

**2014**  
TASK - N1

**SUFFOLK COUNTY DEPARTMENT OF  
ECONOMIC DEVELOPMENT & PLANNING**



March 2014

**SUFFOLK COUNTY  
TRANSFER OF  
DEVELOPMENT RIGHTS (TDR)  
STUDY**

**TASK N1- INVENTORY OF EXISTING TDR PROGRAMS**



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**SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY**  
**INVENTORY OF EXISTING TRANSFER OF DEVELOPMENT RIGHT PROGRAMS**

New York-Connecticut Sustainable Communities Planning Program TASK N.1

**March 2014**



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# SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY

## TASK N.1

### INVENTORY OF EXISTING TRANSFER OF DEVELOPMENT RIGHT PROGRAMS

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# **SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY**

## **INVENTORY OF EXISTING TRANSFER OF DEVELOPMENT RIGHT PROGRAMS**

### **New York-Connecticut Sustainable Communities Planning Program TASK N.1**



#### **I. INTRODUCTION**

In 2011, Suffolk County was awarded a Sustainable Communities Regional Planning Grant by the U.S. Department of Housing and Urban Development (HUD) as part of a bi-state collaboration of cities, counties and regional planning organizations that came together to form the New York-Connecticut Sustainable Communities Consortium (<http://www.sustainablenyct.org>). Suffolk County is tasked with preparing a Regional Transfer of Development Rights (TDR) study that examines existing local, county and regional TDR programs and propose recommendations that 1) encourages better participation within existing TDR programs 2) coordinates development right absorption within identified and designated growth zones in the County while discouraging development in environmentally sensitive areas, and 3) develops better coordination and implementation between local land use decisions and regional transportation policies.

The US Housing and Urban Development Agencies' Sustainable Community Initiative (SCI) was created to help build strong and resilient communities through a more integrated planning process that connects housing and transportation options to job centers. The SCI is intended to create communities that are economically prosperous, inclusive, and environmentally sustainable, by connecting housing to jobs, fostering local innovation, and supporting energy-efficient and healthy affordable housing. The TDR land use tool can be a vital instrument in the overall Sustainable Communities Initiative.

Recently, Suffolk County Executive Steven Bellone announced Connect Long Island (CLI), his plan to grow Suffolk County's economy, create jobs and make Suffolk a more attractive place to live and start a business. Connect Long Island is a comprehensive regional transportation and development plan that creates an innovation economy and sustainable growth by supporting Transit Oriented Developments and building a 21st century transportation infrastructure by connecting these development hubs to our major research and educational institutions and innovation zones for emerging hi-tech companies. Transferring the development potential to downtown TOD's utilizing the TDR is a tool for Suffolk County to promote economic development

This report (Task N.1.) is the first of three reports attributed to the Suffolk County initiative in accordance with the New York-Connecticut Sustainable Communities Planning Program. The reports which follow include Task N.2 "Analysis" of all existing programs and Task N.3 development of specific "strategies" will be release at a later date.

## **BRIEF HISTORY OF DEVELOPMENT RIGHTS**

The concept of development rights can trace its evolution to the mid-1800s where the debate over the separable elements of land (real estate) and land ownership was resolved by the Supreme Court over a mineral and mining rights dispute in the Midwest (*Boggy v. Mercer Mining Co.*). Most property owners have a view of their property as just a piece of land on which they may build. Yet property owners actually have a "bundle of rights" with respect to their land. These rights include the ability to use and enjoy, exclude others, sell, lease, bequeath, mine, and also develop. In the *Boggy* case, the surface owner's rights to demonstrate and retain title to underlying minerals was challenged by a mining company but affirmed by the court. The "bundle of rights" began to form as a concept with respect to land ownership.

A **development right** is defined as the difference between the existing use of the parcel and its potential use as permitted by existing law. A development right is equal to the unused development potential of a parcel. A transferred development right (TDR) is a development right that has been moved (transferred) from its parent parcel to another. The development potential is removed from the parent (sending) parcel and legally transferred to the receiving parcel whereby additional incremental development is allowed. The **Sending Area** is defined as the area or properties sought to be protected from development. As a consequence, these parcels "send" or transfer their development rights to properties in the receiving area. Once the development right is removed from the sending property, the land of the sending parcel is encumbered by a protection mechanism, to prohibit further development, such as a conservation easement. Whether or not the ownership of the (sending parcel) land remains with the original parcel owner or goes to a conservation entity or governmental body would be determined by the land owner at the time of the placing of the conservation easement. The **Receiving Area** is located where additional density can be accommodated with a minimum of adverse consequences. Receiving Areas "receive" transferred rights, therefore allowing development to occur at a density greater than would normally be allowed without resulting in a "net" increase to the density of the (defined planning) region.

The New York City Landmarks Preservation Law of 1968 is usually cited as the first authentic TDR legislation. The City Council was concerned about development pressure on historic buildings and created a means for owners of historic buildings to sell development rights to developers desiring additional density rights in another part of the City and thus preserve the historic building and provide equity for historic building owners. The TDR concept was tested when Penn Central Transportation Co. applied for permission to construct a 50-story office tower above Grand Central Station NY (recently designated historic landmark at the time). The application was denied by the City and the applicants sued. The United States Supreme Court rejected the plaintiff's claim that the law was a "taking" and the Landmarks Preservation TDR Law was upheld.

About a dozen municipalities around the country enacted their own TDR programs in the 1970s. Suffolk County based its farmland acquisition program on a separation of development right concept in 1974. In 1975 the Town of Islip adopted the Planned Landmark Preservation Overlay District that included a TDR component. Southampton Town's "Old Filed Map" law is an example of one of the oldest local codifications in Suffolk County that actively utilized the TDR concept. It wasn't until the 1990s with the adoption of the Long Island Pine Barrens Protection Act of 1993 that another wave of TDR enabling legislation occurred in Suffolk County. The Towns of Brookhaven, Riverhead and Southampton added implementing language in their local codes to enable and facilitate the transfer of Pine Barren Credits (specially designated development rights). With the passage of the state enabling legislation in the late 1990s the Towns of Riverhead, Shelter Island, Southampton and Southold added Community Preservation Fund language in their local ordinances that includes a TDR component.

Statewide enabling proposals were debated in New Jersey, Maryland, and Virginia in the 1970s and 1980s. Montgomery County, Maryland enacted the nation's most notable farmland protection program with a TDR component in 1980. The New Jersey Pinelands Commission employed TDR to preserve ecologically significant pine forest in the 1980s as well. In New York State, enabling legislation regarding TDR can be found in Section 261-a of Town Law. Section 261-a. 2 states, in part, that the "purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interests or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource." The section goes on to describe the conditions and procedures for enacting a viable TDR program.

Part of the mission for this TDR study is to identify strategies for coordinating development right absorption within identified and designated growth zones in Suffolk County. Executive Order number 8-2006 issued February 28, 2006 directed the Suffolk County Department of Planning to perform an evaluation and analysis of proposed development in five "major growth and development areas" in Suffolk County. These five areas were identified through a collaborative process between Suffolk County, local municipalities and the New York Metropolitan Transportation Council (NYMTC). The five areas are:

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

While the five major growth and development areas do not represent the total of all potential growth in Suffolk County, they were selected because each one uniquely has the potential for some kind of significant additional development (see *A Review of Selected Growth and Development Areas-Suffolk County New York-August 2006*; Suffolk County Department of Planning [<http://www.suffolkcountyny.gov/Departments/Planning/Information/>]

PublicationLibrary.aspx#scpc]). Since 2006, additional growth zones have been recognized. Included with these are the redevelopment initiatives known as Wyandanch Rising in the Town of Babylon and the Ronkonkoma Hub in the Town of Brookhaven. Also added is the 65 ac Gabreski Airport Planned Development District, Mattituck train station and Hamlet Business (HB) zoning, the Village of Greenport train station and commercial business district and land zoned Commercial Industrial (CI) surrounding the East Hampton Airport (**see Fig. 1**).

