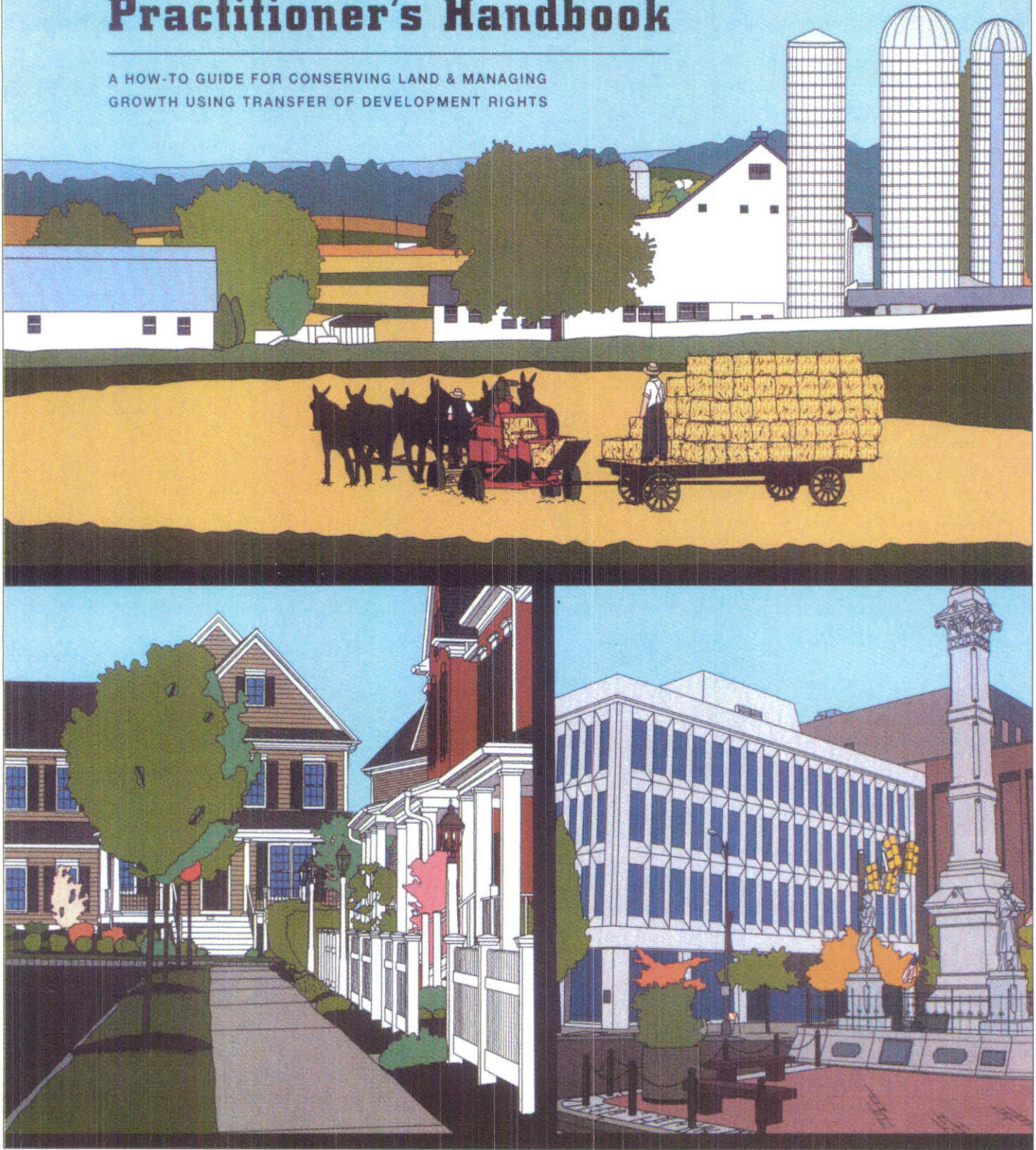


JANUARY, 2008

Prepared on behalf of Lancaster County and its municipalities

The Lancaster County TDR Practitioner's Handbook

A HOW-TO GUIDE FOR CONSERVING LAND & MANAGING
GROWTH USING TRANSFER OF DEVELOPMENT RIGHTS



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Acknowledgments

This Handbook was prepared on behalf of Lancaster County and its municipalities by the Brandywine Conservancy, with close support from Professor Thomas Daniels (University of Pennsylvania) and direct guidance from the Lancaster County TDR Partnership. Partnership members (affiliations and contact information provided on the following pages) freely contributed their time and expertise:

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This handbook has been prepared through a Lancaster County Municipal Planning Grant to Warwick Township and through the generous support of William Penn Foundation.

Special thanks go to William Crosswell, Esq., for legal opinions, and to Tom Comitta and Sachi Mallach of Thomas Comitta Associates, Inc., and Kevin Meyers of the Chester County Planning Commission for their courtesy reviews of the final draft.

The following professionals made significant contributions to this guide through their participation in the May 1, 2007, TDR Receiving Area Stakeholders Meeting. (Lancaster County TDR Partnership members and Brandywine Conservancy staff also participated.) Thanks go to the Heart of Lancaster Hospital for hosting this event.

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Figure 9-1:

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January, 2008



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Section 1: Introduction

Transfer of Development Rights

Transfer of Development Rights (TDR) is a way to allow the right to develop a property to move to another property. For example, a farmer can sell the right to develop his farmland to a developer who is then allowed to build at a higher residential density (measured in number of houses per acre) in a planned growth area. The farmer benefits financially as does the developer. The TDR program gives the farmer financial returns without selling his farmland for development. The TDR program also gives the developer the option to build at a higher than usual residential density, or commercial/industrial intensity. The public benefits both from the farmer preserving his farmland through the sale of his development rights and from the developer building more intense development in a planned growth area.



Photo: Courtesy of Lancaster Farmland Trust

If a community wants to permanently protect farmland and promote development and redevelopment within an urban growth area, it must first add a TDR program to its zoning ordinance. The ordinance must identify a sending area, where the community wants to have land protected, and a receiving area, where the community wants residential and other growth to occur.

By adding the TDR tool to the zoning ordinance, the local government gives landowners in the sending area the legal ability to sever and sell development rights. The local government also determines how many TDRs the landowners have. For instance, the local government can grant one TDR for every five acres a landowner owns, so a landowner who owns 100 acres would have 20 TDRs. Developers can purchase these development rights and can transfer them to a receiving area to build some-

thing they otherwise could not build, such as additional residential dwelling units or more intense commercial, industrial, or institutional development. The local government determines how many TDRs a developer must purchase to increase density, to permit greater impervious surface coverage, to enable a mix of land uses, or even to allow



a use not otherwise permitted. Through the zoning ordinance, the local government limits the total allowed density for developments that use TDRs in order to avoid developments that are out of scale or character with the rest of the community.

Lands from which TDRs have been severed are permanently restricted from further development through a conservation easement. The conservation easement generally restricts the use of a property to farming, forestry, and open space; other commercial, residential, industrial, or institutional land uses are not allowed. A municipality, or a partnering conservation organization, will need to monitor these lands to ensure that landowners are abiding by the terms of the conservation easement. TDR programs have administrative responsibilities for municipalities which can vary depending on the local government's commitment to using TDRs. Some municipalities rely on the private market and zoning incentives to encourage TDR transactions. Other municipalities purchase TDRs from landowners and then sell them directly to developers.

A number of townships in Lancaster County are using TDRs to permanently protect farmland in the countryside and to promote desired development and redevelopment within urban growth areas. Lancaster County municipalities that do not have a TDR program should seriously consider adding this tool to their zoning ordinance if they are interested in preserving farmland or other rural

lands. Although this handbook emphasizes the use of the TDR tool for farmland preservation, a municipality could use this tool for the preservation of forestlands, watersheds, historic lands and buildings, and scenic viewsheds. In addition, boroughs and Lancaster City can amend their zoning ordinances to allow developers to use TDRs for new developments. For example, a borough could make the approval of a requested building height increase in an area targeted for redevelopment subject to the developer's purchase of TDRs.



Photo: Courtesy of Lancaster Farmland Trust

A municipality does not need to amend its comprehensive plan to create a TDR program, but it is a good idea. Because the comprehensive plan establishes the legal basis for the zoning ordinance, it is good planning to have the comprehensive plan and zoning ordinance be consistent with each other when the TDR option is added to the ordinance.



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A Note on Property Rights

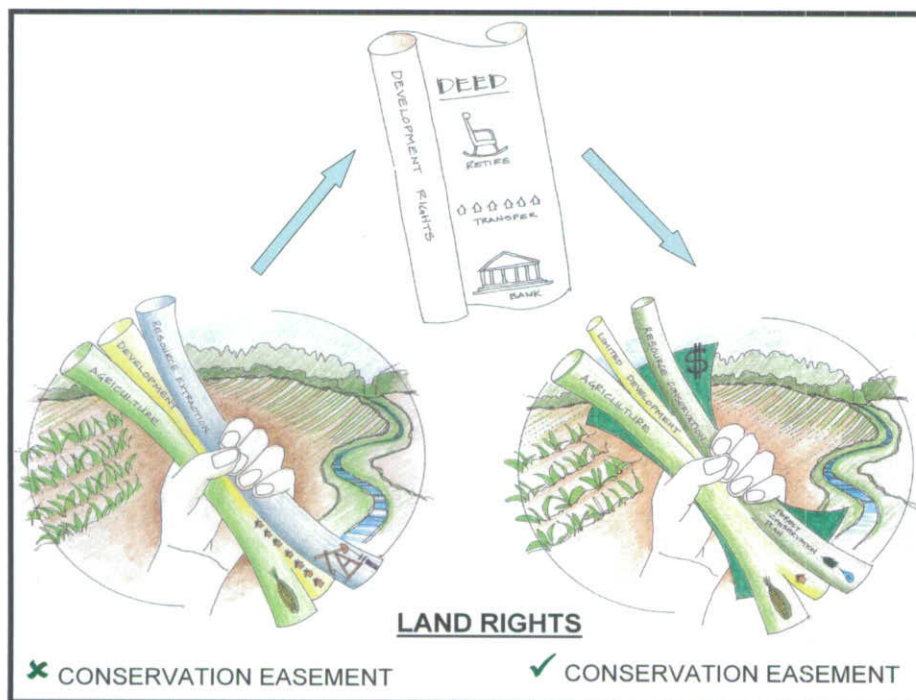
When you own real estate, what you own is a bundle of rights. These rights are created by government and include: water rights, mineral rights, the right to use the land, the right to sell it, to lease it, to pass it on to heirs, and the right to develop it. A landowner can separate any one of these rights from the rest of the bundle and sell or give away that right. For instance, it is common for landowners to sell mineral rights to mining companies.

to pay property taxes. The landowner can no longer develop the property except for specific farming, forestry, or open space uses.

What Are My TDRs Worth?

The dollar value of a TDR is going to be a foremost question on the minds of many TDR stakeholders. Landowners in a sending area will want to know what they can expect to obtain in cash from potential TDR buyers (developer, realtor, or

municipality). TDR buyers will want to know how much the TDRs will cost in order to calculate their receiving area development "pro formas," and appraisers will be looking for TDR sale comparables. Unfortunately, there is no easy answer to the question of worth. TDR values based on recent sale transactions in West Hempfield, Warwick, and Manheim Townships have varied widely (see Section 3 of this Handbook for reported TDR values). The dollar value of a TDR de-



When a landowner sells the right to develop his property, the landowner receives a cash payment. But the land is still private property, and the landowner retains all of the other rights and responsibilities of owning land such as the responsibility

pends on many factors - some will be unique to the TDR program established by a municipality or multi-municipal agreement, and some will be sensitive to the local real estate market. Key factors, such as: a) the number of TDRs per acre allocated to a sending area landowner; b) the maximum den-





Photo: Courtesy of Lancaster Farmland Trust

sity (dwelling units per acre) or intensity (maximum impervious coverage) that a TDR buyer can achieve in the receiving area; and c) a municipally-initiated TDR transaction versus a private sector TDR transaction are all explained in detail in subsequent sections of this Handbook.

As a general rule of thumb, the per acre value of a TDR in a sending area established within a township's effective agricultural zoning district has been similar to the per acre value of an agricultural easement purchased by the Lancaster County Agricultural Preserve Board which is currently capped at \$4,000 per acre. This is particularly true where township officials have been acquiring TDRs from their landowners. Where TDR programs rely upon the private market for TDR transactions, sales (and prices) are actively negotiated and depend

largely on what the market will bear both in the sending and receiving areas established by municipal zoning.

The Legality of TDRs

The Pennsylvania Municipalities Planning Code (Act of 1968, P.L. 805, No. 247, as reenacted and amended) enables all townships, cities, and boroughs to use TDRs. Specifically:

Section 603(c)(2.2) – Ordinance Provisions:

- * Allows municipalities to create a TDR program within the zoning ordinance. No one can force a landowner to sell TDRs. It must be voluntary on the part of both the landowner and the developer.

Section 619.1 – Transferable Development Rights:

- * Creates transferable development rights that can be severed *from the bundle of rights* and transferred to another property.
- * Requires municipal approval for a transfer of development rights from one property to another.
- * Limits the transfer of development rights from sending areas to receiving areas within a single municipal boundary unless two or more municipalities have a joint zoning ordinance or written intergovernmental agreement.



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Section 1105(b)(2) – Intergovernmental Cooperation:

- * Specifically enables transfers of development rights among municipalities that have adopted a county or multi-municipal comprehensive plan.

For two or more municipalities interested in transferring development rights across their boundaries, they must first approve a written intergovernmental agreement or have adopted a multi-municipal plan. TDRs can be exchanged among contiguous or non-contiguous municipalities.

