer of development rights from sending districts.

When international program implementations are examined, the TDR Program's basic principles are voluntariness, market-orientedness and flexibility. Within the framework of these principles, the process begins with the application of landowner in sending district to the municipality and ends with the investor's purchase of development bonuses. TDR is a planned, participatory and controlled process.

There are successful applications of TDR and SDR methods in between parcels, urban-rural areas, special regions, and cities.

TDR method is can be one of the solutions to reduce the risk of building and quality of life in the majority of our cities.

Rather than increasing the intensity of development bonuses in order to obtain public spaces in highly dense structured neighborhoods, development rights can be transferred or sold to cover the cost of demolishing and rebuilding.

TDR can also be used as a solution to protect our cultural and natural assets and to restrict development in and around sensitive areas such as basins and lakes.

The aims of the TDR and SDR methods and development bonuses should be; to protect our natural and cultural assets under development pressure, to maintain equal sharing of values and to provide protection and development balance.

The integration of real estate sector and finance sector will challenge our planning practice through various dimensions. TDR will be the first step in this. The task of planners is to ensure that the advantages and disadvantages of implementing this vehicle are analyzed correctly and that the scenarios and environments are well prepared for the successful implementation of sample applications.

A.Faruk GÖKSU

Kentsel Strateji, 2013

- 01. Application**
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- 08. Bonus**
- 09. Certificate**
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# 10 steps of TDR process

Source: Ali Faruk Goksu

## 1 Application

- Landowners and Enterpriser
- Application Form

## 2 Municipality

- Local Committee
- Landowners
- Investors
- Non-governmental Organizations
- Planning Committee
- TDR Plan
- Fund Impr. Plan
- Market Analysis
- Public Benefit Plan

Institutional Capacity

## 6 District

- Sending (preserved)  $\xleftarrow{\text{BONUS}}$  Receiving (developing)
- $\xrightarrow{\text{USD}}$

Design of the Districts

## 8 Bonus

- Density per Unit
- Bonus per Unit
- Bonus Calculation
- Credit Calculation

## 3 Ministry

- Implementation Regulation
- Bank, Fund

Law of TDR

## 4 Information

- Natural Environment
- Utilization of Existing Land
- Property Informations
- Existing Plans

## 7 Size

- Fund Resources
- Bond Funds
- Purchase and Sale Operations of Bonus Certificates

## 10 Bank

- Supply and Demand Balance
- Promotions and Restrictions
- Number of Transferrable Development Rights

## 9 Certificate

- Preperation of Certificate
- Usage of Certificate
- Purchase and Sale Restrictions

Evaluating Scenario

# 01. Application

Those who want to voluntarily participate in the TDR program need to present a written application to related municipalities. Documents required for application are determined by the administration.

The landowner from a sending district who wants to transfer the development rights, should fill the application form for the approval of the committee.

The application must include the following documents.

- Document of Title
- Explanation of the assets to be protected
- The current use and the size of the property, plan/maps of streets, water resources, surrounding uses
- Document showing the existing development right
- Document showing the maximum allowed development right
- A letter explaining the intention of the property owner about the future ownership of the property; will it remain in private property or pass to public property
- Conservation, restoration etc. plans
- Documents containing calculations of development rights
- Application fee

Landowner applies to the planning unit of the municipalities. Evaluation is done by the planning committee, if necessary, with the assistance of the Local Committees established by property owners, investors or civil organizations.

# 02. Municipality

The municipalities should prepare maps of density, value, poverty, and deprivation in the preparation stage of the TDR process.

The municipalities in the TDR process should carry out the following activities in the planning and implementation stages.

- Master Plan
- Public Service Plan
- Transfer Regulations
- Approvals
- Capital Improvement Plan
- Real Estate Market Analysis
- Plan Approval
- Approvals
- Periodic Control of Program
- Identification of the sending district, current land use decisions, transferable development right credits,
- Identification of the receiving district, planning area, current land use decisions, density increase,
- Information about the technical and social infrastructure and capacity analysis for the sending and receiving districts and all title documents,
- The area can receive development rights from more than one territory until the district reaches its maximum intensity.

The sender has the right to sell and bargain the whole and/or part of the construction rights. The receiver has the right to use it as possession, resale or extra right of residence.

A Local Committee of different interest groups is formed to assist the planning unit.

The benefit of the Local Committee is to support information, communication and program participants. The appointment of members of the committee consisting of representatives of property owners, investors, affected by the program, and representatives of civil organizations in the sending and receiving districts by the elected administrators gives priority to participation.

## 03. Ministry

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The TDR and SDR require the preparation of new regulations on property and property rights.