The following sections present the analysis of the TDR programs in Suffolk County. There are forty-three municipalities in Suffolk; ten towns and thirty-three villages. While some villages in Suffolk County have TDR mechanisms this report is focused on the ten towns of Suffolk County. An inventory and analysis of the village programs will be performed in later tasks to complete the research and broaden the recommendations.

Further information on the Transfer of Development Right concept as a land use planning tool and the fundamental elements necessary to have a viable TDR program (i.e. sending and receiving districts, TDR bank, etc.) can be found in NYS General Municipal Law Section 261-a.

## **II N.1.a REVIEW OF ZONING CODES FOR EACH OF THE TEN TOWNS OF SUFFOLK COUNTY**

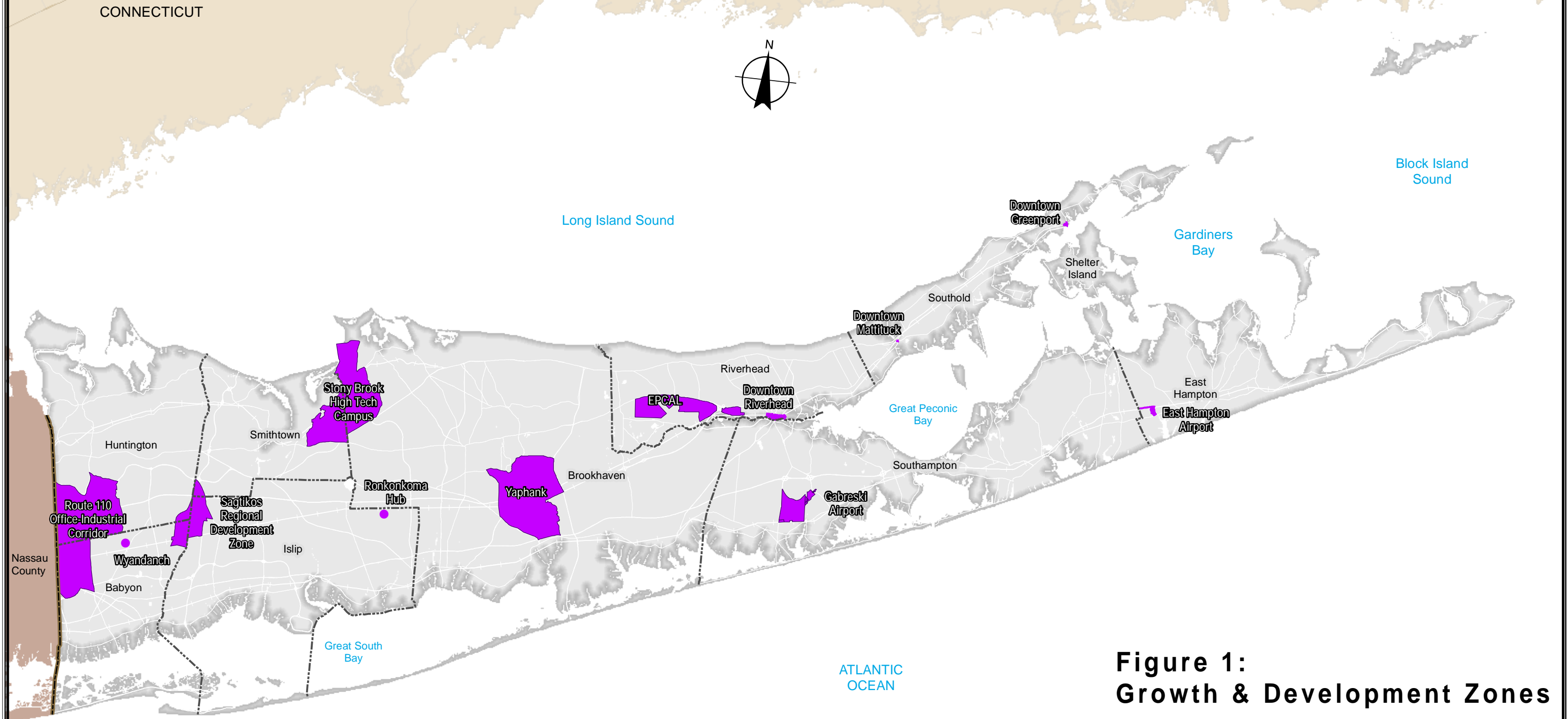
Transfer of Development Rights as a land use planning tool has existed in Suffolk County since the 1970s. Beginning in the Town of Islip and then throughout the remaining nine towns in the County, 14 local municipal TDR programs have been added to Town codes. The following is a summary of the Town TDR programs. The full text of the Town codes related to TDR are provided in **Appendix A**. **Table 1** lists the Suffolk County Towns and several parameters relevant to TDR. Analysis of this summary, the information provided in **Appendix A** and in **Table 1** is provided in Task N.1.c. below.

The TDR concept has evolved in Suffolk County since it was first introduced. In Suffolk County, a development right can be one of two types, based on the restrictions in the receiving District. The first type of development right is based on zoning and the restrictions of the district on density in terms of number of units or floor area ratio (FAR). A definition for this type of development right can be as follows: the "right permitted to a lot, parcel or area of land under a zoning ordinance or local law regarding permissible use, area, density, bulk, or height of improvements executed thereon." A typical development right could be used to increase the number of units or FAR (or other zoning constraints) above the maximum allowed in the zoning district.

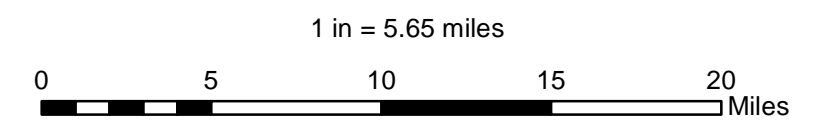
In Suffolk County a distinction can be made for a second type of development right called a sanitary or density flow right (also known as a waste water credit). A density or sanitary flow right is the right permitted to a parcel of land to discharge sanitary waste into the ground pursuant to the Suffolk County Sanitary Code (Article 6) for the specific hydrogeological (groundwater recharge) zone in which the land is situated.

# SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

## Suffolk County, New York



**Figure 1:  
Growth & Development Zones**





**y Transfer of Development Rights (TDR) Study**

er of Development Rights Programs

Town	TDR Program	Purpose of Program	Unit	Sending Areas	Receiving Areas
<b>Babylon</b>					
<b>Brookhaven</b>	Transfer of Development Rights	Assure the preservation of vital natural resources, open spaces, historically significant properties, and farmland, and provide for orderly growth and development (§85-408).	Transfer of Development Rights (TDR) (§85-408.1)	Natural land, farmland, historical land and abandoned and underutilized retail centers (§84-408.A & §85-408.4.A).	Multiple Family Housing(ME), Planned Retirement Community(PRC), Planned Congregate Housing Community(PRCHC) (§85.408.4); Compatible Growth Area (CGA), A-1 & A-2 Residence Districts.
	Central Pine Barrens District	Protect, preserve and enhance the functional integrity of the Central Pine Barrens ecosystem and its significant natural resources and provide for orderly growth and development (§85-443).	Pine Barrens Credit (PBC) (§85-444)	Central Pine Barrens Core Preservation Area (§85-444)	Multiple Family Housing(ME), Planned Retirement Community(PRC), Planned Congregate Housing Community(PRCHC) (§85.408.4); Compatible Growth Area (CGA), A-1 & A-2 Residence Districts.
<b>East Hampton</b>	Affordable Housing Credit Program	Promote and facilitate the creation of affordable housing by the private and public sectors, while enhancing the conservation of open space (§250-10).	Affordable Housing Credit (§250-20)	All areas of a parcel located within the Town of East Hampton shall qualify as a sending district, except: A.A farm as defined in § 134-2 of the Town Code (includes stock, dairy, poultry, fur-bearing animals, horse farm, fruit, vegetables, grain and truck farms, plantations, orchards, nurseries, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities) (§250-40-20).	Neighborhood Business, Central Business, Affordable Housing Overlay District, Commercial Service, Commercial Industrial, Residentially zoned property if owned by the Town of East Hampton (§250-40-10).
<b>Huntington</b>	Transfer of Density Flow Rights	Preservation of natural open space, while encouraging responsible economic development (§172-1).	Density Flow Rights (§172-2)	Open Space (§172-2).	Hamlet centers, nodes and corridors as identified by the Comprehensive Plan (§172-2).
	Transfer of Development Rights	Protect the natural, scenic or agricultural qualities of open land; enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value; enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource; maintain overall balance between population capacity and ultimate commercial and business development (§198-118.2).	TDR (§198-118.2)	Natural land, farmland and historical land (§198-118.2)	Hamlet centers, nodes and corridors as identified by the Comprehensive Plan (§172-2).
<b>Islip</b>	Planned Landmark Preservation Overlay District (PLP)	Promote the education, culture, pleasure and economic and general welfare of the residents; to safeguard historic, aesthetic, scenic and cultural heritage so that they may provide continuity through physical evidence of the Town's evolution and historic beauty; Stabilize and improve property values and thereby protect the Town's tax revenues (§68-447).	TDR (§68-448)	Designated historic district or site (§ 68-447)	Appropriate locations in the Planned Landmark Preservation District (§ 68-448)
<b>Riverhead</b>	Pine Barrens Overlay District	Preservation of land within the Core Preservation Area while maintaining the value of those lands by providing for the transfer of Pine Barrens credits. Development rights shall be transferable from the Core Preservation Area to approved receiving sites outside the Core Preservation Area (§108-180).	PBC (§108-175)	One or more designated areas of land in the Core Preservation Area for which development rights or Pine Barrens credits are allocated for use in one or more Receiving Districts (§108-177)	One or more designated districts to which development rights or Pine Barrens credits generated from one or more sending areas may be transferred, and in which increased development is permitted to occur (§108-177).
	Community Preservation Fund	Protect and preserve open and undeveloped lands (§14-2 & §14-9).	TDR (§14-3)	Open & undeveloped land, agriculture & historic properties (§14-8)	Downtowns and appropriate commercial projects
<b>Shelter Island</b>	Community Preservation Fund	Implement a plan for the preservation of community character (§50-3A).	TDR (§50-3A.2)	Designated properties by the Town Board (§50-5C)	Designated properties by the Town Board (§50-5c)
<b>Smithtown</b>	Transfer of Density Flow Rights	Regulate the transfer of density flow rights and encourage the transfer of density flow rights from certain open spaces to the historic downtowns in order to facilitate the: preservation of open space or environmentally sensitive land, protection of the groundwater, preservation and enhancement of the Town's three historic central business districts; and creation of affordable housing units (§323-3).	Density Flow Rights (§323-4)	An area of the Town that is desirable to be preserved as open space as depicted on the § 323-5 Transfer of Density Flow Rights Map (§323-4)	An area of the Town that is desirable to be developed more intensively than areas outside the district including historic business districts/downtowns as depicted on the § 323-5 Transfer of Density Flow Rights Map (§323-4)
<b>Southampton</b>	Transfer of Development Rights Certificate Program	Preserve open lands and enable flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource (§244-1).	TDR (§244-4)	Agricultural Overlay District, Aquifer Protection Overlay District, Central Pine Barrens Overlay District, or other environmentally sensitive lands per Town's CPF Project Plan (§244-1C).	Receiving sites recognized by Town Code, Comprehensive Plan, SC Sanitary Code and CPBP (§244-1B).
	Central Pine Barrens Overlay District	Protect, preserve and enhance the functional integrity of the Central Pine Barrens ecosystem and the significant natural resources including ground and surface waters (§330-215).	PBC (§330-217)	Central Pine Barrens Areas (Core & Compatible Growth Areas) (§330-221)	Approved receiving sites outside the core preservation area (e.g., Compatible Growth Areas or outside Central Pine Barrens area) (§330-221)
	Agricultural Overlay District	For the purposes of subdivision development in the Agricultural Overlay District, the residential development site portion of the entire tract shall be so delineated as to make available and to preserve intact the maximum possible land area for agricultural purposes (§330-47).	TDR (§330-49)	Open rural areas which constitute a highly significant agricultural and economic resource (§330-47).	Applicants for a planned residential development in the Agricultural Overlay District may transfer the residential development or capital value of the entire agricultural tract to an approved land area off said tract, even though the land is not contiguous to the agricultural tract. Such approved residential development site area shall be deemed to be an integral part of the agricultural tract in establishing the residential development or capital value of the entire agricultural tract and in computing the land's development capacity in terms of dwelling units (§330-49).
	Old Filed Map Overlay District	Assure the continued availability of the open space character of that significant area of the Town, to preserve its vital natural resources and to provide for its orderly growth and development, the Town Board has determined that it is necessary to establish a land tenure system based on development rights and the transfer thereof and a public improvement development program for such old filed maps. §243-8b).	TDR (§243-8b)	All nonconforming lots within the Special Old Filed Map Overlay District (§330-521)	All lots within the Special Old Filed Map Overlay District with not less than 10,000 square feet with the exception of §330-156 (§330-521 & §330-54A)
	Special Old Filed Map District	Overdevelopment of substandard parcels having a lot area of less than 10,000 square feet on old filed maps south of Montauk Highway between the Shinnecock Canal on the east and the Brookhaven Town line on the west is likely to adversely affect the public health or safety by causing pollution of the groundwater reservoir, saltwater intrusion into the groundwater and/or excessive demand on the groundwater reservoir. The Town Board further finds that such adverse impacts cannot be successfully controlled by application of customary regulations and provisions §330-57e).	TDR (§330-57g)	Lots less than 10,000 square feet within the Special Old Filed Map Overlay District (§330-57g)	Lots with 20,000 or more square feet and within the Special Old Filed Map Overlay District (§330-57G). Lots less than 10,000 square feet require a special permit (§330-59B).
	Community Preservation Fund	Implement a plan for the preservation of community character (§140-3A).	TDR (§140-3A.2)	Designated properties by the Town Board §140-5C)	Designated properties by the Town Board §140-5C)
<b>Southold</b>	Transfer of Development Rights	Preservation of open space, agricultural lands and recreational landscapes; preservation of the rural, cultural, and historic character of the hamlets and surrounding countryside; preservation of the natural environment and prevention of further deterioration of resources; preservation and promotion of a broad range of housing and business opportunities to support a socioeconomically diverse community; and increased transportation efficiency (§117-1).	Sanitary Flow Credit (§117-2)	Open space, farmland, historic and recreational land, including land in any zoning district not defined as a receiving district (§117-4.A.1 & §117-1).	Business (B), Hamlet Business (HB), Residential Office (RO), and Affordable Housing District (AHD) (§117-4.A.2.).
	Southold Community Preservation Fund	Preserve the Town's remaining natural, scenic and historic treasures (§17-2).	TDR (§17-6A 2&3)	Open space, farmland, historic land, and natural resources (§17-3).	Designated receiving sites recognized by the Town
<b>Suffolk County</b>	Suffolk County Sanitary Credits	Transfer of Sanitary Credits to allow increase in yield on receiving parcels in accordance with Article 6 of the SC Sanitary Code	Sanitary Credit (Article 6 SC Sanitary Code)	Undeveloped property in same Hydrogeologic Zone (as proposed development?)	Developable property in the same Hydrogeologic Zone
	Pine Barrens Credit Program	Preservation of 58,000 acre Core Pine Barrens habitat	PBC (Article 57 ECL)	Core Preservation Area	Projects in the Compatible Growth Area
	Suffolk County Workforce Housing Credit Program	Facilitate the creation of workforce housing	Workforce Housing Development Rights (WHDNR)	Purchased open space parcels	bonafide Workforce Housing Development Projects





Suffolk County's potable (drinking) water is obtained from its sole source aquifer, an underground fresh water reservoir. The County does not obtain any public potable water from above ground reservoirs. Throughout Suffolk, in un-sewered areas, sanitary waste from a treatment system is generally discharged into the ground above the aquifer. In-system settling of solids (sludge) and overflow effluent filtration through the soil (as the wastewater seeps down toward the groundwater table) is the primary treatment method for detached single family homes. Since the aquifer below these systems is the same source for the County's drinking water supply, the Suffolk County Sanitary Code has established the maximum allowable discharge of sanitary waste into the ground by dividing the County into hydro-geologic groundwater management zones (see section III.N.1.b herein).