TDR Opportunities Presented in Lancaster County

Support for the use of TDRs in Lancaster County is clearly evident in numerous county and regional policy documents. For example, in 2006 the Lancaster County Board of Commissioners adopted a growth management plan update (entitled *Balance*) that recommends the use of TDRs. Also in 2006, a Blue Ribbon Commission for the Future of Agriculture in Lancaster County, appointed by the Board of Commissioners, recommended the use of TDRs in its Phase I Report. The Lancaster Inter-Municipal Committee of central Lancaster County, with 11 member municipalities, adopted a regional comprehensive plan, *Growing Together*, in April 2007. This plan recommends the use of TDRs in helping these 11 municipalities achieve their conservation and growth management objectives.

These county and multi-municipal recommendations, combined with the extensive experience of several Lancaster municipalities with TDRs, led to the idea of creating a municipal guide on how to use TDRs for Lancaster County. This guide, *The Lancaster County TDR Practitioner's Handbook*, is designed to help individual municipalities, cooperating municipalities, and the County establish and administer successful TDR programs. Municipalities can use TDRs along with other regulatory and non-regulatory tools to preserve farmland, protect other natural and cultural resources, and accommodate community growth.

The preservation of productive farmland and the agricultural heritage it represents are key goals common to many municipalities. County officials and municipal officials have developed planning strategies and implementation tools to protect farmland while accommodating growth through regional cooperation. For example, Lancaster is the only county in the Commonwealth to achieve consensus on Urban Growth Areas. Moreover, there is visual proof of the coordination of water and sewer lines with the planning of suburban and urban development areas. Extensive use of effective agricultural zoning in many of the County's townships has not only reduced development pressure on farmland, but has also minimized speculative forces on land values. Lancaster County also has the leading farmland preservation program in the nation, combining the purchase of development rights by the Lancaster County Agricultural Preserve Board with the acquisition of conservation easements by other organizations such as the Lancaster Farmland Trust.



The existing framework of coordinated planning and the strong support for and experience with farmland preservation should contribute to broad support for the TDR tool. The transfer of development rights from rural areas to Urban Growth Areas can help to preserve valuable farmland and to support new development inside and adjacent to existing communities.

Purpose and Content of this TDR Practitioner's Handbook

The primary purpose of this Handbook is to share existing knowledge about TDRs gained from three successful municipal TDR programs in Lancaster County (Warwick, Manheim, and West Hempfield Townships), as well as the experience of the Handbook authors, with municipalities, landowners, and developers who are considering use of TDRs. The Handbook will also be helpful to:

- 1) Municipalities wishing to expand existing TDR programs into new parts of the municipality or to protect a variety of land resources;
- 2) Two or more municipalities interested in establishing multi-municipal TDR programs;
- 3) Lancaster County officials who wish to identify potential roles for County personnel and their departments; and
- 4) Other organizations who can partner with municipalities to facilitate greater use of TDRs.

By drawing upon local TDR knowledge, municipalities will better understand how to establish a TDR program through their comprehensive plan and zoning ordinance. They can identify sending and receiving areas consistent with *Balance* and their own municipal plans. Through the use of TDRs, municipalities can help preserve more farmland and encourage more efficient use of the County's urban areas and boroughs through increased densities or diversity.

Section 2 of the Handbook explains how a municipal TDR program works. After reviewing Section 2, municipalities may be able to begin drafting their own TDR ordinances and may wish to refer to the sample ordinance included in Appendix 2 of this Handbook. However, this sample will likely need some adjusting to better fit each community's planning and land conservation objectives. Section 3 of the Handbook describes how the basic TDR framework has been adjusted for three successful TDR programs in Lancaster County. Section 4 documents community-wide support for TDRs. Section 5 is a discussion of key issues for communities to understand in developing or expanding a TDR program. Section 6 provides specific guidance to Lancaster County municipalities for establishing or modifying existing TDR programs and includes both basic steps and suggested refinements of basic TDR program components. For example, the municipality that wishes to "jump start" its TDR program by taking a more active role, such as by purchasing TDRs and banking them for future sale, can read how Warwick Township did so in Section 3 and then apply that knowledge using the steps provided in Section 6.



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Municipalities that are considering a multi-municipal TDR program will find Section 7 helpful. That Section contains recommendations to structure a TDR transaction between two townships, a township and a borough, or one or more townships and the City of Lancaster, as recommended by *Growing Together*. Under a multi-municipal TDR program, the ordinance language is similar for all participating municipalities. However, the planning or conservation objectives for sending or receiving TDRs in each municipality, and even the valuation of TDRs from community to community, are likely to be different.

Section 8 of the Handbook discusses further refinements to the basic TDR program, including partnering with the Lancaster County Agricultural Preserve Board, the Lancaster Farmland Trust, or the Lancaster County Conservancy to pursue TDR transactions, and steps that the County could pursue, such as establishing its own TDR bank to facilitate intermunicipal TDR transfers. Through either a multi-municipal or County-wide TDR program, development rights could be transferred across both contiguous and non-contiguous municipalities. This would permit some rural areas to remain largely free from suburbanizing development while enhancing the financial value of buildable lands within the County's Urban Growth Areas and rural centers.

Section 9 of the Handbook presents important considerations for marketing and community outreach when establishing and administering a single or multi-municipal TDR program. The use of TDR almost always results in new development some-

where. Achieving a suburban community's support for new development is typically linked to the preservation of valuable farmland elsewhere within the community. However, there are also benefits to a more urban community by accommodating a TDR development, such as fostering downtown redevelopment or preventing the loss of local businesses to the suburban community. The community's support for the TDR program must be continually nurtured.

The Handbook has also been designed, through ten separate appendices, to help municipalities and regional planning organizations save the time and expense needed to form their own TDR programs. Each appendix contains sample materials that are removable and reproducible for use at work sessions or to serve as a guide when forming the municipality's or organization's own TDR regulations or legal documents. All samples have been reviewed by legal counsel. Municipalities enacting TDR provisions or transacting TDR deals based on these samples should seek legal advice from their own solicitors. The ten appendices are described as follows:

Appendix 1. List of Municipal and Other Contacts with TDR Experience. Source: Brandywine Conservancy. *This is a list of township, county, non-profit, regional, and other individuals in Lancaster County that have experience with the use of TDRs. E-mail addresses and phone numbers are provided.*

Appendix 2. Sample Transfer of Development Rights Ordinance – Single Municipality. Source: Brandywine Conservancy. *A sample TDR ordinance*



for a single-municipality program including examples of both residential (West Hempfield Township) and non-residential (Warwick Township) TDR receiving areas.

Appendix 3. Sample Deed of Transferable Development Rights. Source: Lancaster Farmland Trust. *A legal document intended to be used to convey severed TDRs from a sending area to the Lancaster Farmland Trust and to acknowledge their use in receiving areas in Warwick Township.*

Appendix 4. Sample Declaration of Restriction of Development. Source: Lancaster Farmland Trust. *A legal document used to restrict development of an area in Warwick Township from which TDRs have been severed.*

Appendix 5. Sample Conservation Easement Models. Sources: Lancaster Farmland Trust; Commonwealth of Pennsylvania as provided by Lancaster County Agricultural Preserve Board; Pennsylvania Land Trust Association. *Three conservation easement documents which would be used instead of the Declaration of Restriction of Development document used in Warwick Township. The Lancaster Farmland Trust sample and the Commonwealth sample are for an agricultural easement, whereas the Association sample is more generic and applies to all natural resources.*

Appendix 6. Sample Application for Transfer and Use of Transferable Development Rights. Source: Manheim Township, Lancaster County. *Application used by Manheim Township staff to initiate a formal review/approval by the Township Board of Commissioners of a receiving area development request.*

Appendix 7. Sample Notice of Sale of Transferable Development Rights. Source: Warwick Township, Lancaster County. *Legal notice used by Warwick Township to inform the public of their intent to sell one or more of their banked TDRs.*

Appendix 8. Sample Agreement for Inter-Municipal Transfer of Development Rights. Source: Brandywine Conservancy. *Legal document, to be adopted by ordinance, that enables more than one municipality to participate in a transfer and receipt of TDRs across municipal borders.*

Appendix 9. Example of TDR Tracking Method - Single Municipality. Source: Manheim Township, Lancaster County. *Example of TDR record keeping for a single-municipality.*

Appendix 10. Summaries of May 1, 2007, Lancaster County TDR Receiving Area Stakeholders Meeting. Source: Brandywine Conservancy.

Final Note

For TDR to work effectively, a landowner must be willing to sell TDRs, a developer must be willing to buy TDRs, and a municipality must be willing to enable the TDR transaction through its zoning ordinance (and preferably in keeping with its comprehensive plan). TDR is a market-driven tool, but it can also be a municipally-driven tool where a municipality is willing to purchase and sell TDRs. Developers need to have financial incentives, such as density bonuses, to use TDRs



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spelled out in a municipal zoning ordinance. In addition, neighborhood groups, farmers, realtors, and elected officials are important stakeholders in the design and long-term marketing of TDR.

Before establishing a TDR program, a municipality or group of municipalities is strongly encouraged to obtain:

- 1) Local consensus for natural and cultural resource conservation as a desirable public benefit; and
- 2) Local consensus for appropriate suburban or urban development when properly planned and managed.

This consensus building can occur during a comprehensive plan or open space plan update, through a community values survey process, or through formal education of local residents, business owners, and elected officials. It is also helpful for municipalities to gain a basic understanding of TDRs from this Handbook and to have access to professional consultants and legal counsel who are knowledgeable about TDRs when beginning their own TDR program.



Section 2: A Basic TDR Framework

A municipality that decides to create a TDR program should carefully tailor that program to its own planning and conservation objectives, administrative capabilities, and market conditions. Examples of this “tailoring” are summarized in Section 3 of the Handbook. However, nearly all municipal TDR programs have several basic common components. These include:

- 1) A sending area from which TDRs are sent;
- 2) A method to determine the number of TDRs per landowner in the sending area;
- 3) A receiving area where TDRs are applied;
- 4) Rules for how many TDRs a developer must acquire to use in projects that involve TDRs in the receiving area; and
- 5) Administrative rules for placing a conservation easement on lands from which all TDRs have been sold, for keeping track of TDRs owned by each landowner in the sending area, and for zoning and land development approvals involving projects that use TDRs in the receiving area.

The Sending Area

The Sending Area is a portion of a municipality where landowners may participate in a TDR pro-

gram by severing and selling their TDRs. Sending areas usually have high natural resource values, such as farmland, or cultural resource values, such as historic sites. Sending areas are best defined by distinct boundaries such as a zoning district. For instance, Warwick and Manheim Townships have designated their agricultural zoning districts as TDR sending areas.

The sending area and the receiving area (discussed later) can be established during a municipality’s comprehensive planning process. For example, during West Hempfield Township’s comprehensive plan update, lands outside its Designated Growth Area that had high agricultural value or watershed value were designated as the sending area.



Photo: Courtesy of Lancaster Farmland Trust

The sending area should be large enough to generate a sufficient number of TDRs. A limited supply of available TDRs will drive up their price. Conversely, flooding the market with too many TDRs will depress their market value. While very affordable TDRs may increase their attractiveness to



developers, a low TDR sales price may also reduce a landowner's interest in choosing the TDR option over other options such as subdividing off building lots.

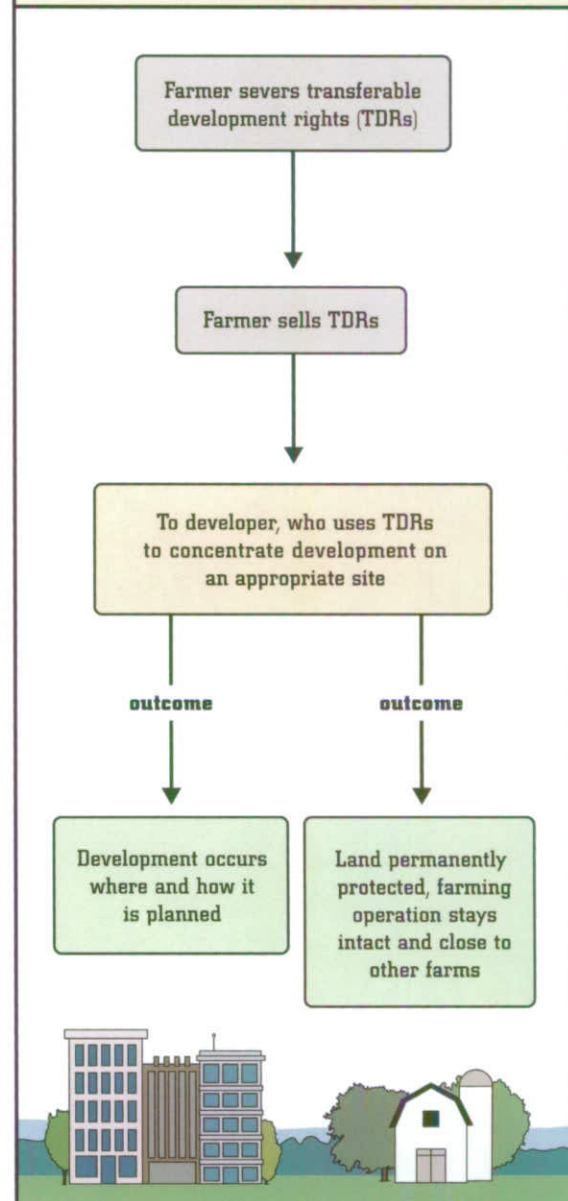
Within the sending area, the municipality allocates TDRs to landowners who can sever the TDRs from their property and sell them (as conceptually shown in Figure 2-1). The municipality establishes this allocation in the zoning ordinance, and it should be a clear process. The allocation should result in at least the same number of TDRs as the number of lots or houses that could be achieved through subdividing the property. Because a municipality cannot require a landowner to sell TDRs or a developer to buy them, there must be compelling financial incentives for landowners to sell their TDRs and compelling zoning incentives to attract developers to buy and use TDRs in their projects. For example, many TDR programs permit the transfer of a greater number of development rights from a property than the number of lots or houses permitted by zoning for that property.