Due to the restriction of building rights in sending districts where protection is required through TDR, property owners might think that their rights have not been paid enough. Such lawsuits to be filed by property owners will be resolved according to legal grounds.

Therefore, taking into consideration such factors, it is necessary to make legal arrangements related to the TDR in the first place. Laws and regulations should give municipalities the authority to implement the TDR program.

In addition, the regulations should be in line with the comprehensive plans. Transfer of development rights can also be issued independently, with changes and additions to existing laws and plans. Another important issue in the legal process is that the transfer records should be kept regularly.

The Ministry makes legal arrangements for the TDR implementation process and grants the municipality to set up a bank for its system operation.

## 04. Information

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Detailed analysis of natural conservation areas, determination of existing land use, a collection of property information, examination of existing development plans, are very crucial in TDR processes.

During the implementation of the program, the collection of information and the evaluation are carried out by the planning unit and the local committee.

The following information should be gathered.

- Natural and Conservation Areas
- Current Land Use Decisions
- Property Map
- Current Development Plans

# 05. Document

For the implementation of TDR, legislation should include planning and implementation process and mandatory documentation.

**Master Plan** forms the framework of the TDR program of the municipality.

- Includes estimates of economic growth and population.
- All possible sending and receiving districts should be defined.
- It should be analyzed how the estimated population increase will be distributed within the municipal boundaries and in the receiving districts.
- The existing and recommended infrastructure in the receiving district should be defined.
- The process and method of transferring the development rights from the sending area to receiving district should be determined.
- Definite planning objectives and design standards should be established for the management of the development in the receiving district.

**Capital Development Plan** should include the location and cost of the infrastructure of receiving district, and if the cost of the infrastructure is to be shared with the investor, the method should be defined.

Real estate market analysis, examines the relationship between the development rights produced in the sending areas and the development capacity of the receiving districts. This analysis aims to check the validity of the transfer system, before developing an applicable regulation.

**Public Service Plan** defines the provision of public amenities, in particular, the receiving district.

**Reports;** Environmental Impact Assessment, Infrastructure Capacity Analysis, Quality of Life Impact Reports should be requested by municipalities during the process.

# 06. District

In the TDR program, definition and design of sending and receiving districts is an important step. Municipalities designate the sending and receiving districts on land use maps. In determination process, compliance with the upper scale plans is the basis.

## Sending District

TDR is a voluntary (non-mandatory) program that allows property owners in sending district to sell their construction rights. It should be considered that the TDR method is for public benefit, it is a way of protection for the sending district.

Step 1; The Planning Department issues the TDR Certification Letter of Intent. The application is made through the Land Development Agreement process.

Step 2; Letter of Intent is being used to sell development rights to potential property owners in the receiving district.

Step 3; the sender negotiates to sell the TDR.

Step 4; after the agreement on sale of TDR;  
- Zoning restrictions will be written on a land title, or the property passes to a municipality.  
- The certificate of disposal in the sending district is recorded.

## Receiving District

TDR is a voluntary program that provides the opportunity for property owners to increase the density, height, and transport capacity by purchasing development right.

Step 1; Depending on the use of the TDR, the density, transport, and height aspects of the land will be reviewed by the Planning Department. (Land Use Application or Land Development Agreement)

Step 2; the approval conditions include the following;

- Documentation and verification of the TDR purchase record prior to a construction permit.
- Sending district Letter of Intent with a current date, which redefines the right to development.

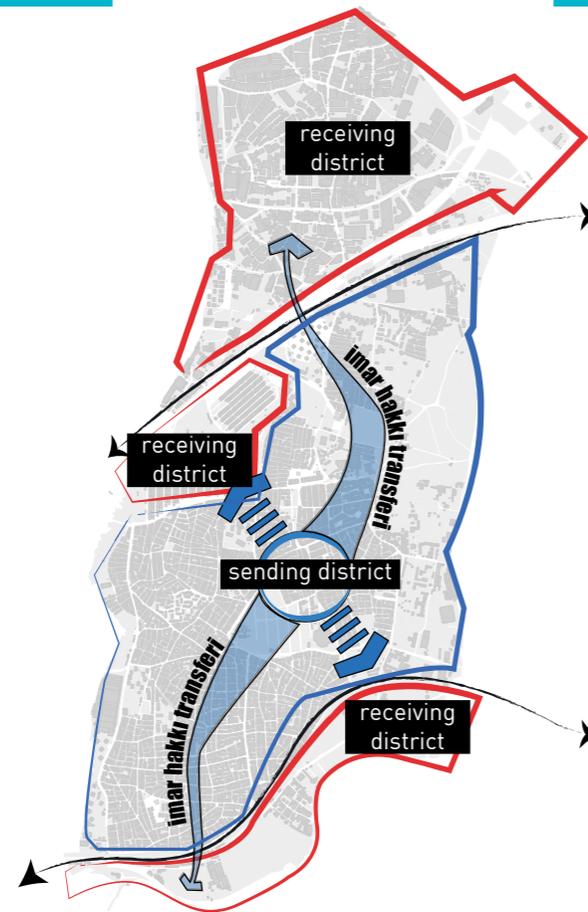
Step 3; receiving district negotiates to buy the TDRs needed.