***“Suffolk County’s  
potable (drinking)  
water is obtained  
from its sole source  
aquifer, an  
underground fresh  
water reservoir.”***

A full sanitary flow right/waste water credit is equivalent to the right to develop a single-family detached residential parcel with an individual on-site sewerage system or its nonresidential wastewater flow equivalent (see Suffolk County Sanitary Code section 760-605). For these purposes the SCDHS, through the mathematics and chemistry involving nitrogen pollution to groundwater and human health related to drinking water, has established that 300 gallons per day of sanitary waste is equivalent to the discharge of a detached single family residential dwelling. For the purposes of TDR a sanitary flow right can be transferred from one parcel to another parcel of land in order for the receiving parcel to exceed the Suffolk County Sanitary Code regulatory restriction on effluent loading to the groundwater (up to twice the allowable density).

A development right and a sanitary flow right/waste water credit can be exclusive of each other. In some cases the density allowed at a receiving site by Article 6 is greater than that allowed by the local zoning. In this case a development right(s) can be transferred to the site by the town without extraordinary review under Article 6 until the Article 6 density cap is reached. In other circumstances the limiting factor on density is Article 6. The zoning for the particular parcel may allow a greater density as of right (without variances or special approval from the town) however, in order to reach the density allowed by the zoning a developer would be required to transfer in a sanitary credit(s) until the zoning density is reached. At times the rights are equivalent (e.g. when the density allowed under Article 6 and the zoning district coincide) and the terminology is the only distinction.

Other terms related to TDR exist in the ordinances, such as Pine Barrens Credit (PBC), Affordable Housing Credit, Sanitary Flow Credit, etc. Definitions of these terms can be found in **Appendix A** under the local codes applicable to the Town. The following is a brief summary of existing Transfer of Development Rights (TDR) programs in Suffolk County; the full text of the TDR programs from local Town Codes is found in **Appendix A**.

**Summary of Transfer of Development Right (TDR) Programs in Suffolk County:**

Generally, TDR programs throughout the County of Suffolk are voluntary. As of this writing no program is mandated by state, county or town on an applicant wishing to achieve a desired density. Change of zone, variances, and incentives for public benefit (i.e. provision of affordable housing, inclusion of alternative energy sources, achieving LEED certification, donation of civic space, etc.) compete with the utilization of the TDR tool to build unit density on projects.

The ability to cross municipal boundaries, school district boundaries and other political jurisdictions is controlled on a case by case basis by municipal legislative bodies. Approval by the sending and receiving jurisdictions are required.

Some programs have restrictions on the allocation and use of TDR's for specific purposes (farmland preservation, Pine Barren preservation, etc.). The restrictions are generally legislative or programmatic and are mutable over time with changing political climates. Discussions on more generous allocation formulas for sending parcels, increasing sending area land and places, increasing the use of TDR for other purposes (tree clearing violation mitigation, economic development purposes, etc.) have been and are being considered at this time.

The following is a Town by Town review of TDR programs within Suffolk County:

**Town of Babylon:** The Town of Babylon has no codification of a Transfer of Development rights tool in its ordinance. The Town has no direct, as-of-right mechanism to transfer development potential aside from mitigation via SEQRA or implemented by the Suffolk County Department of Health services or as part of a negotiated "public benefit" package.

**Town of Brookhaven:** The Town maintains a Transfer of Development Rights program (Article XXXVII, 1996) associated with the Pine Barrens region (see Pine Barrens Credit program below). In addition, the Town established a TDR program (Article XXXVA, 2005) whose purpose is:

- (1) To assist in creating and stimulating a market for the acquisition and disposition of development rights.
- (2) To provide an available vehicle for the acquisition of development rights of land from property owners as a result of the application of the provisions of this article to their property.
- (3) To promote and manage the orderly growth and development of land by the acquisition, holding and disposition of development rights or land.
- (4) To facilitate achievement of the comprehensive planning goals of the Town of Brookhaven, including the Town Code and Zoning Ordinance, by the acquisition, holding and disposition of development rights or land.

- (5) To facilitate future planning of development and to maintain public land reserve with respect thereto by the acquisition, holding and disposition of development rights or land.
- (6) To provide for open spaces and to preserve and protect vital natural resources by the acquisition and holding of development rights or land.

**Town of East Hampton:** The Town has established a Transfer of Development Rights program in the form of its Affordable Housing Credit Program (the program was adopted by the Town Board in 2007). According to the Town Code, "the primary purpose of the East Hampton Affordable Housing Credit Program is to promote and facilitate the creation of affordable housing by the private and public sectors in the Town of East Hampton while at the same time enhancing the conservation of open space within the Town by permanently sterilizing certain lands purchased by the Town through the creation of conservation easements (see Chapter 250 of the East Hampton code)." The Town of East Hampton is one of four Towns in Suffolk County outside of the Central Pine Barrens Zone to have an approved and accepted TDR program with the Suffolk County Department of Health Services.

**Town of Huntington:** The Town maintains a transfer of Development Rights (TDR) provision within its code (added in 1991; Chapter 172 and Article XVIIIA), wherein the stated purpose is "to implement the Comprehensive Plan of the Town of Huntington of 1965 and the proposed update to said plan of 1990 by providing the means of achieving elements of the Town planning objectives with reference to natural resources, population, utilities, business and housing and, more particularly, to do so while maintaining the overall balance established between population capacity and ultimate commercial and business development." Further, land from which the development rights are to be transferred must have such characteristics that their open space preservation will fulfill one (1) of the following objectives:

- (1) To protect the natural, scenic or agricultural qualities of open land.
- (2) To enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value.
- (3) To enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource."

The Town of Huntington is one of four Towns in Suffolk County outside of the Central Pine Barrens Zone to have an approved and accepted TDR program with the Suffolk County Department of Health Services.

**Town of Islip:** The Town TDR program, one of the oldest in Suffolk County (1975), is limited to a Planned Landmark Preservation Overlay District (Article XLI of the Islip code). The intent of the district is to promote the education, culture, pleasure and economic and general welfare of the residents and to safeguard historic aesthetic, scenic and

cultural heritage. TDR is utilized on an case by case intermittent basis, when a landmark property is proposed for improvement, and is not an as-of-right program.

**Town of Riverhead:** The Town allows for the transfer of development credits from the Agricultural Protection Zone (APZ) to commercial areas such as County Road 58. According to the Town code, it is the intent and purpose of the TDR program to “implement the land use policies set forth in the Town of Riverhead Comprehensive Plan with specific reference to protection of the lands located within the Agricultural Protection Zone (APZ), the preservation of agricultural lands, the support of the existing agricultural industry, and the necessary and appropriate economic development of the community.” Two mechanisms exist within the Town; the Community Preservation Fund (see 64 -e NYS Town Law and see Article 1 of the Riverhead code, adopted 1998) for the removal of development rights from the APZ and the Pine Barrens Overlay District (Article XXXV of the Riverhead Town code. Adopted 1996), utilizing Pine Barren Credits (from the Core Preservation Area of the Pine Barrens). Under the Pine Barrens program (see below) credits are only used for increases in sanitary flow and are restricted to land in the identified receiving areas generally within the Compatible Growth Zone area of the Town.

**Town of Shelter Island:** The Town has the ability to utilize TDR as a component of the Town’s Community Preservation Fund pursuant to New York State Town Law Section 64-e (adopted by the Shelter Island Town Board September of 1998 as Chapter 50). No other codified program exists within the Town Code.