An allocation determined through a ratio or simple formula is the most frequently used method. For example, Warwick Township allocates TDRs within its sending area at a ratio of one TDR for every two acres of land. A landowner with 100 acres of land zoned Agricultural District is allocated 50 TDRs. This same landowner could only subdivide five building lots from the 100-acre parcel under the Agricultural District provisions.

West Hempfield Township allocates TDRs within its sending zone based on a mathematical multi-

Figure 2-1

TDR STEPS: FARMER TO DEVELOPER



plier. This multiplier is applied to the lot or house yield otherwise permitted through zoning, and results in a higher number of TDRs than subdividable lots. For example, a landowner in West Hempfield Township with 100 acres of land zoned Agricultural District is entitled to 4 new lots or houses. As an option, the same landowner is entitled to sever and sell 20 TDRs ($4 \times 5 = 20$).

Some municipalities further refine the TDR allocation to exclude, or discount, areas of a property that have wetlands, floodplains, or steep slopes. These lands normally could not be used for building sites and limit the land's development potential. And, some municipalities reduce the TDR allocation if a landowner has already exercised other development options, such as subdividing building lots.

Most TDR programs also exclude parcels within the sending area below a certain size. This reduces the number of TDRs generated, and these lands often have lower natural resource or cultural value. An exception might be a particularly significant habitat area or historic site.

To avoid costly surveys and engineering studies when determining the TDR allocation, TDR ordinance provisions should allow the use of existing information to document the existence and extent of development limitations on a property in the sending area. This information is readily available from a municipal office, the Lancaster County Planning Commission, or the Lancaster County Geographic Information System Department. Landowners may be given the option of performing more

detailed studies (e.g., topographic survey, soil tests) to determine the allocation of TDRs where these more readily available sources appear deficient or inaccurate.

The use of a lot or dwelling unit yield study to determine equivalent TDRs is not recommended. This is an expensive process for a landowner or developer to undertake, particularly if the developer wishes to purchase only a portion of the landowner's total TDRs.

The Receiving Area

The Receiving Area consists of one or more sections of a municipality where developers may apply purchased TDRs to proposed land development projects. Receiving areas are favored by the municipality or region for accommodating growth. They can have distinct boundaries, such as a municipal zoning district, or be defined through specific criteria. West Hempfield Township identified its TDR receiving areas during its comprehensive plan update to coincide with undeveloped or underdeveloped lands inside its Designated Growth Area.

Receiving areas can often accommodate a range of TDR developments, from relatively modest density to high density, or intensity. The County's growth management element *Balance* recommends an average net density of 7.5 dwelling units per acre for new developments within the Urban Growth Areas. TDRs can help townships and boroughs meet or, in the City of Lancaster's case, exceed this density goal.



While TDR receiving areas are often used to accommodate residential development, Warwick Township applied the TDR tool to encourage non-residential development in its receiving area. Warwick Township's Campus Industrial zone allows developers to use purchased TDRs to exceed the ten percent maximum impervious coverage limitation. The Township also helped to finance supporting infrastructure to serve the receiving area. Unlike new residential development, new development in this non-residential TDR receiving area has increased the Township's tax base without adding students to local schools. TDR ordinances can establish residential, non-residential, or mixed-use TDR receiving areas within the same community or region. This can help reduce public opposition to the TDR tool by spreading out the perceived fiscal and density impacts of a TDR program.

Receiving areas can vary widely in size. Warwick Township, for example, has a relatively small receiving area (150 acres). West Hempfield Township permits the use of TDRs in all of its residential zoning districts inside its Designated Growth Area in order to accommodate market fluctuations and consumer preferences.

The zoning ordinance specifies the number of purchased TDRs that can be used for a residential or non-residential development within the receiving area. The zoning ordinance should also establish incentives for developments that use TDRs to favor these projects over non-TDR developments. For example, a smaller minimum lot size may be allowed for a proposed residential subdivision when TDRs are used, resulting in a higher lot yield. Likewise, a greater residential density or more square

feet of non-residential building space can be made possible through TDR use. For example, a developer could achieve six dwelling units per acre for a TDR receiving zone development rather than four dwelling units per acre without using TDRs. Or, a developer proposing a TDR development may be granted some leniency with certain ordinance requirements such as dimensional standards to enable greater density or a reduced minimum open space requirement. The ordinance should acknowledge reasonable and practical trade-offs to accommodate a developer's attempts to use TDRs. An example of West Hempfield Township's TDR receiving zone allocation is shown in Table 3-1 in Section 3.

The ratio of sending area TDRs to receiving area TDRs, or the transfer ratio, also needs to be determined. For simple computing purposes, for every one TDR a developer purchases from a sending area landowner, the zoning ordinance could allow the developer to build one additional dwelling unit - in the receiving area. Another approach is that of Warwick Township, which allows 4,000 square feet of additional impervious coverage (building or parking) for commercial, institutional, or industrial development per purchased TDR. Responses from developers and others participating in TDR developments favored the 1 to 1 ratio. As land values increase within the sending areas over time, the value of a sending area development right may exceed the value of a single TDR in the receiving area, so adjustments to the receiving area side of the ratio may be appropriate. For example, a developer may need four TDRs to build additional apartments for every single TDR purchased from the sending zone.



The extent to which a TDR development is allowed to exceed, or vary from, the base zoning requirements and standards can often be a challenging decision for a municipality. Questions such as “what will the market support?” or “what will be compatible with the neighborhood where the TDR development is proposed?” should be answered when establishing the TDR ordinance provisions. Also, the municipality should set an upper density limit, or maximum height or impervious coverage limit—in the case of non-residential TDR developments—to prevent a TDR development that is clearly out of character with the surrounding community. In reaching this decision, the municipality must keep in mind that zoning ordinances can always be modified. If the TDR exceptions do not stimulate developer interest, or they result in too much or poorly designed development, the municipality can always make adjustments to the zoning ordinance to reflect new market conditions. Warwick Township found support from their residents with a non-residential TDR option and so started with that. Now they can build upon that success in seeking other opportunities to use TDRs.

Amending the Comprehensive Plan

There should be a strong relationship between a municipality’s comprehensive plan and its zoning ordinance. The zoning ordinance can be effectively used to help implement the adopted plan. Given this important relationship, a municipality, or a multi-municipal organization, should use the comprehensive plan whenever possible to help shape

its TDR program. For example, a municipality can include appropriate locations for sending and receiving areas in an update to the comprehensive plan and tie the sending and receiving areas to land use, housing, natural and historic resource protection, and implementation strategies.

Should a municipal TDR ordinance ever be the subject of a legal challenge, specific discussions or recommendations about TDRs contained within that municipality’s comprehensive plan could improve the chances of surviving the challenge.

Amending the Zoning Ordinance

Adding TDR provisions to a zoning ordinance typically involves several parts of the ordinance. Normally, the TDR sending option is added to the list of permitted uses within one or more sending area zoning districts, and the option of TDR receipt is added to the list of permitted or conditionally permitted uses within one or more receiving area zoning districts or overlay districts. In addition, the procedures for determining a landowner’s TDR allocation, severing TDRs, TDR transfer ratios from sending to receiving areas, restricting the land where TDRs have been severed, and finally, municipal approval of new developments in the TDR receiving areas are also established. New definitions will also be appropriate because of the introduction of new terms.

The sample TDR ordinance, provided in Appendix 2, explains many of the procedural and administrative steps that municipalities, landowners, and/



or developers must follow in executing a valid TDR transfer. Section 6 of this Handbook explains the steps in setting up a TDR program, including both basic and optional ordinance provisions. While most municipalities follow similar TDR ordinance set-up provisions, most municipalities differ from one another in the administration of their TDR programs.

Honey Brook Township, Chester County, permits the severing of TDRs in its agricultural district subject to a TDR certification process described in the ordinance's administrative section. This process insures that a landowner's calculation of allocated TDRs is consistent with that of the Township. The cost for the landowner obtaining Township certification is covered by Honey Brook Township. The certification application requires a Planning Commission review and recommendation and is ultimately decided upon by the Board of Supervisors. The TDR certification process helps to inform the Township of TDRs that are available, which can be shared with developers when inquiring about TDRs.

Warwick, West Hempfield, and West Lampeter Townships require conditional use approval for receipt of TDRs within their receiving area zoning districts. The conditional use process is preferred, because it allows Township Supervisors to impose reasonable conditions of approval to address development impacts that may affect the community. For example, the potential stormwater impacts of an increased amount of impervious surfaces allowed through TDR receipt could be addressed by requiring the developer to install Best Management Practices to reduce runoff. The conditional use

process also allows the municipality greater discretionary authority than simply subjecting a TDR receiving area development to requirements and standards contained within a subdivision and land development ordinance. The conditional use process is established within the zoning ordinance and can also be used by its elected officials (i.e., Board of Supervisors, City or Borough Council) to modify zoning ordinance provisions when necessary to accommodate an occasional unique aspect of a TDR development.

The zoning ordinance should also establish procedures for:

- 1) Determining property eligibility for severing and selling TDRs;
- 2) Determining the number of TDRs allocated to eligible properties;
- 3) Severing TDRs;



Photo: Courtesy of Brandywine Conservancy



- 4) Municipal approval of a TDR development application; and
- 5) The permanent protection of the property from which the TDRs are being severed (and used for a TDR development).

Other Legal and Administrative Considerations

Severing Development Rights. Development rights are an interest in real estate and, therefore, must be conveyed from seller to buyer similar to other real estate transactions. In addition, the zoning ordinance must establish a procedure for the severance of TDRs from a property in the sending area. This procedure includes use of a “Deed of Transferable Development Rights” to legally document the severance. Other measures, such as notes on a plat or subdivision plan, are also needed to clearly document the number of development rights severed and any development rights retained with the property. The deed of transferable development rights must be recorded in the Lancaster County Recorder of Deeds Office, and recording the deed should be the responsibility of the TDR buyer. Documentation of the recording should be provided to the municipality prior to final plan approval. Appendix 3 includes a sample Deed of Transferable Development Rights.

Preserving the Land with Severed TDRs. In addition to enabling the severance of TDRs, the municipal ordinance must also establish a procedure for ensuring the permanent preservation of land

once the TDRs have been legally severed and sold. This is accomplished through a declaration of restriction of development or conservation easement.

The declaration and the conservation easement are legally binding agreements between the landowner and an enforcing entity (such as a land trust or municipal government) defining the permitted uses of the property. These uses are typically limited to agriculture, managed forestry, open-space uses, and a single house or subdividable lot right (in compliance with local zoning regulations). Only one agreement is necessary - the choice lies with the municipality and the easement holder. Warwick Township and Lancaster Farmland Trust use a declaration. Appendix 4 includes a sample Declaration of Restriction of Development. Appendix 5 includes three sample Conservation Easements.

All of these sample agreements contain detailed descriptions of the uses that are permitted on the property - and may also define environmental performance standards for non-agricultural properties. These documents are permanent and “run with the land” so that if the land from which TDRs have been severed is sold or passed onto heirs, the restrictions in these documents apply to all future landowners. In addition, the documents give the easement holder, either a land trust or municipality (or both), the right and obligation to enforce the specified terms and restrictions of the easement.

Provisions for TDR severance, transfer, and/or receipt, like any other zoning ordinance provision, can be amended or deleted by the local governing



body. Landowners who legally sever and hold onto TDRs are not guaranteed the ability to sell them should the TDR provisions be deleted from the zoning ordinance in the future. Likewise, developers and others who purchase TDRs and hold onto them may lose their ability to utilize them in the future if TDR provisions within the zoning ordinance are amended or deleted.

Ordinance “Maintenance”

Municipalities enacting TDR ordinances need to understand that minor zoning ordinance adjustments will be an ongoing part of their program’s administrative responsibilities. For example, minor adjustments may be necessary to facilitate a TDR transaction desired by the municipality that is prevented by the zoning ordinance. Also, ordinance adjustments will likely be necessary to respond to changing land values and real estate market conditions, changes in the comprehensive plan, or simply where a specific ordinance provision did not produce the intended effect.

Multi-Municipal TDR Programs

Multi-municipal TDR programs permit the transfer of development rights across municipal boundaries. The Pennsylvania Municipalities Planning Code requires that municipalities involved in such a transfer have: a) a joint zoning ordinance; b) a written agreement in place; or c) an adopted multi-municipal comprehensive plan. Regardless of the option selected, language can be added to a zoning

ordinance that allows for both single- and multi-municipal TDR transactions. Municipalities can send and receive TDRs within their own boundaries or they can send to and/or receive TDRs from other municipalities, provided the participating municipalities’ zoning allows the transfer. The following is sample ordinance language that is being proposed for West Sadsbury Township, Chester County, to allow intermunicipal TDR transfers:

“Any lot or tract within any other municipality with which West Sadsbury Township has executed applicable inter-municipal agreements may use development rights purchased from sending area landowners within West Sadsbury Township, subject to the provisions for received development rights in the applicable municipality.”

The process of determining which municipality will receive TDRs from another will be the most challenging of the necessary steps for intermunicipal TDR transfer. Most likely, the receiving area municipality will need to see a benefit to its community by accommodating developments that use TDRs in its receiving zone before it enables such transfers to occur. The preservation of open space in an outlying municipality may not resonate with borough or city residents faced with a TDR receiving area development. However, if the TDRs purchased for the receiving area development enabled the protection of the borough’s or city’s drinking water source, or insured the retention of the local farmer’s market by saving nearby farmland, community support may be achievable. Ideally, the costs and benefits of the TDR program should be discussed and resolved during the drafting of the multi-municipal comprehensive plan.



Special Purpose TDRs – Sending and Receipt

TDR programs in Lancaster County are largely oriented toward the preservation of farmland in exchange for modest increases in development levels or allowing certain uses within the County's Urban Growth Areas. However, the TDR tool can also be applied to protect historic structures or sites, conserve sensitive woodlands and headwaters, or to promote community development objectives such as downtown redevelopment or affordable, or workforce, housing.