Step 4; after the sale of TDR;

- The certificate of disposal in the receiving district is recorded.
- Construction permits are granted and the project can be started.

Protected Area

Developing Area



- \* Design of the sending district (protected zone)
- \* Design of the receiving district (development zone)
- \* Legal orientation of the TDR pool (TDR Bank, Certificate)
- \* TDR Functioning Format

# 07. Size

In order to guarantee the demand for development rights, the receiving district capacity should be more than the development rights which will be formed in the market. This will also create competition in the market. Through determining different receiving districts, how much capacity each area has and how many development rights can be created with bonus densities and area size can be calculated.

If the development densities in the current plans are high enough, investors will not have to buy the right to build.

It is determined how much additional development right will be granted in the case of purchasing. These additional densities, called bonus densities, reach different percentages in each application.

The most important issue in implementing TDR is the balance between the number of development rights to be created in the sending districts and the demand to be created in the receiving districts.

The calculation should be made as to how much development right should be given to the district, the size of the sending and receiving districts, and how much bonus density will be created.

# 08. Bonus

**The number of Development Right Credits:** Defining the number of development right credits to be given to sending district, is done by one of the following methods.

- Spatial Size: The most common way to separate the TDR Credit is, by the size of property parcels.
- Development Value: Another method is to determine the land's potential development value.

**Value of the Development Right Credit:** Although this value is determined by the free market mechanism, the TDR program can control, regulate or support prices for the protection of both sides. Therefore, the value is defined by negotiation between, market mechanism, land use arrangements and a combination of specific planning rules.

**Supply Demand Balance:** In order to manage successful TDR process, demand and supply of development rights should be analyzed and calculated well. The role of the municipalities in the creation of supply and demand is crucial. Firstly, the difference between the base densities in sending and receiving districts determines the supply and demand.

Another factor that determines the supply and demand by the municipality is the transfer ratio.

**Transfer Ratio:** The value determined to ensure a balance between the demand and supply. This value is the ratio of usable construction rights in the receiving district to the usable development rights in the sending district.

**Bonus Density:** It shows the extra development right the investor can build over the given development rights on the current plan.

# 09. Certificate

Development rights can be converted into certificates, bought and sold in the market mechanism. Institutions, which are responsible for preparing the certificates should be determined.

The institution that prepares the certificate;

- Determines the development rights to transfer to receiving district from sending district,
- Issues development rights certificate,
- Makes title deed restrictions and treaties,
- Keeps a record of restrained and transferred development rights,
- Responsible for preparing all the necessary forms.

The following information should be included in the TDR Certificate;

- The name of the transferring person
- The name of the receiving person (if known)
- Legal description of the development right calculations
- The size of the housing unit or construction right
- If some of the development rights are not transferred, the rest of the construction rights on the parcel
- Date of issuance of the certificate

# 10. Bank

Transfer of Development Rights bank forms the relationship between the property owner and the bank, the developer and the bank to balance supply and demand. This process covers the conversion process of development rights into certification.

One of the most important components of a successful TDR program is the Bank for Development Rights. It is responsible for buying and selling the development rights, bringing buyers and sellers together so that the market can be revived and controlled at a time when it is stagnant.

The Bank for Development Rights may be established by the public, municipal or other non-profit organizations. The legal mechanism must also be established for the operation of the bank. TDR Bank can buy, keep and sell construction rights. Another potential role of the TDR Bank is to raise funds with low-interest loans and allowances and to provide the infrastructure of the receiving district. In this way, it is possible to increase the demand for the area by reducing the costs of the investor.

This work was inspired by the book Rick Pruett, AICP (2003) Beyond Takings and Givings, Arje Press, California and various internet sources.



Asmalımescit Mah. Tünel İş  
Geçidi B Blok Kat: 1 No:125  
34430 Beyoğlu/İSTANBUL

Tel : 0212 252 02 77  
Faks: 0212 252 02 78  
info@kentselstrateji.com  
www.kentselstrateji.com