**Town of Smithtown:** The Town has established a “Transfer of Density Flow Rights” program (adopted by the Town Board of the Town of Smithtown in February of 2010). Pursuant to Town Code, the intent of the program is to regulate the transfer of density flow rights and encourage the transfer of density flow rights from certain open spaces to the historic downtowns in order to facilitate the:

- (1) Preservation of open space or environmentally sensitive land;
- (2) Protection of the groundwater;
- (3) Preservation and enhancement of the Town's three historic central business districts; and
- (4) Creation of affordable housing units.

The Town of Smithtown is one of four Towns in Suffolk County outside of the Central Pine Barrens Zone to have an approved and accepted TDR program with the Suffolk County Department of Health Services.

**Town of Southampton:** The Town allows for the transfer of development credits in a number of ways (see Chapters 330-Article XXVI; 330-7 of 1989; 330-9 of 1986; and 244, Adopted by the Town Board of the Town of Southampton October 2001; revised 2009, in effect 2010). Development rights may be transferred within (and out of) the Central Pine Barrens Overlay District (Article XXIV, 1995). Additional sending areas include the Aquifer Protection Overlay

District, the Agricultural Overlay District and the Tidal Wetlands and Ocean Beach Overlay District and development rights may be transferred out of these districts. The Town also has established TDR programs for Old Filed Map regions of the Town (1976) as well as a Community Preservation Fund pursuant to New York State Town Law Section 64-e (Article I, 1998).

**Town of Southold:** The Town maintains a Transfer of Development Rights (TDR) program in order to advance the goals of the comprehensive plan (Chapter 117, Adopted by the Town Board of the Town of Southold March of 2005). The Town Code specifically provides that it is the intent and purpose of the TDR program “to provide for the transfer of sanitary flow credits, and thereby transfer development potential from areas designated for preservation to areas designated as more appropriate for higher-density residential development.” The exclusive use of Southold’s TDR chapter is to promote affordable housing. The Town will accept no other development right transfers for any other purpose. The Town utilizes the Community Preservation Fund program (see 64-e of NYS Town Law) as a TDR tool (Article I, adopted August 1998). The Town of Southold is one of four Town in Suffolk County outside of the Central Pine Barrens Zone to have an approved and accepted TDR program with the Suffolk County Department of Health Services.

### III. N.1.b. IDENTIFICATION OF ALL TDR PROGRAMS IN SUFFOLK COUNTY

In addition to the 14 TDR programs operated by the 10 Towns in Suffolk County, there are other TDR programs on a regional scale that exist within the bounds of the County.

**Suffolk County Sanitary Credits:** Article 6 of the Suffolk County Sanitary Code is the foundation on which the majority of TDR programs in Suffolk County are created on. The Sanitary Code is promulgated by the Suffolk County Department of Health Services and is a duly delegated implementation of New York State health law.

Article 6 establishes eight Groundwater Management Zones with specific permitted densities in order to protect the integrity of the groundwater where wastewater is discharged through on-site disposal systems (**see figure 2**).

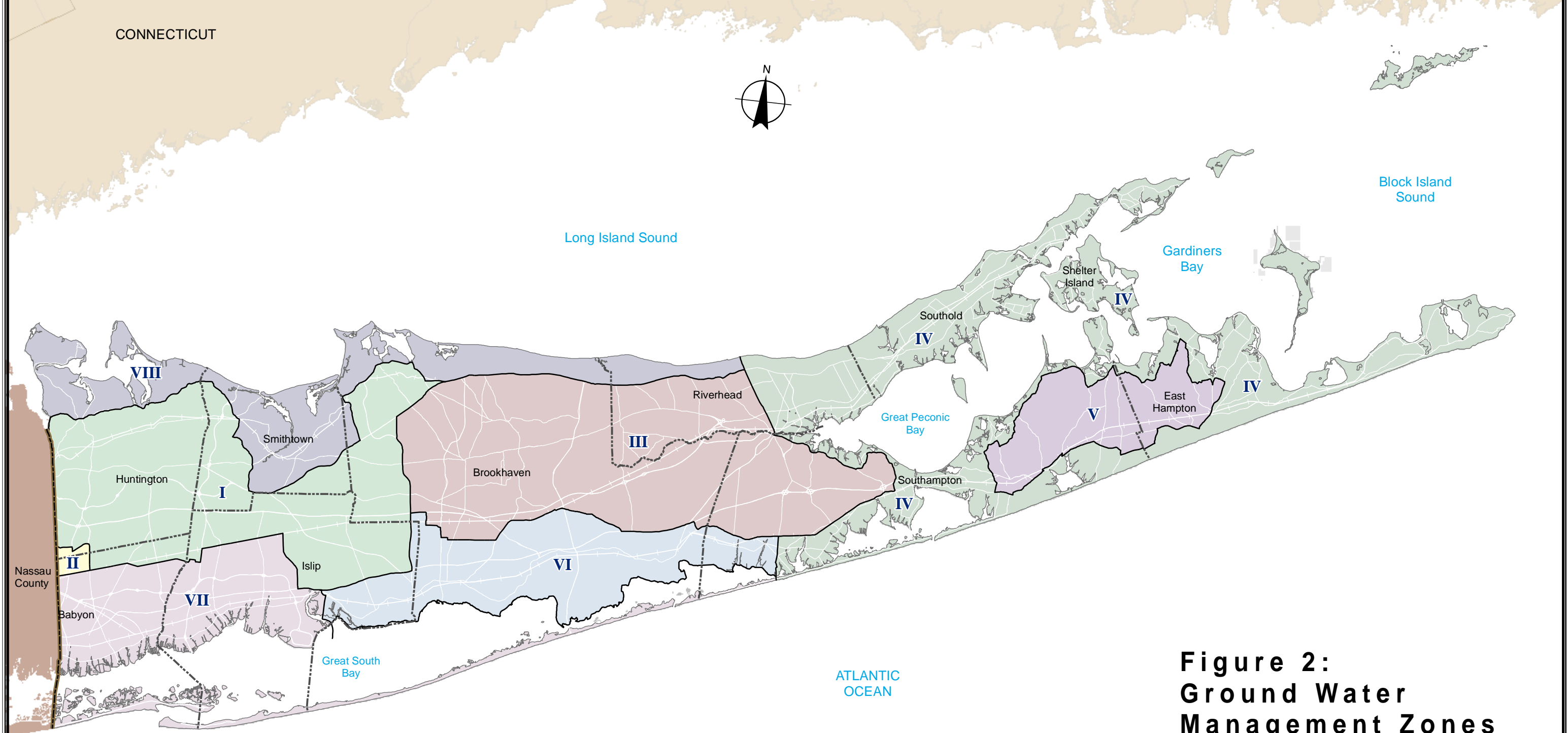
*“Article 6 of the Suffolk County Sanitary Code is the foundation on which the majority of TDR programs in Suffolk County are created on”*

Article 6, Sections 760-605.C, 760-607.E and 760-607.F, include provisions to permit the use of transfer of development rights. A development right under Article 6 is termed a sanitary credit. A Sanitary Credit can be described as the right permitted to discharge waste water into the ground for parcel of land pursuant to the Suffolk County Sanitary Code (Article 6) for the specific hydrogeological (groundwater recharge) zone in which the land is situated.

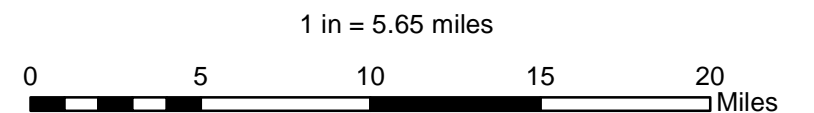


# SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

## Suffolk County, New York



**Figure 2:  
Ground Water  
Management Zones**







Pursuant to Article 6 of the Suffolk County Sanitary Code the County allows for the transfer of sanitary credits (development rights) within similar groundwater management zones in order to allow for an increase in yield on the receiving parcel.