Many of Lancaster County's boroughs, and the City of Lancaster, are ideal TDR receiving zones. For example, recent interest shown by private developers for increasing the height limit in Lancaster City's zoning ordinance to accommodate new development provides an ideal opportunity for using the TDR tool. The City's zoning ordinance could be amended to allow for increases in the maximum building height limit. But to take advantage of the optional height increase, developers would need to purchase and use TDRs. Merely giving away "free" density through a building height increase without requiring the use of TDRs misses a significant opportunity to protect land elsewhere. The City can provide outlying townships with a receiving area opportunity beyond their borders. Furthermore, the City could apply the TDR tool to its targeted redevelopment areas so that the increased development density or intensity is focused where the economic development or housing benefits to the City are the greatest.

Lancaster's municipalities could further encourage the development of more affordable housing by increasing the TDR incentives in their ordinances. For example, one TDR from the sending zone could allow the construction of one market-rate dwelling unit or four affordable dwelling units in the receiving area.



Photo: Courtesy of Brandywine Conservancy

Municipal Banking and Selling of TDRs

Two of Lancaster County's successful municipal TDR programs have established a TDR "bank." This means that municipal officials have allocated public funds for the purchase of TDRs from willing landowners. The TDR purchase price can be negotiated, such as Manheim Township did with its initial transactions, or the price can be set through an appraisal, such as Warwick Township does. Once purchased, these TDRs are held, or "banked," by the municipality and most often are later sold to a developer or real estate broker.



Manheim Township is considering “retiring” some of its purchased TDRs rather than selling them which means that the township may never sell the banked TDRs.

For either a first-class or a second-class township to sell TDRs, it must put them out to bid. The township can establish a minimum bid price, and it is not required to accept any of the bids offered. The township cannot, however, selectively choose a higher bid over a lower bid that meets the minimum bid price.

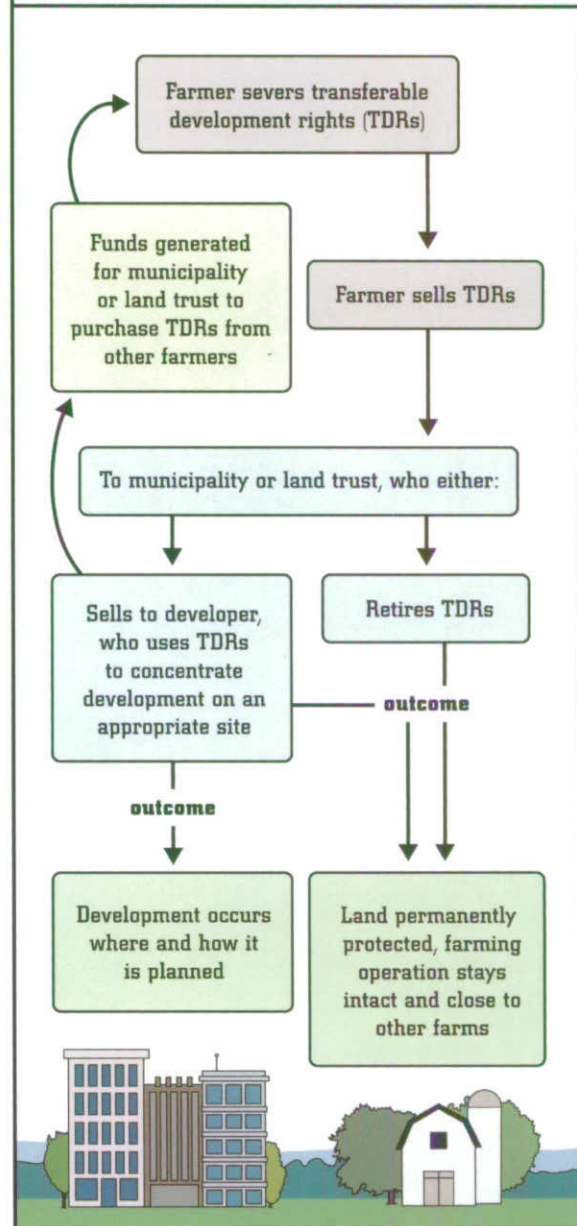
The non-profit Lancaster Farmland Trust has purchased, banked, and sold TDRs (as conceptually shown in Figure 2-2) on the open market in partnership with Warwick and Manheim Townships. The Trust is not subject to Commonwealth law regarding “bidding” of TDRs and, therefore, can more freely negotiate a TDR sale price.

A municipality or non-profit organization can use the money from the sale of TDRs to purchase additional TDRs. In other words, the sale of TDRs creates a “revolving land preservation fund” for the municipality or non-profit organization. This is an advantage over a traditional Purchase of Development Rights (PDR) program.

Although not yet used in Lancaster County, a municipality can put an open space referendum to a vote, subject to the Commonwealth’s Act 153, to generate property or earned income tax revenue that is solely used for the acquisition of interests in real estate for open space preservation. Under Act 153, tax revenues can be used to purchase

Figure 2-2

TDR STEPS: FARMER TO MUNICIPALITY/LAND TRUST TO DEVELOPER



TDRs. Chester County voters in more than 15 municipalities have approved this dedicated tax. Many of these municipalities have leveraged projected tax revenue through the sale of bonds or loans to increase the amount of funds available for purchases of development rights.

The Agreement for Intermunicipal Transfer of Development Rights

For a municipality to receive TDRs from outside its boundaries, it must have a written agreement with the municipality(ies) from which the TDRs were severed. This agreement identifies the cooperating municipalities and also those that wish to have the ability to receive development rights. More discussion of this agreement for intermunicipal TDRs is provided in Section 7 of the Handbook and a sample Agreement for Intermunicipal Transfer of Development Rights is provided in Appendix 8.

Act 442, Act 4, and Local Tax Freezes

Act 442 of 1967 is Pennsylvania's original land conservation legislation that authorizes municipalities to "preserve, acquire or hold land for open space uses." Previously adopted provisions of Act 442 authorized a municipality to increase local taxes (property or earned income) for the specific purpose of open space protection, subject to the favorable response by voters on a municipal open space referendum. (Note: Act 153, see top of page 10, left column, is an amendment to Act 442.)

Act 4 of 2005 amended Act 442. Act 4 clarifies how a school district board or any other local taxing authority can exempt property from further tax increases. If a property has been preserved through the sale or donation of a conservation easement or if TDRs have been retired and not applied to new development, then the property can be exempted from further school tax and other local tax increases. The school board, Lancaster County, and all townships within the school district containing the property proposed for exemption would need to approve the exemption.

A property preserved when its TDRs are sold and used for residential development purposes is not exempt, since those development rights are still being used for new residential dwelling units. There is still a net increase of school students that can be generated by the TDR receiving area development. Education costs for these new students are the major component of municipal/school district budgets.

On the other hand, properties preserved through the sale of TDRs for non-residential purposes could be exempted from further school tax increases because the resulting development is not generating school children. However, Act 442 would need to be amended to enable tax exemptions for properties preserved through a non-residential TDR program.



Section 3: Three Successful Lancaster TDR Programs

Section 2 of this Handbook recommends that each municipality undertaking a Transfer of Development Rights program tailor its program to its own planning and conservation objectives, administrative capabilities, landowner desires, and market conditions. As of July of 2007, five Lancaster County townships—Warwick, Manheim, West Hempfield, Mount Joy, and West Lampeter—had a TDR option in their zoning ordinances. Warwick, West Hempfield, and Manheim Townships have completed several TDR transactions. These three townships adjusted the basic TDR framework described in Section 2 to fit their unique planning and conservation needs. A review of these three municipal TDR programs shows how other Lancaster County municipalities can use or adjust the basic TDR framework to create a successful program.

Warwick Township

Warwick Township, located in north central Lancaster County, has had a TDR option in place since 1993, although refinements to the program in 1998 led to its current TDR successes. Warwick has preserved more land through TDRs than any township in the state with more than 900 acres preserved.

Warwick Township's zoning ordinance identified the Agricultural Zone as the sending area for TDRs

and assigned every farm in the Agricultural Zone one TDR per two acres. The Township's sole receiving area is a 150-acre Campus Industrial zoning district located in the Township's southern end. Figure 3-1 shows the Agricultural District boundaries (sending area) and the Campus Industrial District boundaries (receiving area). The Campus Industrial District has an impervious surface limit of 10 percent of the gross lot area, but a landowner who purchases TDRs may increase the impervious surface by 4,000 square feet for each TDR purchased. The maximum impervious coverage per parcel, including any TDR bonus, is 70 percent of the gross lot area.

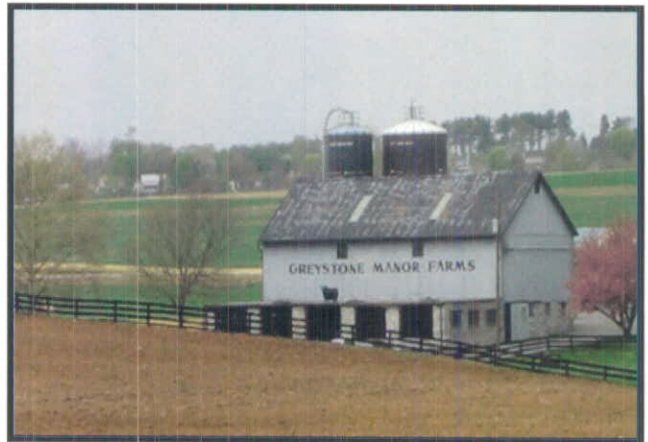


Photo: Courtesy of Warwick Township

Warwick Township has tailored the basic TDR framework in the following six ways:

- 1) Severed TDRs from the sending area can only be received within the special Campus Industrial Zone and are converted to impervious coverage increases in the receiving area.



2) Township officials actively purchase TDRs from landowners by partnering with the Agricultural Preserve Board and the Lancaster Farmland Trust.

3) When the Farmland Trust preserves a farm in Warwick Township, the Farmland Trust takes the TDRs from the property, sells them, and reinvests the proceeds in preserving more farmland in the Township.

4) Township officials and Lancaster County have agreed that available TDRs from farmland preserved in Warwick through the County's purchase of development rights program will be given to the Township. In return for receiving these unused TDRs, the Township contributes funds toward the County's purchase of development rights program. When the landowner enters into a development rights purchase transaction with the County, he or she also agrees to donate any unused TDRs. To date, only one landowner has chosen not to donate their TDRs.

5) The TDRs obtained through the County's purchase of development rights program have enabled Warwick Township to sell each of them at a very affordable price. (The County's cap on the per acre purchase price for an agricultural conservation easement is \$4,000. If one TDR is generated for every two acres in Warwick, the fair market value of a TDR could be as high as \$8,000). The Township sells its TDRs through a bid process controlled by Commonwealth law. As of 2007, Warwick Township was starting its bid offering at \$3,250 per TDR. The Township uses the proceeds from the sale of TDRs to acquire additional TDRs.

6) Township officials actively market their TDRs to developers and help pay for infrastructure within the receiving area. These officials continually communicate with landowners in the Campus Industrial Zone TDR receiving area and with realtors who have an opportunity to help potential buyers understand the benefits of using TDRs. In addition, the Township provided the public sewer improvements needed to support development within the Campus Industrial Zone and experienced a full return on its infrastructure investment in just three years.

Special note: The ten percent maximum impervious coverage limitation that Warwick applied to non-TDR uses may seem very restrictive for an industrial zoning district. However, it is important to understand that the land the Township zoned Campus Industrial District was formerly zoned for rural residential use. The rezoning, even with the ten percent lot coverage restriction, was viewed by Township officials as an "up-zoning," and added financial value to rezoned properties. Further, the Township has zoned other areas for industrial uses with a higher impervious coverage limitation that do not include a TDR receipt option.

The Township's first TDR transaction involved a developer's use of over 100 TDRs for the Heart of Lancaster hospital complex. Heart of Lancaster representatives found participation in the Township's TDR program a rewarding experience, particularly the knowledge that their investment in the Township's farmland preservation program helped to maintain a highly desirable rural and agrarian lifestyle for many of the Township's residents.



Warwick Township Sending and Receiving Areas Figure 3-1

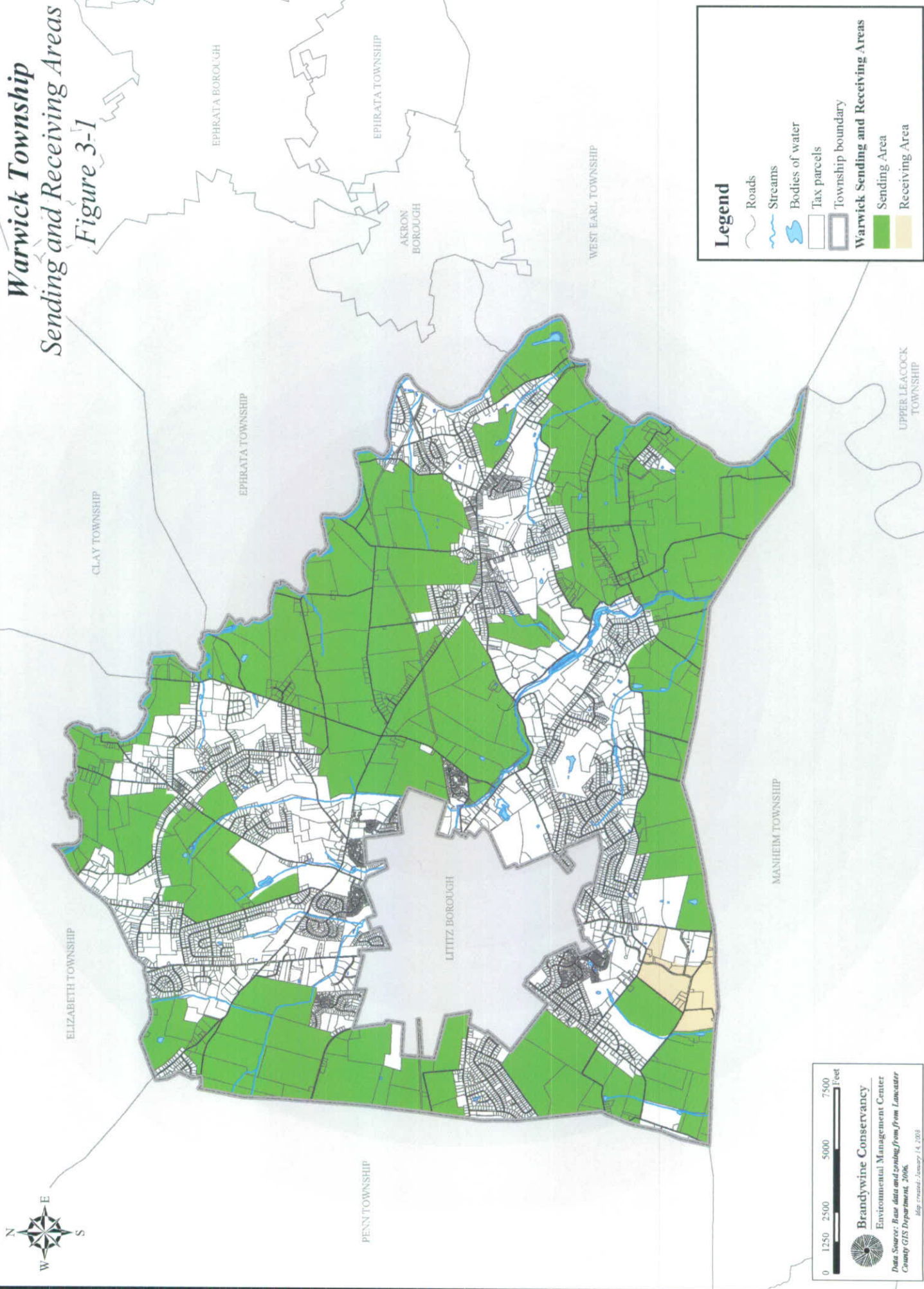




Photo: Courtesy of Warwick Township

Warwick Township officials are exploring ways to expand the TDR program given the success and clear support it has already achieved. According to Township Manager Dan Zimmerman, the most important components of a successful TDR program are making the program easy to understand and use and marketing the program through outreach with landowners, developers, and the general public.