With the exception of the Central Suffolk Pine Barrens Zone (including parts of Brookhaven, Riverhead and Southampton Towns) and areas within the Towns of East Hampton, Huntington, Smithtown, and Southold, the Suffolk County Sanitary Credit program is on a discretionary case by case basis at the Suffolk County Department of Health Services Board of Review (variance board of appeals); that is, an applicant (unable to meet the standards of the Article) suggests potential sending parcels (for sterilization and creation of a sanitary credit) to utilize the waste water potential as it is transferred to another site. The Board of Review would use objective criteria and discretion in determining the ability of the applicant to transfer the credit. It is not a guarantee to the applicant that the transfer would be allowed.

Within the Central Pine Barrens Zone, transfer of waste water credit is permitted as of right via the utilization of a Pine Barrens Credit (PBC) in accordance with the Central Pine Barrens Comprehensive Land Use Plan. As such, pursuant to Environmental Conservation Law Article 57 and the Central Pine Barrens Comprehensive Land Use Plan, projects involving transfers of development rights that meet specific criteria will not be required to obtain a variance from the Suffolk County Department of Health Services Board of Review. The PBC use is an expedited process.

**Pine Barrens Credit Program:** The Central Pine Barrens is a 100,000 acre ecological habitat within the central and eastern portions of Suffolk County. The region contains one of the greatest concentrations of endangered, threatened and special concern species of plants and animals in New York and provides deep flow recharge to the aquifer from which Long Island draws its drinking water. To protect these resources, the New York State Legislature passed the Long Island Pine Barrens Protection Act (the "Act") and it was signed into law on July 13, 1993. The Act defines the Central Pine Barrens area and delineates within it a 52,500 acre Core Preservation Area (the "Core") and a 48,500 acre Compatible Growth Area (the "CGA"). The boundaries of the Central Pine Barrens lie within the Towns of Brookhaven, Riverhead and Southampton and portions of the villages of East Quogue and Westhampton Beach.

The Long Island Pine Barrens Protection Act required the preparation of a Comprehensive Land Use Plan and specified the requirements for a TDR program to be created and included in the Plan. The Central Pine Barrens Comprehensive Land Use Plan (administered by a five-member co-council comprised of representatives from the State, County and three Towns called the Central Pine Barrens Joint Planning and Policy Commission) defines development in these areas with the goal of managing development to preserve ecological and hydrological resources. The program serves as a land preservation tool that was also intended to compensate private property owners in the Core who are now restricted from being able to develop their properties.

It should be noted that the Commission has the combined duties of a state agency, a planning Board and a park commission that oversees development in the Central Pine Barrens area. The Act defines development rather than the Plan. The Plan sets up standards for development in the CGA, among other responsibilities, to manage

development and to preserve ecological and hydrological resources. The Plan also contains the details of the Credit Program for day-to-day operation such as how to obtain credits, allocation formulas, etc.

Development in the Core is severely constrained and use of those lands is limited in the Core area. Landowners are free to sell their property either to another private party or to a government agency, can opt to apply for and receive transferable development rights (TDRs) for the development potential associated with these lands or can attempt to apply for a hardship waiver which, if granted by the Commission would allow development to occur. In order to receive TDRs, which are referred to as Pine Barrens Credits in the Pine Barrens Credit Program, the property owner would need to apply to the Pine Barrens Credit Program, which is a voluntary program. Through the Pine Barrens Credit Program, the development potential from the parcel is translated into Pine Barrens Credits in certificate form based on the parcel's acreage and zoning as of 1995. This enables the property owner to use the Pine Barrens Credit to develop, outside of the Core Area, or to sell it to a developer who can also apply it to development outside of the Core Area. In the process of removing the development potential from the Core Area parcel, a conservation easement is placed on the property which prevents it from being developed. However, the property owner still owns the underlying land (It should be noted that, in some cases, easements are recorded on land in the Core that contains development on a portion of the property. In that case, when the easement is drafted it may contain reserved rights such as an allowance for continued agricultural use. Prior to recording the easement, the condition of the property is documented and that point in time. Typically, no new development activity is permitted, unless otherwise reserved in the easement, but the existing use may continue "as is").

The Pine Barrens Credit Program allocates Pine Barrens Credits to privately-owned undeveloped or partially developed Core Area properties that are collectively referred to as "sending areas." These rights or credits allow up to a 20% increase in development, above what is allowed by zoning, in certain designated areas known as "Residential Receiving area Districts (RRAD's)" which are located outside of the Core Area. These Pine Barrens Credits can also be used for additional increases in density beyond the 20% increase in non-"as-of-right" receiving areas when authorized by the individual Towns. Or, these Pine Barrens Credits can also be used to obtain, from the Suffolk County Department of Health Services, an increase in sewage flow above the quantity allowed in a particular area, in order to meet sanitary requirements. Details as to how the Pine Barrens Credit Program operates in each of the three Central Pine Barrens towns is specified in the Central Pine Barrens Comprehensive Land Use Plan.

An advisory body to the Central Pine Barrens Joint Planning and Policy Commission called the Pine Barrens Credit Clearinghouse was established to facilitate the transfer of development rights, to oversee the Pine Barrens Credit Program and to purchase (as a buyer of last resort) the development rights from property owners who wish to sell them. Sales of Pine Barrens Credits occur on the open market directly between the Pine Barrens Credit owner and the interested buyer. The program initially received a \$5 million dollar loan to fund the program from the New York State Department of Environmental Conservation which had to be returned after 10 years. Currently, the program has approximately \$2.5 million left in its "bank" which is from the interest accumulated over time on the \$5 million. These funds are used to purchase Pine Barrens Credits from private owners and are replenished when purchased Pine Barrens Credits are resold by the Credit Clearinghouse. The Pine Barrens Credit Clearinghouse owns 10.19

Credits at this time which were purchased in 2011 through an offer made by the Clearinghouse to spend up to \$1 million to purchase Pine Barrens Credits from Pine Barrens Credit owners located in the Town of Brookhaven.

**Suffolk County Workforce Housing Credit Program:** On November 2, 2004, the voters of Suffolk County approved the Save Open Space Bond Act; a program to preserve open space, protect farmland, and create additional new parklands. In addition to authorizing \$75 million for the acquisition of open space, parkland and farmland, the Save Open Space Bond Act provides a tool that addresses another critical public purpose in Suffolk County. The tool allows the County to transfer development rights from properties acquired pursuant to the Act for open space and passive parkland purposes to non-environmentally sensitive properties. The transferred development rights, called Workforce Housing Development Rights (WHDR's) facilitate the construction of affordable ownership and rental workforce housing throughout Suffolk County. At the time of this writing, an Introductory Resolution (IR1923-2011) has been put forth in the Suffolk County Legislature that would allow the use of these development rights beyond the creation of workforce housing for "smart growth, community and economic development and job creation." The utilization of WHDR credit, as with all TDR programs is subject to SCDHS endorsement and/or approval.

**PDR Programs:** In addition to TDR programs in municipalities throughout Suffolk County, there are several initiatives at the State, County and Local level to acquire lands for open space, parkland, environmental or other reasons. Suffolk County was one of the earliest counties in the country to recognize that the preservation of its drinking water, its open spaces and its agricultural land would not be possible without some public investment. The County has been at the forefront of open space preservation through the acquisition of environmentally sensitive lands starting on a grand scale in the 1980's. The County has also worked with partners, particularly the local towns in successfully preserving open space. Suffolk County government has served the County's residents well in preserving open space. The Suffolk County Open Space Land Acquisition Program is one of the most successful programs for land preservation in the Country.

In addition to total acquisition of a parcel there are several **purchase of development right** (PDR) programs at the local as well as at the Suffolk County level. The largest of these programs is the Suffolk County farmland acquisition program. Suffolk's farmland acquisition program was initiated in 1974. This program is now the oldest Purchase of Development Right program for farmland in the United States. The County's farmland development rights program goal is to preserve a sufficient amount of Suffolk farm land acreage to ensure the vitality of the agricultural industry in the County for future generations. The legal interest in property acquired through this program eliminates all development rights other than those uses necessary for agricultural production.

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#### IV. N.1.c. ANALYSIS OF PROPOSED INTENT OF EXISTING PROGRAMS AND IDENTIFICATION OF GEOGRAPHIC LOCATION OF SENDING AND RECEIVING AREAS.

The language of TDR enabling legislation in New York State (see NYS Town Law Section 261-a) specifically defines the purpose for TDR:

*“The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical cultural, aesthetic or economic interest or value and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource...”*

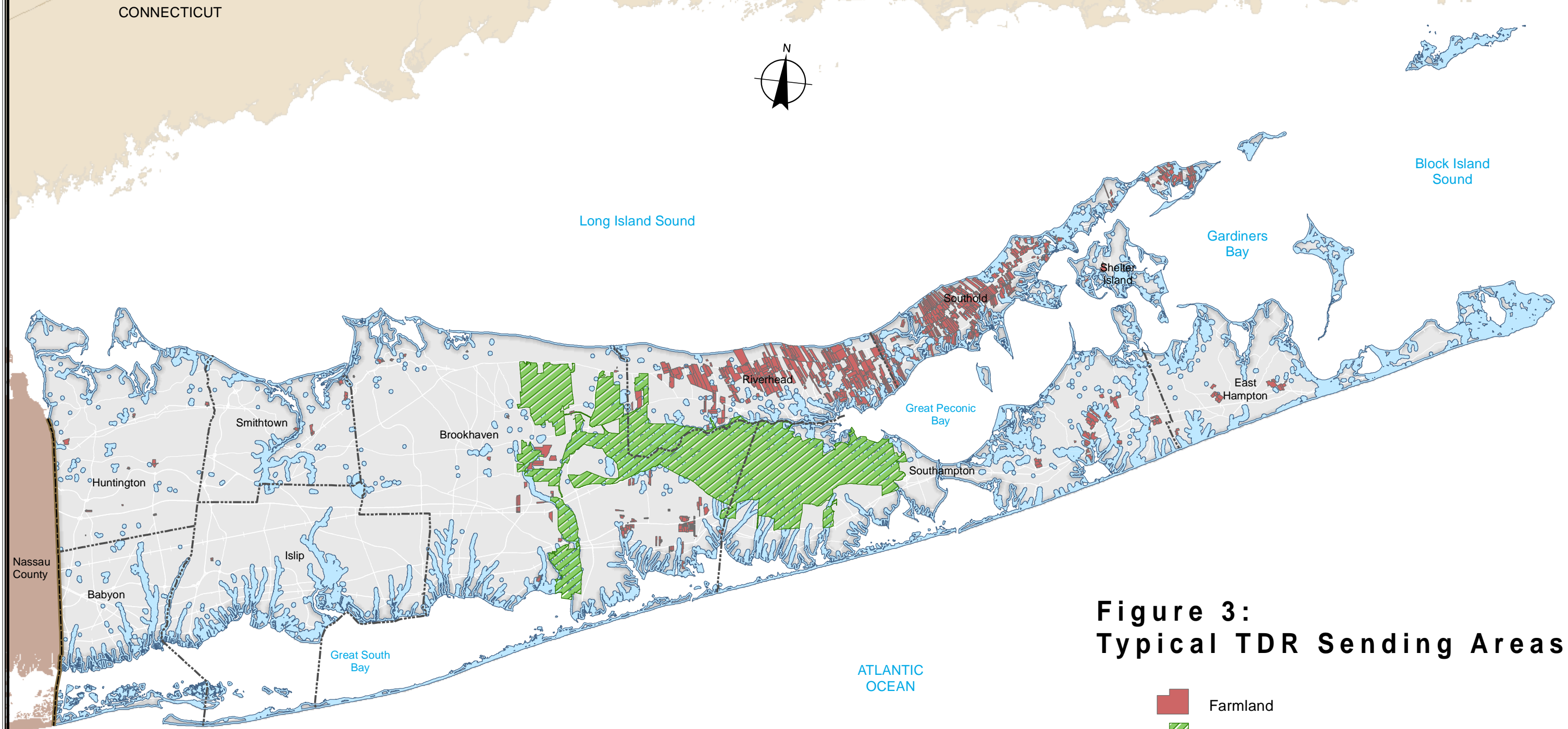
It is no surprise then that the stated purpose of local TDR ordinances emulates the language of the State law. All the local programs indicate a desire to preserve the natural, historic, agricultural, and economic characteristics of the Town that define the community character as it is or intended to be. Hence, the “sending areas” tend to be similar targets throughout each of the ten (10) towns; undeveloped woodland, environmentally constrained areas with steep slopes, high groundwater or wetlands, historic structures and agricultural land. Correspondingly, the majority of the receiving sites tend to be similar in nature; that being downtowns, central business districts and hamlet centers. Receiving sites are generally defined as being accessible to infrastructure (public water and sewer), suitable for Transit Orientated Development (TOD) and readily available infill or redevelopment parcels.

NYS Town Law requires that a viable TDR program establish sending and receiving districts for development rights (261-a.2.a). The law also specifies that the sending and receiving districts be “designated and mapped with specificity” (261-a-2b.). With the exception of the Town of Smithtown and the Central Pine Barrens program (**see Appendix A**), the majority of sending and receiving areas in the Towns are only “designated...with specificity” via written language in the ordinance. It could be argued that certain zoning district categories (e.g. Hamlet Business District, Downtown Development District, Planned Development District, Multi-Family District, etc.) as represented on local zoning maps meets the “specificity” clause of the Town Law.

The geographic locations of Sending and Receiving areas in Suffolk County for the 14 local TDR programs and the three regional programs can be generally summarized and represented on two graphics (**see Figures 3 and 4**). It should be noted that the East End towns of Southold and East Hampton indicated their uneasiness about locations in the towns being identified as receiving areas. Southold representatives indicated that “Southold Town was not interested in being identified as a receiving area in a County-wide program. “As a sending area town for TDR’s Southold representatives were more inclined to participate in a regional program.

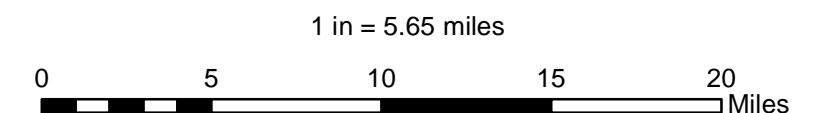
# SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