West Hempfield Township

West Hempfield Township, in western Lancaster County, began its TDR program in 1998 when it implemented several innovative zoning incentives to entice both landowners and developers to help the Township protect natural resources and manage growth. Although initial landowner and developer interest in the new TDR option was weak, the Township continued to promote the TDR option and make refinements as shown in Table 3-1. By 2004, the Township had acquired its first TDRs by working with the County Agricultural Preserve Board and establishing a TDR bank. In 2006, the

Township sold TDRs to a developer and approved its first receiving area development. The next TDR sale followed in mid-2007, and the Township has, as of the date of this publication, preserved 345 acres through its TDR program.

Table 3-1: Zoning Density Expressed in Dwelling Units Per Acre

| Zoning District | Base Density | Open Space Option | TDR Bonus | Max.. Density |
|-------------------|-----------------------------------|--------------------------|-----------|--------------------------|
| R-R | 0.33/acre (3 acre lot) | 0.5/acre (2 acre lot) | N/A | 0.5/acre (2 acre lot) |
| R-1 | 1.45/acre (30,000 sq. ft. lot) | 1.5/acre | 1/acre | 2.5/acre |
| R-2 | 1.74/acre (25,000 sq. ft. lot) | 1.75 /acre | 1.5 /acre | 3.25 /acre |
| R-3 Single Family | 2.18/acre (20,000 sq. ft. lot) | 2/acre | 2/acre | 4/acre |
| R-3 Multi-Family | N/A | 3/acre | 3/acre | 6/acre |

Source: West Hempfield Township

Note: Base density for R-1, R-2, and R-3 denotes developments served by public water and sewer.

EXAMPLE: R-1 DISTRICT

Base Density = $43,560 \div 1.45 = 30,000$ sq. ft. lot

Open Space Option = $43,560 \div 1.5 = 29,000$ sq. ft. lot

Maximum Density (TDR) = $43,560 \div 2.5 = 17,400$ sq. ft. lot



As part of the Township's zoning incentive "package" developed prior to 2006, a TDR sending option was added to the Rural Agricultural and Rural Residential Zoning Districts, and a TDR receiving option was added to the low, medium, and high density residential zoning districts (receiving areas). The Township's Rural Agricultural District allows the subdivision of land at a density of one building lot for every 25 acres, but it also permits the severing of TDRs at an allocation of one TDR for every four acres. The Township's Rural Residential District allocates TDRs to sending area parcels using a multiplier of 0.067. For example, a 30-acre parcel would be allocated two TDRs. Table 3-1 explains how severed TDRs can be used in the Township's three residential zoning districts which are also TDR receiving areas. The "maximum density" column on the far right reflects the addition of the TDR bonus to the base density for each of the three districts. Figure 3-2 shows the locations of the Township's TDR sending and receiving areas.

West Hempfield Township has tailored the basic TDR framework in the following four ways:

1) TDRs are used to protect other natural resources in addition to prime farmland. The Township's Rural Residential zoning district encompasses steep slopes, woodlands, rock outcroppings, scenic Susquehanna River bluffs, and other locally and regionally important features that the Township wishes to preserve by offering landowners an attractive financial alternative to development. This is the first example in Lancaster County where the TDR tool has been applied to preserve natural resources other than prime farmland.

2) The receiving areas were downzoned when the TDR provisions were enacted so that the ordinance's TDR bonus, when combined with the base-district density, is: a) realistically achievable due to market conditions, and b) is not of a density that would be out of character with surrounding uses.

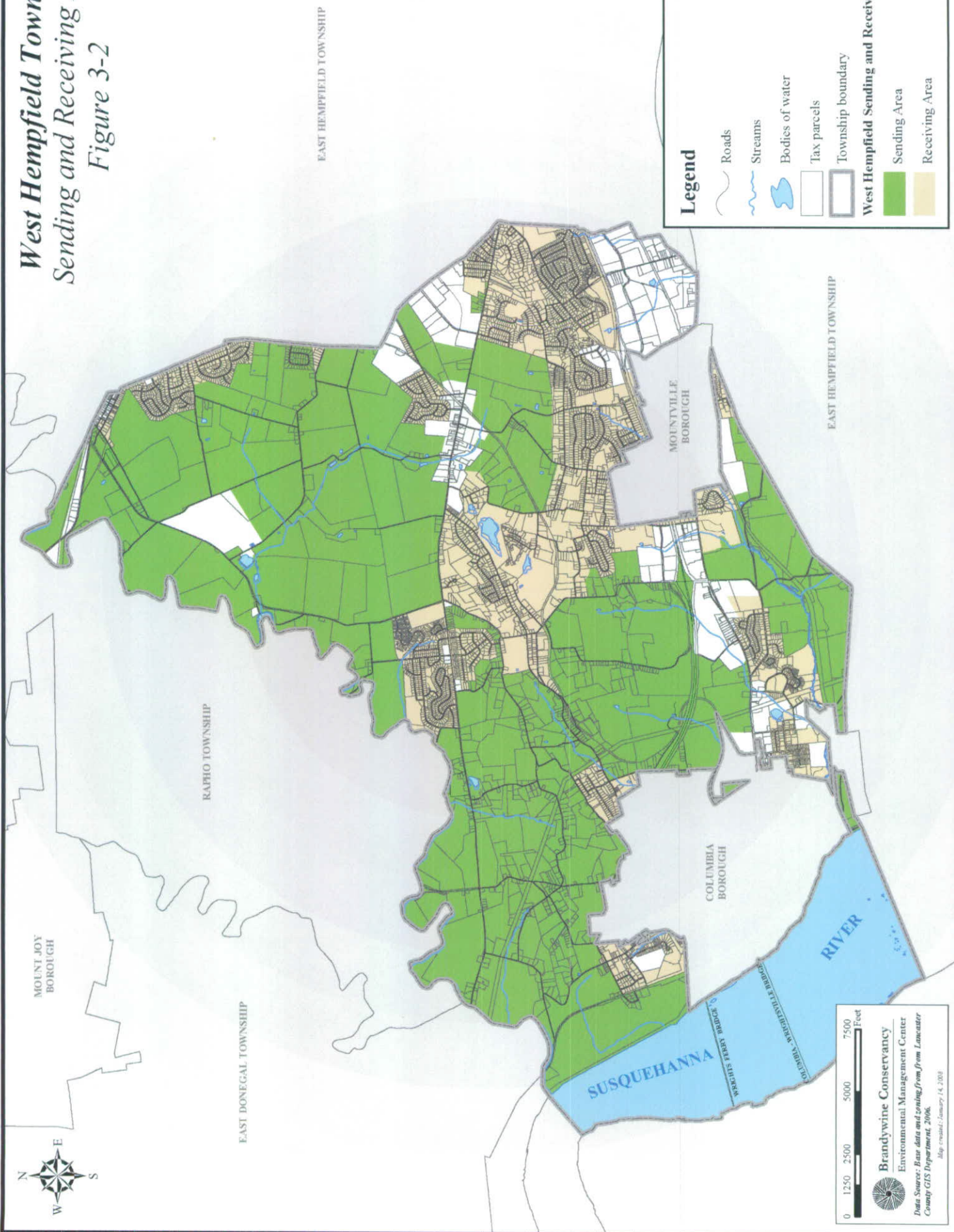
3) The Township's 2003 Comprehensive Plan identified the TDR sending and receiving areas relatively simply – sending areas outside the Township's Designated Growth Area, receiving areas inside the Designated Growth Area. The Plan recommends use of the TDR tool in the Future Land Use and Implementation Chapters.

4) The Township partners with the Lancaster County Agricultural Preserve Board to acquire TDRs. Following Warwick Township's example, Township officials and the County have agreed that the County will give the Township any available TDRs from farmland preserved in West Hempfield through the County's purchase of development rights program. In return for receiving these unused TDRs, the Township contributes funds toward the County's purchase of development rights program. The Township has made the same request of the Lancaster Farmland Trust, given the Trust's past efforts in successfully preserving township farms through the acquisition of conservation easements.

As of 2007, the Township sold TDRs to developers for \$16,000 per TDR. According to Township Manager Charlie Douts, Jr., this value was based



West Hempfield Township Sending and Receiving Areas Figure 3-2



on what Supervisors felt would be their cost to purchase development rights from a farmer (at \$4,000 per acre) and what they also felt was a fair price for a developer to pay for a TDR to use within a Township receiving area. The Township is interested in expanding its TDR program by looking at other receiving area alternatives and increasing its TDR allocation for high value, non-agricultural resource lands.

Manheim Township

Manheim Township, which lies between Warwick Township to the north and the City of Lancaster to the south, began its TDR program in 1991. As of January, 2007, 310 TDRs had been sold or retired on 10 farms totaling 437 acres.

Like the other two successful TDR programs, Manheim's Agricultural Zone is also its sending area for TDRs. In addition to the TDR option, the Agricultural Zone allows parcels to be subdivided at one building lot for every 20 acres. Until recently, Manheim Township's TDR receiving areas were limited to residential zoning districts. In 2006, the Township identified land next to the City of Lancaster for a new TDR receiving area. The Township adopted a Planned Commercial Development Zoning Overlay ordinance which requires the use of TDRs for new commercial developments under this option. Figure 3-3 shows the Agricultural Zone boundaries (TDR sending area), the residential zoning district boundaries (TDR receiving area), and the Planned Commercial Development Zoning Overlay (TDR receiving area).

Manheim Township allocates TDRs to land in the sending area based on its "net" acreage—after subtracting any acreage restricted by deed or in non-agricultural use. The net acreage is then multiplied by 0.73 to obtain the number of TDRs. This multiplier was selected by the Township to reflect the development capability of a residentially zoned (R-1) property. In the residential receiving area, each TDR is equivalent to one dwelling unit above the base density permitted in the residential zone of the receiving area, and lot and yard area requirements are modified to support the higher density permitted with the use of TDR. For the Planned Commercial Development overlay, two purchased TDRs allow one acre of impervious coverage.

The Township tailored the basic TDR framework through the following actions:

- 1) Early in the program, Township officials prioritized key farms for preservation and negotiated the price and purchase of TDRs from those landowners.
- 2) Manheim Township officials also partnered with the Lancaster Farmland Trust for the purchase and sale of TDRs, with the Township purchasing roughly 90 percent of the TDRs on a sending zone parcel and the Lancaster Farmland Trust purchasing the remaining 10 percent.
- 3) Township officials actively marketed their TDRs to developers. Of the 310 TDRs that have been sold or retired in the Township, 242 were purchased by the Township. Of the 242 TDRs, 114 have been sold to developers in the receiving areas.



According to Manheim Township's Director of Planning and Zoning, Lisa Douglas, Manheim Township's elected officials have recently adjusted other aspects of their original TDR program. The Commissioners have decided not to buy or sell any more TDRs, including those that have been banked from earlier purchases. Instead, developers who wish to use TDRs must now purchase the TDRs directly from Township landowners or buy them from the Lancaster Farmland Trust. One township developer contacted for this Handbook indicated a preference for working directly with the township's landowners in purchasing TDRs. This developer preferred seeing a direct benefit going to the landowner as a result of the TDR purchase. Another township developer preferred buying TDRs from the Township because it was a quicker way to obtain TDRs. As of mid-2007, TDRs in Manheim Township were selling for an average of \$10,000 each.