## Suffolk County, New York



**Figure 3:  
Typical TDR Sending Areas**

- Farmland
- Central Pine Barrens Core Preservation Area
- Waterways & Coastline



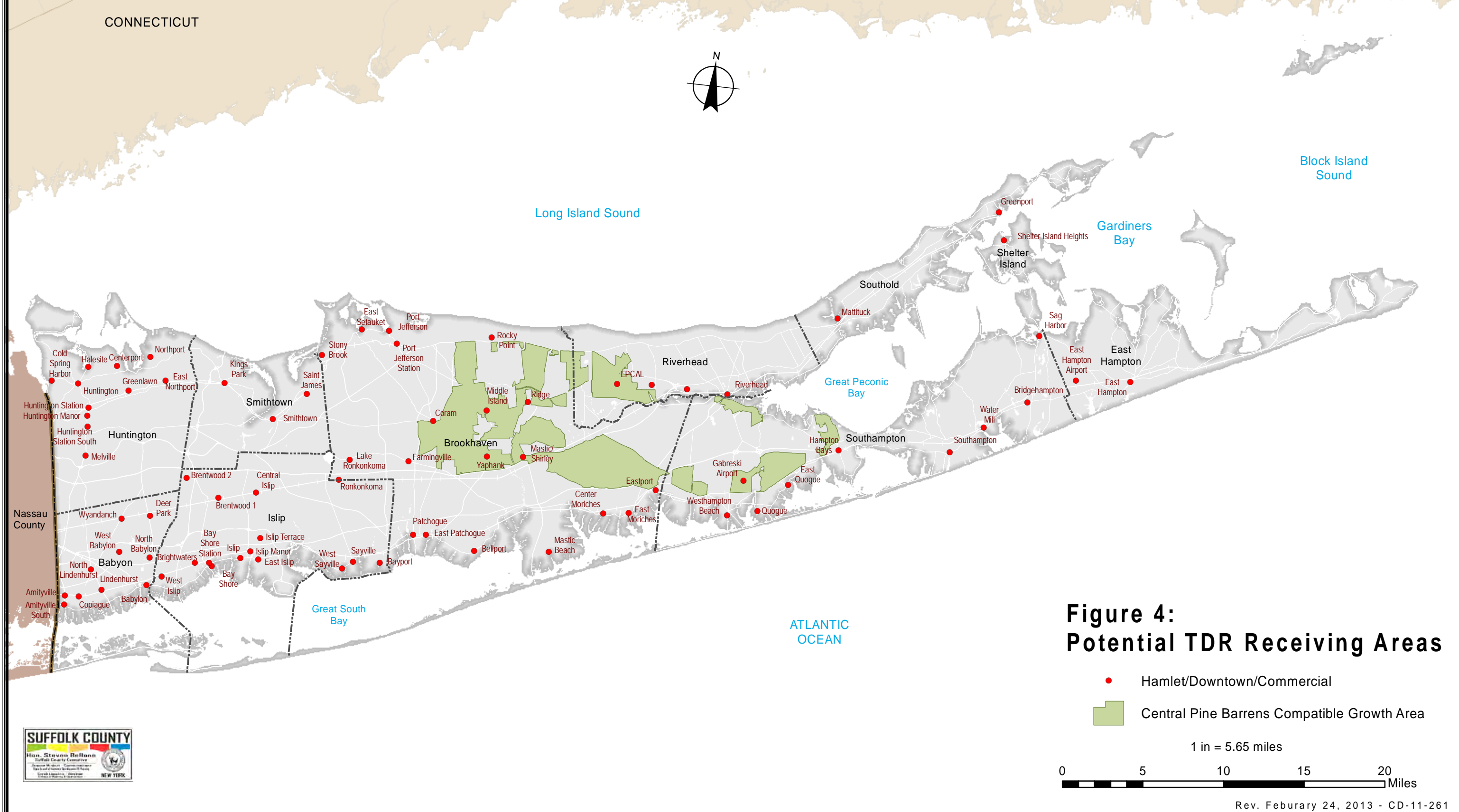
Real Property Taxmap parcel line work used with permission of Suffolk County Real Property Tax Service Agency (R.P.T.S.A.). This rendering is a DRAFT MAP in that 1) the data displayed is an interagency or intra agency work produced for the purpose of identifying and correcting data. It is not a final agency determination. It is not statistical or factual compilation of data. In some cases correct data has been left out and questionable or inaccurate data has been exaggerated to help identify errors. In short, this is a DRAFT MAP produced in an effort to aid in the correction of data and is not held out as being complete or accurate in any way.

\*excerpted from (F.O.I.L.) the provisions of the Freedom of Information Law (Public Officers Law Article 6 Section 84-90) by section 87.2.g



# SUFFOLK COUNTY TRANSFER OF DEVELOPMENT RIGHTS (TDR) STUDY, TASK N1

## Suffolk County, New York



**Figure 4:**  
**Potential TDR Receiving Areas**

- Hamlet/Downtown/Commercial
- Central Pine Barrens Compatible Growth Area

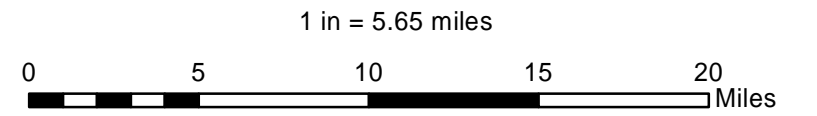






Figure 3, Typical TDR Sending Areas, shows farmland as potential TDR sending properties. The County of Suffolk is not contemplating transferring the development rights it has already purchased from farmland. However, there are certain farmed parcels not preserved via a PDR or other means that may be under development pressure and a TDR program may be a viable option to preserve the agricultural soils on the property. The Figure is a generalized representation showing indiscriminate groupings of farmland and other environmental parameters that are suitable for a TDR program.

## V. CONCLUSION

Beginning in the 1970's when Transfer of Development Rights became a legal tool in New York State, Suffolk County and the Towns within have been experimenting with TDR. The concept has evolved into 14 local and three regional programs. The Towns of East Hampton, Huntington, Smithtown and Southold are four Towns in Suffolk County outside of the Central Pine Barrens Zone to have an approved and accepted TDR program with the Suffolk County Department of Health Services (the Central Pine Barrens Comprehensive Land Use Plan, involving the Towns of Brookhaven, Riverhead and Southampton is also approved by the SCDHS).

While the Towns within Suffolk County have developed independent programs within their borders, the intent of the TDR strategies are alike. The municipalities recognize the valuable environmental elements that characterize Suffolk County and their communities as well as the need to provide fair equity to those landholders whose properties are targeted for preservation. All the programs balance the preservation with the recognition that certain properties will be improved and therefore development rights are channeled into certain nodes of development where infrastructure is available. All the programs target similar geographic areas for "sending sites" (natural and historic properties and areas) and "receiving sites" tend to be defined similarly as well (downtowns, etc.).

The TDR programs were constructed within the constraints of New York State Law and several have withstood legal challenges. The underlying goals for this study, which are to 1) encourage better participation within existing TDR programs 2) coordinate development right absorption within identified and designated growth zones (receiving areas) in the County while discouraging development in environmentally sensitive areas 3) develop better coordination and implementation between local land use decisions and regional transportation policies, would result in a more robust regional TDR program for Suffolk County.

This report (Task N1) is a summary inventory of existing TDR programs in Suffolk County. Appendix A of this document includes the full text of the various TDR programs by Town. Whether or not the programs are operating to their optimum is the subject of the subsequent reports.

## VI. NEXT STEPS

This task report is the first of four reports attributed to the Suffolk County initiative. In accordance with the New York-Connecticut Sustainable Communities Planning Program - April 14, 2011 Work Program the reports which follow include:

*Task N.2-Analysis of all existing programs:* This task will be a complete analysis of the TDR programs in the County including an accounting of "credits" in the various programs and the ratio of credits to receiving sites. The ratio of receiving sites to sending sites is critically important in order to insure that the various programs are legally defensible and operationally viable. The report will evaluate the various TDR programs and report the credit retirement histories of each initiative. An identification of the potential overlap between programs will be identified, and the undermining effects of other endeavors in the County that weaken the viability of the TDR programs will be reported.

*Task N.3-Development of specific strategies:* This report will identify and document the problems associated with implementing the TDR programs in Suffolk County. Specific measures to encourage greater participation within existing TDR programs will be provided. The report will make recommendations to encourage best management practices for better coordination between land use and transportation policies and develop specific strategies for coordinating credit absorption within designated growth zones in the County.

*Task N.4-Public outreach:* The design and implementation of an effective regional TDR policy will require the participation of several key stakeholders, particularly towns, villages, property owners, affordable housing advocates, community groups and environmental and farm protection organizations. An advisory committee will be established to provide that participation, and public meetings will be held at key junctures at both the County and Town level. A community advisory committee is proposed to be established to monitor study milestones and to provide input into policy development. (see the webpage link at the SCPD homepage for project event listings and outreach initiatives).

In total, the four reports comprise the scope of work for the Suffolk County Department of Planning under the HUD Sustainable Communities Grant as envisioned by the New York-Connecticut Sustainable Communities Consortium. The final products will include a complete inventory of existing TDR programs and a report recommending a county-wide strategy that will include coordination and enhancement of existing programs and policies to insure that credits are adequate and used effectively. Anticipated outcomes of the implemented recommendations of this study include the containment of suburban sprawl through the preservation of remaining open spaces and the promotion of development patterns that direct growth to where it is warranted-in close proximity to transportation hubs, downtowns, designated growth zones and infrastructure. The recommendations of this initiative should have applications throughout the New York-Connecticut region, particularly in developing areas where transit oriented development goals must specifically address the need to protect water quality and environmentally sensitive land.