PENN TOWNSHIP

WARWICK TOWNSHIP

WEST EARL TOWNSHIP

UPPER LEACOCK TOWNSHIP

EAST LAMPETER TOWNSHIP

CITY OF LANCASTER

LANCASTER TOWNSHIP

LANCASTER TOWNSHIP

EAST HEMPFIELD TOWNSHIP

EAST PETERSBURG TOWNSHIP

Legend

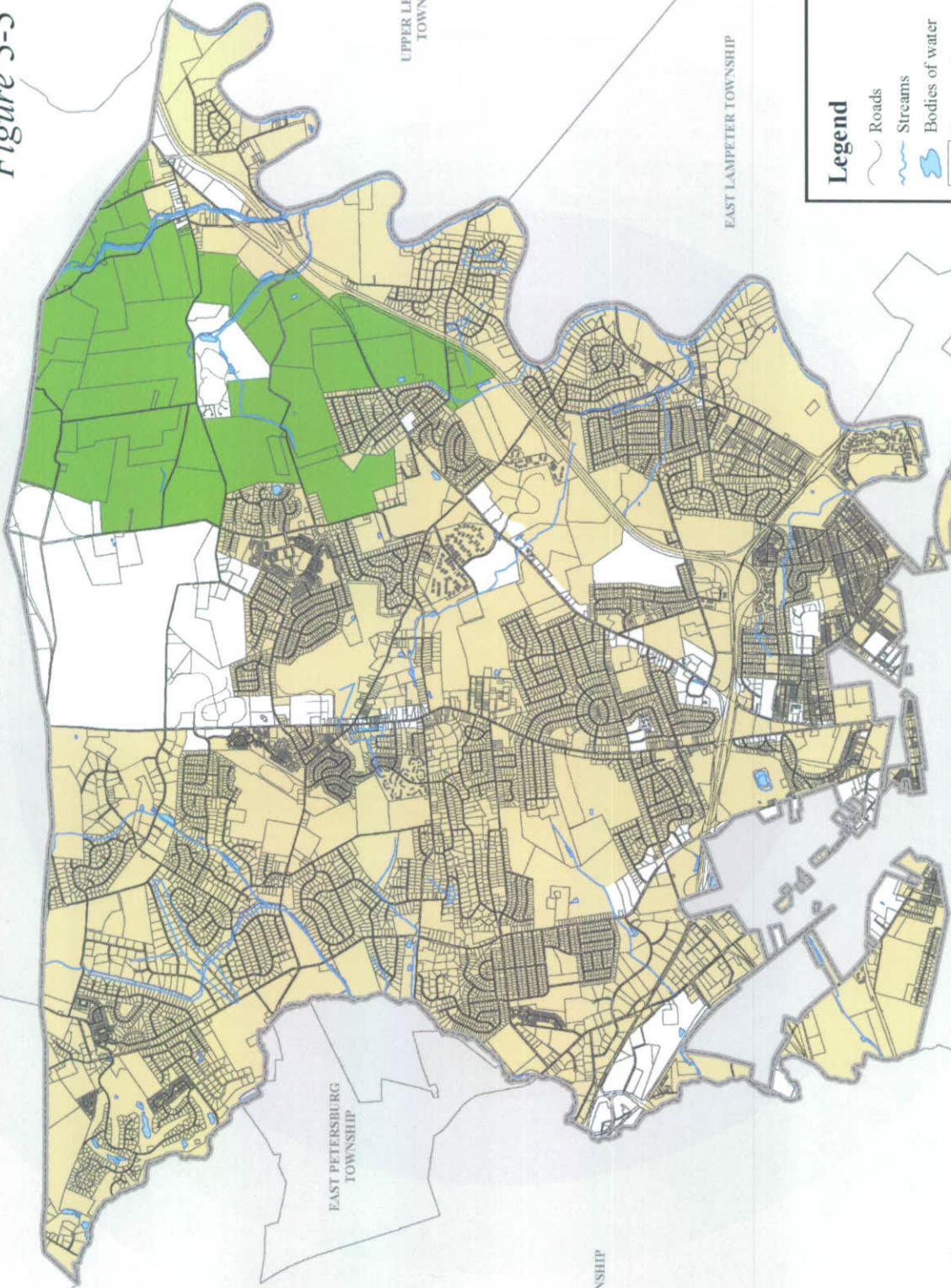
- Roads
- Streams
- Bodies of water
- Tax parcels
- Township boundary
- Manheim Sending and Receiving Areas
 - Sending Area
 - Receiving Area



Brandywine Conservancy
Environmental Management Center

Data Sources: Base data and zoning from Lancaster County GIS Department, 2006.
Map created: January 14, 2009

Manheim Township Sending and Receiving Areas Figure 3-3



Section 4: Community-Wide Support for TDR

Municipalities looking to establish a TDR program will find a great deal of support from the Lancaster County government, municipalities that are using TDRs, and private sector organizations. This Section documents several public planning and land conservation efforts that demonstrate support for TDRs.

Lancaster County's Growth Management Element of the Comprehensive Plan

In 2006, the Lancaster County Board of Commissioners adopted a new Growth Management Element of the Lancaster County Comprehensive Plan entitled *Balance*. *Balance* emerged after extensive input from the County's 60 municipalities and local residents and businesses. *Balance* reflects the Lancaster community's general consensus on the long-term importance of agriculture and better managing future non-farm development. *Balance* recommends the use of TDRs by municipalities and regional planning organizations to implement the Urban Growth Area and Rural strategies recommended by *Balance*.

The Urban Growth Area strategy maintains the existing urban growth boundaries within the County even though a 26 percent increase in development

is projected by 2030. These urban growth areas can accommodate most of the projected development, provided that municipalities make more efficient use of "buildable lands." Increased land-use efficiency can occur in many appropriately planned locations where higher density housing developments or a mix of residential, commercial, and institutional land uses are allowed by local zoning. The redevelopment and re-use of lands within individual boroughs and the City of Lancaster are also key components of the Urban Growth Area strategy. This Urban Growth Area strategy assumes that increasing the efficiency of how urban and suburban lands are used will reduce the pressure to convert the County's rural land

Warrington TND



Illustration: Courtesy of Keystone Custom Homes

into suburbs. Successful implementation of this strategy will require that some municipalities amend their zoning ordinances to allow for higher density residential uses and mixed use developments.



The Rural strategy of *Balance* is to protect agricultural, natural, historic, and scenic resources through more careful land use and zoning actions by local municipalities. These actions will favor the protection of farmland and other natural resources and discourage other uses that are more appropriately located in areas planned to accommodate growth. Limited growth is assumed for lands outside of the County's Urban Growth Area, but it should occur mainly within rural villages and crossroad-communities.

TDR is a key tool identified in *Balance* for implementing the County's Urban Growth Area strategy. For example, many of the areas planned to accommodate more intense development inside the Urban Growth Areas would also be appropriate as TDR receiving areas. The requirements for TDR usage should be considered by municipalities when their applicants are seeking the upper end of the zoned density range, or when creating a Traditional Neighborhood Design (TND) ordinance.

Similarly, *Balance* recommends TDR to implement the Rural strategy. Rural lands outside the Urban Growth Area consist mainly of farmland and natural areas and are appropriate for TDR sending areas.

Lancaster County's Blue Ribbon Commission for Agriculture's Phase I Report

In 2005, the Lancaster County Board of Commissioners appointed the Blue Ribbon Commission for the Future of Agriculture. Commission members

toured the county and learned, through community forums and other focused outreach efforts, about the state of agriculture and its role in the county's economy, cultural make-up, land use, and its future. After concluding these community outreach efforts, the Blue Ribbon Commission submitted recommendations to the County Commissioners for supporting the long-term viability of county agriculture.



Photo: Courtesy of Lancaster Farmland Trust

For farmland preservation, the Commission recommended the implementation of multi-municipal TDR programs throughout the County, as well as removing obstacles to enable a county-wide TDR program.

Special Note: Lancaster County's TDR success stories have clearly shown that agricultural zoning can be successfully combined with a Transfer of Development Rights program. The agricultural zoning sets limits on non-farm development, and the TDR program provides an option for farmers and other rural landowners to capture the development value of their land without having to sell any land.



Table 4-1: Recent Multi-Municipal Planning Efforts and Participants, Lancaster County

| Name of Multi-Municipal Planning Effort | Participating Municipalities |
|---|---|
| Northwest Lancaster County | Conoy, Mount Joy, W. Donegal Townships Elizabethtown Borough |
| Solanco | Drumore, E. Drumore, Fulton, Little Britain Townships |
| Elanco | Brecknock, Caernarvon, Earl, E. Earl Townships Terre Hill Borough |
| Lancaster Inter-Municipal Committee, "Growing Together" | E. Hempfield, E. Lampeter, Lancaster, Manheim, Manor, W. Hempfield, W. Lampeter Townships E. Petersburg, Millersville, Mountville Boroughs Lancaster City |
| Octoraro | Bart, Colerain, Sadsbury Townships Christiana Borough |
| Cocalico | E. Cocalico, W. Cocalico Townships Adamstown, Denver Boroughs |
| Conestoga Valley | E. Lampeter, U. Leacock, W. Earl Townships |
| Lititz – Warwick | Warwick Township Lititz Borough |
| Strasburg Region | Strasburg Township Strasburg Borough |
| Manheim Central | Penn, Rapho Townships Manheim Borough |

Source: Lancaster County Planning Commission staff

Multi-Municipal Planning Efforts in Lancaster County

In 2000, Pennsylvania's municipal planning enabling legislation was changed to make it easier for municipalities to plan together and allowed TDRs to be transferred across municipal boundaries. Ever since the Commonwealth permitted municipalities to plan together, Lancaster County has strongly promoted multi-municipal planning efforts. As of 2007, 46 of the County's 60 municipalities had participated in some form of cooperative planning effort. A complete listing of Lancaster regions and their contributing municipalities as of this date is shown in Table 4-1.

Several key regional efforts are described as follows:

Lancaster Inter-Municipal Committee's Regional Comprehensive Plan: The largest multi-municipal planning program within the County involves the municipalities comprising the Central Lancaster County Urban Growth Area. This program is administered by the Lancaster Inter-Municipal Committee (LIMC), which is comprised of thirteen municipalities, including four boroughs, eight townships, and the City of Lancaster. A map of the municipalities comprising the LIMC is depicted in Figure 4-1.

Eleven of the LIMC's 13 municipalities, through an intergovernmental planning agreement, completed and adopted a single comprehensive plan for their region entitled *Growing Together*. This multi-municipal plan was developed to be consistent with



the Lancaster County Comprehensive Plan, including *Balance*, the Growth Management Element.

LIMC's multi-municipal planning process began with a public input effort that attracted residents, municipal officials, businesses, and other stakeholders from the region. Opportunities for public input were divided into two phases: an idea generation phase, consisting of a stakeholder workshop, four public meetings, and a community vision summit; and a comment phase, consisting of three public forums. Through these public meetings, as well as through input by a steering committee made up of representatives of participating municipalities and Lancaster County Planning Commission staff, participants planned for the protection of unique features; identified common goals and needs; and accommodated an appropriate amount of future growth within targeted areas of their region.

The product of their planning work, *Growing Together*, relieves each adopting municipality from having to provide for all categories of residential, commercial, industrial, and other land uses as is otherwise required by Commonwealth law. *Growing Together* has also established several excellent opportunities for use of the TDR tool. In particular, the Plan prioritizes 36 Growth Opportunity Areas for innovative urban developments. These Growth Opportunity Areas are specified in the Plan as "larger than 40 acres; bordered by existing development; served by major roads; and served by, or accessible to, public water and public sewer service." These Growth Opportunity Areas appear to be highly appropriate TDR receiving areas, and

they could be zoned by the region's municipalities to encourage linking new development in these areas with the use of TDRs. Natural resource lands identified by the Plan for preservation would be appropriate for TDR sending areas.

LIMC's regional planning efforts clearly establish many of the basic components of a multi-municipal TDR program. For example, *Growing Together* recommends the adoption of a regional TDR program for implementing its agricultural preservation goal, and the Plan also calls for TDR program funding from state and local sources. Three of the region's 13 municipalities (West Hempfield, West Lampeter, Manheim Townships) already have TDR ordinances in place which could be readily amended to allow for intermunicipal transfer of development rights. Receiving area opportunities, such as the Growth Opportunity Areas, can be facilitated through amendments to municipal zoning ordinances. Finally, intermunicipal planning agreements already exist to facilitate TDR transfer among participating municipalities.

The Conestoga Valley Region Strategic Comprehensive Plan (2003): The Conestoga Valley Region is comprised of East Lampeter, West Earl, and Upper Leacock Townships. This regional plan recommends consideration of TDR to implement village planning policies. In particular, the plan's recommendations for village expansion call for the consideration of TDR for redirecting rural development to the region's existing villages.

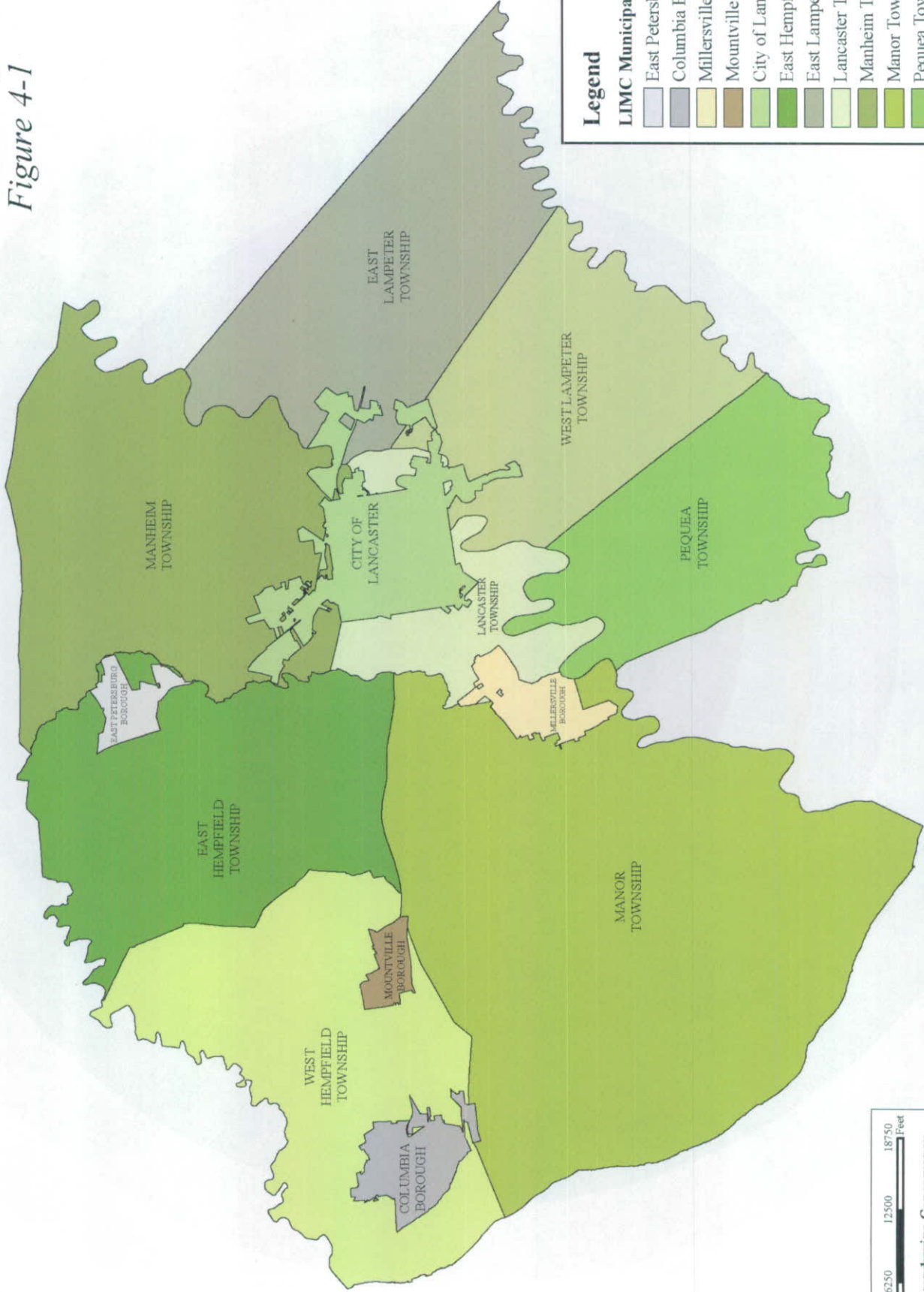
The Lititz Warwick Joint Strategic Comprehensive Plan (2006 Update): This regional plan involving



LIMC Municipalities

Lancaster Inter-Municipal Committee

Figure 4-1



Legend

LIMC Municipalities

- East Petersburg Borough
- Columbia Borough
- Millersville Borough
- Mountville Borough
- City of Lancaster
- East Hempfield Township
- East Lampeter Township
- Lancaster Township
- Manheim Township
- Manor Township
- Pequea Township
- West Hempfield Township
- West Lampeter Township

0 3125 6250 12500 18750 Feet

Brandywine Conservancy

Environmental Management Center
Data Source: Base data and zoning from Lancaster County GIS Department, 2006.
Map created: January 14, 2008

Lititz Borough and Warwick Township includes a possible expansion of the Township's Campus Industrial zoning district (TDR receiving area). The Plan recommends that TDR be part of this expansion process.

As municipalities, County staff, and others become more proficient at the use of TDRs, more of the County's multi-municipal planning efforts will likely include consideration of TDRs. Ideally, multi-municipal plans will identify possible TDR sending and receiving areas that would facilitate the establishment of TDR programs through subsequent amendments to local zoning ordinances.

TDR in Farmland Preservation Programs

The County of Lancaster, through its Agricultural Preserve Board, is already promoting the use of TDRs by partnering with Warwick and West Hempfield Townships. The Lancaster Farmland Trust has bought and sold TDRs in partnering with Warwick and Manheim Townships and is now planning to do so with West Hempfield Township.



Section 5: Key Issues for Lancaster County

Over the past 20 years, local governments and private organizations have been successful at preserving farmland and achieving a number of community-supported planning objectives. This Section examines how a TDR program could enhance current farmland preservation and growth management efforts.

In addition, this Section explores several other key issues, such as the City of Lancaster as a significant stakeholder in a multi-municipal TDR program; the importance of public infrastructure to facilitate the use of TDRs in receiving areas; and the importance of good development design in receiving areas.

Relationship of Transferable Development Rights to the County/State Farmland Preservation Program

The County/State farmland preservation program is a purchase of development rights (PDR) program. The County administers this program through its Agricultural Preserve Board and

matches State funds with County funds for the purchase of development rights to preserve farmland. Like TDR, the County's PDR program is voluntary—landowners must apply to the County to be considered for the PDR program. The PDR program is competitive, and purchase decisions by the County are based on farm size, soil quality, and proximity to both development and already pre-



Photo: Courtesy of Lancaster Farmland Trust

served farms. Also, there is no assurance that enough State/County funds will be available to cover all PDR applications. Each year, the Commonwealth allocates funds to the County for the farmland preservation program. The County's decision to match State funds, or how much to match, is subject to the County budgeting process.

As of 2007, 685 of the County's farms, or 57,850 acres, had been permanently conserved through the County/State PDR program. The Agricultural



Preserve Board had another 56 farms pending development rights purchase approvals and had 209 applicants awaiting new PDR funding allocations as of December, 2006. The Agricultural Preserve Board will give extra weight to a farm application from a township that has a TDR program and has also agreed to commit funds to the preservation of that farm.

From a farmland owner's perspective, the County's PDR program offers a competitive alternative to the sale of TDRs. If it is easier to sell development rights under the PDR program, or if the landowner perceives that the PDR program will yield a better price and/or a quicker sale, then the landowner is likely to ignore the potential to sell TDRs. In addition, the PDR program effectively sets comparative prices for the sale of TDRs, especially since there are ample recent sales of PDRs. Because the County sets a relatively low cap of \$4,000 on the per-acre price for the purchase of development rights, the prices for TDRs have also been rather low. On the other hand, if it takes several acres to create a TDR, prices per TDR will be high.

For example, if the County is paying up to \$4,000 per acre and local zoning allows one TDR per two acres, then TDRs will need to sell for up to \$8,000 each to yield the same financial result for the landowner. If, however, it takes five acres to generate one TDR, then the competitive price for each TDR will be up to \$20,000. Depending on the local real estate market, the price per TDR may exceed what developer/buyers of TDRs are willing to pay. This possible situation points out the importance of calculating the number of acres required per TDR and

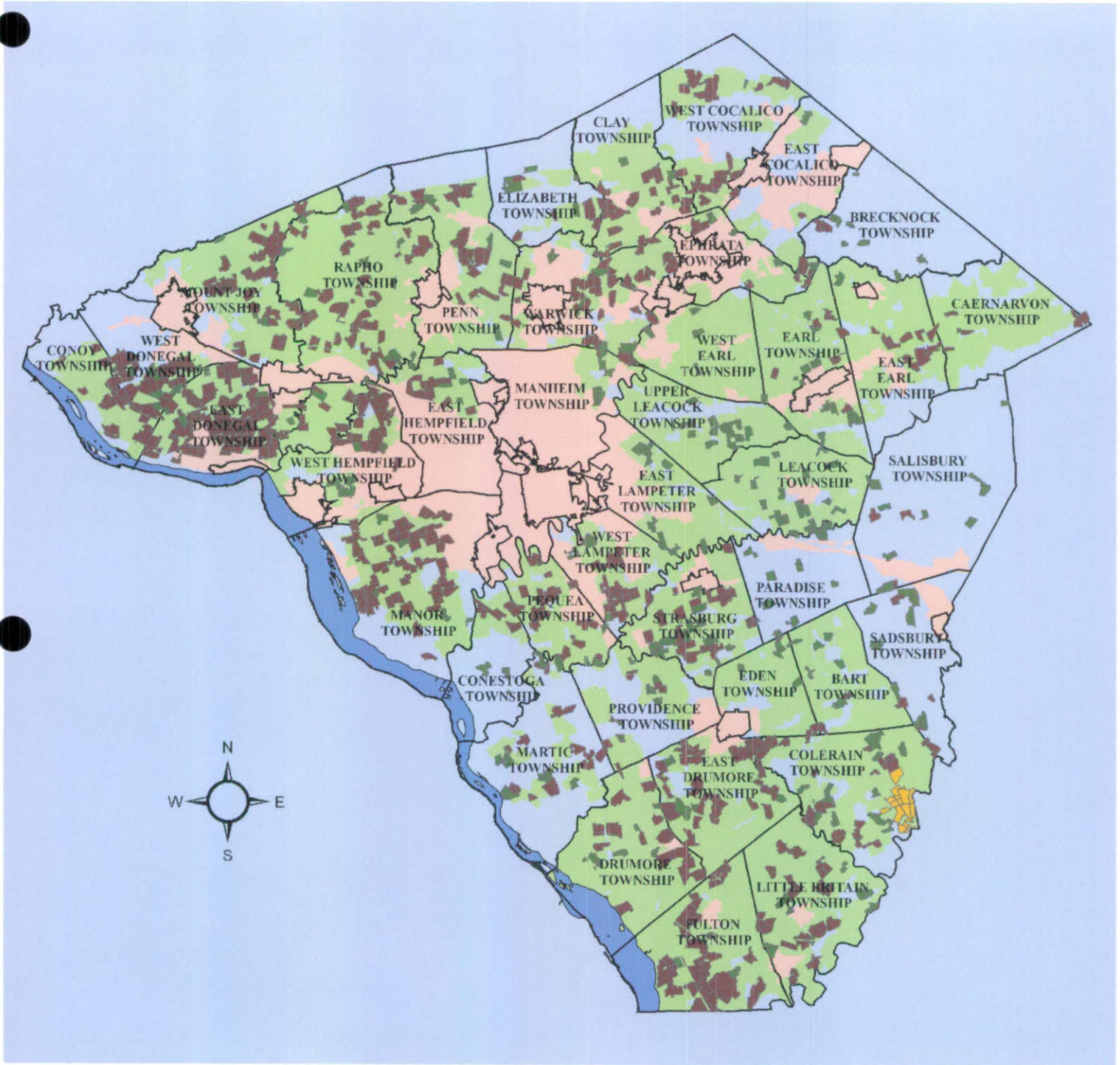
the number of dwelling units or impervious surface allowed per TDR that result in affordable TDR prices for buyers (i.e., the transfer ratio) especially when compared to the per acre prices the County pays to purchase the development rights.

While the County/State purchase of development rights program can influence the pricing of TDRs, it does not, by itself, create any transferable development rights. Warwick Township has shown how to merge the County/State PDR program with an effective local TDR program. Once the Township ordinance formally established severable TDRs, the Township argued successfully to the Agricultural Preserve Board that subsequent purchase of development rights by the County was equivalent to the purchase of TDRs that could be transferred or re-sold rather than merely retired. Because public consensus already had recognized that the benefit of farmland preservation justified the expenditure of public funds for purchase of development rights, there was no compelling need to realize commensurate return from the subsequent re-sale of TDRs. Thus, publicly generated TDRs could be sold at relatively low prices per TDR, enhancing their value to developer/buyers. Yet every dollar recouped from a TDR sale could be used to fund further purchase of TDRs, creating a revolving fund which has enhanced the effectiveness of the County's overall efforts to preserve farmland.

The conversion of publicly purchased development rights into TDRs could impact the private market for TDRs in ways that should regularly be monitored. For example, the conversion of PDRs into TDRs could create a large supply of available



Preserved Farms Lancaster County, Pennsylvania



0 2 4 8 12 16 Miles



Produced by Lancaster Farmland Trust.
GIS Data Courtesy of Lancaster County
Geographical Information Systems Department.
January 14, 2008

TDRs that, depending on buyer demand, could depress the market price for TDRs. Because a municipality or non-profit organization does not require a significant profit, if any at all, this may not be a problem. However, the lower price for TDRs may cause some landowners in the sending areas to decide not to sell their TDRs until prices rise. Yet the private sale of TDRs directly from landowners to developers may be very important to landowners who are unable to qualify for the County/State PDR program or for whom the time associated with finalizing the sale of PDRs does not meet their financial needs. This can be especially critical in an estate planning scenario or in the disposition of an estate following the death of a landowner. The power of the County/State program to effectively set the price of TDRs cannot be underestimated, yet also could potentially become an intentional tool to keep TDR prices at levels that are attractive in the marketplace and thus enhance the ability to use TDR as an effective land preservation and development incentive tool.

Relationship of Transferable Development Rights to Effective Agricultural Zoning

Effective agricultural zoning (e.g., one new dwelling unit per 20, 25, or 50 acres in a single ownership) in sending areas can be very important in making the sale and transfer of TDRs attractive to landowners while keeping the price of TDRs affordable to developer/buyers. Since effective agricultural zoning offers only very limited development opportunities, an alternative means to gain

development value through the sale of TDRs may be attractive to landowners both financially and from the perspective that it does not require them to give up any land. The attractiveness of TDR sales can be enhanced through calculating TDRs to create greater transferable development value than the development value that agricultural zoning provisions would permit on site. This may require seemingly generous calculation rates for TDRs, since the price for which TDRs may be sold, on a per acre basis, may otherwise be substantially lower than the value of subdivided lots.



Photo: Courtesy of Lancaster Farmland Trust

Relationship to Other Conservation Tools and Efforts

Rather than participate in a TDR program, a landowner may choose to sell or donate a conservation easement (development rights) to a qualified private non-profit organization such as the Lancaster Farmland Trust or Lancaster County Conservancy. Land trusts typically raise funds from members,



major donors, private foundations, State and local governments, and even federal agencies. A landowner may sell or donate a conservation easement on an entire property or on part of a property, as long as the property has conservation and natural resource values. Thus, a landowner can sell or donate a conservation easement on a property that is not eligible for the County/State farmland preservation program.

Special Note: Use of a conservation easement in this manner is voluntary and therefore different from the use of a conservation easement which is required by a zoning ordinance to insure that land from which TDRs have been severed is permanently protected.

From a landowner's perspective, conservation easements are less likely to compete with the sale of TDRs, because less funding is typically available. On the other hand, the donation of a conservation easement can be attractive for high income or high wealth landowners who can take advantage of income tax or estate tax benefits or where an urgent situation makes the sale of TDRs less attractive. It is likely that a conservation easement written for the preservation of a property's natural resource values (such as protecting a woodland or wetland) might have greater environmental restrictions than if simply written to restrict development on agricultural lands, such as would be the case with an agricultural easement.

Conservation easements can also complement farmland preservation programs through conserving portions of properties less valuable for farming. Conservation of such areas can be made per-

manent while they are separated from areas valuable for agriculture.

Donated conservation easements, or those sold at a price less than their actual market value may offer the opportunity to provide an income tax deduction which could be used to shelter capital gains received from the sale of a conservation easement or other income.

The use of the conservation easement donation or sale can be promoted along with a TDR program. Landowners within a municipality or region all have different financial needs - the more options available to a municipality or non-profit organization, the better the chances for conservation success.

City of Lancaster's Unique TDR Opportunities

The City of Lancaster offers unique opportunities for the use of TDRs, particularly if inter-municipal transfers can be established. Within the City, there are few conventional opportunities to designate sending areas; however, TDR could be used to protect historic buildings and districts from incompatible development.

Receiving areas could be established where redevelopment or infill development is desired. The key to viable receiving areas for TDRs within the City is to establish a clear difference between what may be developed without TDRs and what may be developed with TDRs so that the use of TDRs is attractive to developers. Base zoning provisions,



in terms of development density and lot coverage, building height, and range of land uses would be kept at current standards. To induce developers to use TDRs, both the City and neighboring municipalities would have to remove competing development opportunities that do not require the use of TDRs. This points out the importance of coordinating inter-municipal planning, even when inter-municipal TDR transfer is not necessarily used.

goods at the City's farmers markets can be sustained when outlying farmlands used to produce such goods are preserved through use of TDRs and City residents accept attractively designed TDR developments. The unique combination of shared public recognition and acceptance of the value of protecting agriculture and historic resources, paired with redevelopment in the City, offers a key opportunity.

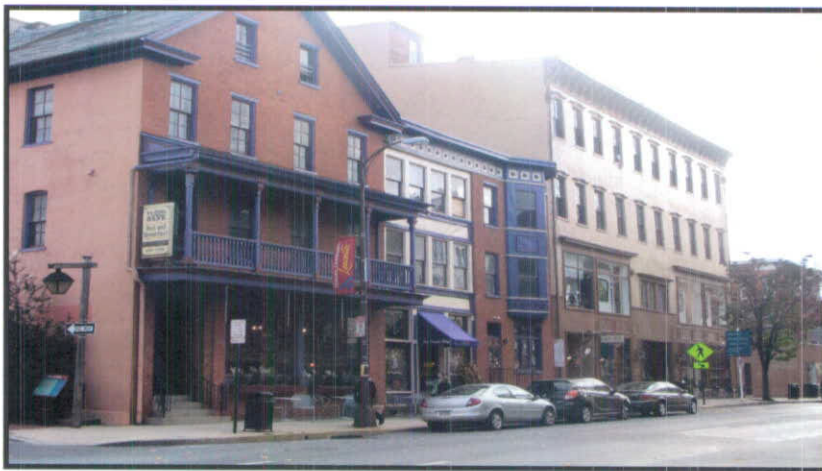


Photo: Courtesy of Brandywine Conservancy

Receiving TDRs within the City, especially from other municipalities, also requires public acceptance (and may require a public relations campaign) for the form and intensity of development that is permitted through the use of TDRs. This underlines the importance of careful planning of receiving areas and the establishment of appropriate design standards. In addition, City residents must recognize and value the larger community benefit of conserving sending area lands, even if they are far removed from the receiving areas. For example, the diversity of produce and other farm-related

Inter-municipal transfer of TDRs from sending areas outside the City to receiving sites within the City also may require careful attention to different TDR valuation in different sending areas. Higher relative development costs within the City and, in some cases, lower relative market value for the development product may require that multipliers be applied to TDRs in order to make them attractive to developers. For example, in order to generate a reasonable profit, a TDR that costs \$25,000

in the sending area may need to generate more than one dwelling unit when applied to moderate-cost condominium units in the City, or significant square footage for non-residential development. Multipliers or TDR receiving rates



Photo: Courtesy of Brandywine Conservancy



also may be designed to favor specific types of development within the City and/or to favor specific resource values through the sale of TDRs from sending areas.

Availability of Infrastructure in Receiving Areas

It is essential that appropriate infrastructure (sewer, water, transportation) is available in TDR receiving areas, with sufficient capacity to handle the service needs of higher densities or intensities of specific development projects. Warwick Township officials recognized this fact and their decision to invest in public infrastructure has clearly contributed to the success of their TDR program. Logically, TDR receiving areas will be established within a municipality's Designated Growth Areas. Designating TDR receiving areas in locations already served by adequate infrastructure is necessary to minimize the negative impacts of sprawl. However, adequate infrastructure capacity may not be available at the time a development using TDRs is proposed. For instance, there may be insufficient highway capacity. Clearly, infrastructure planning and development must keep pace with opportunities to use TDRs in order for a TDR program to succeed.

It is important for adequate infrastructure capacities to be achieved at a relatively low cost to developers and in a timely fashion. Pre-existing infrastructure with adequate capacity or provision of new infrastructure by the municipality (or municipal or regional authority) would clearly be the most attractive scenario for developers. On the

other hand, if developers also must assume significant costs for improving infrastructure, then developers may not be able to justify the cost of paying for TDRs. Because public funding of infrastructure improvements may be limited or slow to come, infrastructure requirements may need to be offset by establishing favorable TDR multipliers or rates of TDR use.

Good Development Design in Lancaster County's Urban Growth Areas and Rural Centers

Development located within a County UGA does not by itself eliminate or minimize the negative impacts of sprawl. High density development, if not well designed, can become high density sprawl.

The first critical issue is to create incentives for developers to use TDRs to implement the higher densities, intensities, or appropriate mix of development advocated by the County and a municipal comprehensive plan. The sending of TDRs from areas outside Urban Growth Areas can reduce pressure to extend growth boundaries or to accommodate extensive areas of lower intensity development not dependent on infrastructure extension. But since the market will ultimately dictate what is developed, the importance of strictly limiting the location of intensive development opportunities cannot be stressed enough.

The second critical issue is for developers and local governments to work together to create attractive and smooth functioning developments. Townships, boroughs, and the City of Lancaster must



adopt and apply design standards that focus on mitigating impacts to existing neighborhoods, promoting pedestrian and bicycle opportunities, maintaining open space and recreational access, and providing for an integrated mix of land uses. Design principles commonly known as “traditional neighborhood design” or TND are a good start, although the specific details of design and use must reflect local context and market realities.

Millcreek TND



Photo: Courtesy of Charter Homes and Neighborhoods

In addition to numerous publications now available to municipalities for use in crafting TND ordinance provisions, several TNDs already exist in Lancaster County that demonstrate key design components. For example, Charter Homes and Neighborhoods’ Millcreek residential development in West Lampeter Township is a good TND example. In this case, the irregular topography justified a divergence from the more familiar grid-like development pattern, and demonstrates why the style of a TND development cannot be “type-cast.” At Millcreek, Charter Homes developed a true mix of single-family detached, attached, and multifam-

ily dwellings. Also created were private garages that are accessed from alleys, attractive building architecture, and ample and conveniently located green space. Other community features include adaptive re-use of a centrally-located farm building that houses a small convenience store and community gathering place.

Veranda is also a Charter Homes and Neighborhoods TND, located in East Hempfield Township, that utilized a more level building site, and reflects a more traditional grid-like development pattern complete with a centrally located village green. According to Steve Spalt of Charter Homes and Neighborhoods, their company’s desire to build more TNDs is often hampered by the excessive time (and, therefore, resources) required to both convince a municipality of the merits of a TND development and to create the appropriate zoning provisions. To establish a goal

Veranda TND



Photo: Courtesy of Charter Homes and Neighborhoods



of designing a TND ordinance to foresee all circumstances is unrealistic, and will ultimately discourage developers from pursuing more innovative

Bridgewater TND



Illustration: Courtesy of Keystone Custom Homes

approaches. TND ordinance flexibility is, therefore, key, according to Steve, as each site presents its own unique features that must be factored into the overall development design and ordinance compliance. Municipalities must be open at least to understanding the problems created for a developer when certain provisions are difficult to comply with, and allow for some “give and take” on development design and ordinance compliance.

Keystone Custom Homes, Inc., also has proposed several large TNDs in both Lancaster and York Counties. Although not yet under construction, illustrations of these developments provided by Keystone’s designers exemplify many of the desir-

able design details associated with a TND. Keystone Custom Homes has purchased TDRs from West Hempfield Township for use in residential cluster subdivisions smaller than shown in these illustrations.

Again, TDR receiving area provisions, such as favorable TDR multipliers, can be tailored to create incentives for the most appropriate development scenarios. For example, to provide an incentive to create workforce housing, a TDR from a sending area could be used to build 2.5 workforce housing units per acre. Although not resulting from TDR receipt, Charter Homes and Neighborhoods’ Florin Hill TND (Mount Joy Borough) includes workforce housing in this mixed-use development. The Borough’s incentive used to attract the work force housing component was a density bonus applied to the overall development.

Bridgewater TND



Illustration: Courtesy of Keystone Custom Homes

High density residential uses proposed in a TDR receiving area could be met with neighborhood opposition if local residents believe that the de-



velopment will be out of character or will reduce their property values. Therefore, it is critical to

Veranda TND



Courtesy of Charter Homes and Neighborhoods

the success of a TDR receiving area development proposal that the development be designed to fit in with its surroundings or, at a minimum, be architecturally compatible. Design standards, the conditional use approval process, and/or a TND zoning overlay should be included with zoning ordinance amendments that add the TDR receiving area option to insure quality design.

West Hempfield Township incorporates TDR receipt with the Open Space Design Option of its zoning ordinance. This option includes design standards and other provisions to insure that, along with the new houses, a meaningful amount of open space is set aside to protect natural and cultural resources, provide an aesthetically designed community, and achieve other community development objectives, such as architectural compatibility with surrounding uses, sidewalks and trails, and innovative

stormwater management measures. The Township also subjects TDR receipt to conditional use approval which has the advantages of: a) enabling the Township to employ appropriate consultants (e.g., planners, environmental, transportation, etc.) in the review and approval process, b) allowing for public input during the conditional use hearings, and c) enabling elected officials to impose reasonable conditions of approval to, for example, insure that the “proffered” development design is actually built in conformance with the plan. Although the extra step of a conditional use application has not discouraged developers from pursuing this option, the municipality can permit the simultaneous processing of a preliminary subdivision plan with the conditional use application to save the applicant time.

If a municipality anticipates the receipt of TDRs through relatively intense development in the future, it would be wise for that municipality to enact appropriate TND or other innovative development design provisions in advance. Having the ordinance provisions in place will be welcomed by developers interested in developing innovative projects, and it is much easier to tweak existing provisions to accommodate a desirable project than starting anew.

In order to achieve a more traditional neighborhood design with a mix of residential and non-residential uses, sample design standards are offered below for illustrative purposes.

1) The development using TDRs shall contain a minimum of:



- i) 20 dwelling units;
 - ii) 20,000 square feet of commercial building space;
 - iii) 10,000 square feet of industrial building space; or
 - iv) a mix of residential and commercial space, containing at least 20 dwelling units;
 - v) a mix of commercial and industrial space, containing at least 20,000 square feet of commercial space.
- 2) The development shall be compatible in scale and character with existing adjacent development. In addition, the development shall help mitigate the environmental impact of the development.
 - 3) Blocks shall be scaled to accommodate a variety of building types.
 - 4) The development shall have an interconnected network of public streets designed to balance the needs of all users, including pedestrians, bicyclists, and motor vehicle operators.
 - 5) A residential development shall have a minimum of 10 percent of dwelling units comprised of Workforce Housing.
 - 6) The development shall evidence a distinct project identity demonstrated through architectural style and landscape maintenance.
 - 7) The development shall maintain a minimum of one 2-inch caliper tree per dwelling unit.
 - 8) Parking lots and garages shall be shielded from view of the sidewalk, and preferably located behind or to the sides of buildings to enhance the pedestrian environment of the street. Effective parking lot landscaping shall include landscaped islands.
 - 9) The development shall provide at least 20 percent of the gross project site as open space.
 - 10) Residential developments shall have a gross residential density of at least seven and a half units to the acre.
 - 11) Residential developments of 50 or more units shall provide at least five percent but no more than 15 percent of the gross project area for commercial use.
 - 12) A residential, commercial, or mixed use development using TDRs must have public central sewer and water service and must be located inside a duly adopted Urban Growth Area.
 - 13) The development shall provide appropriate links with the street network presented in the official map of the municipality.
 - 14) Building types of like scale, massing, and uses shall face one another on a given street. The primary entrance of every building shall directly face a street, a square, a park, a plaza, or a green.



Section 6: Basic TDR Ordinance and Administrative Set-Up

Section 2 of this Handbook explains the basic framework for and some background for the steps to create a municipal TDR program. Section 3 presents a number of successful TDR programs in Lancaster County where municipalities modified the basic TDR framework to fit their own community development and land preservation objectives.



Photo: Courtesy of Lancaster Farmland Trust

This Section provides the steps needed to create a basic TDR ordinance and administrative set-up for a single municipality. For a municipality looking to customize its TDR program, a list of sample options or “plug-ins” is also presented.

The steps described on the following pages assume that a rural municipality has already achieved community consensus to conserve natural or cultural resources and has decided that the TDR tool could help them achieve their conservation objectives. The municipality (or municipalities) has also selected the TDR tool to help achieve community development objectives in suburban and urban areas.

Basic Steps and Plug-ins for a Single Municipality Initiating a TDR Program

The Pennsylvania Municipalities Planning Code enables municipalities to use TDRs and requires municipalities to: a) set up a procedure within the zoning ordinance for the voluntary severance of TDRs, and b) set up an approval process within the zoning ordinance for the transfer of TDRs from one property to another. Aside from these requirements, Lancaster County municipalities have considerable flexibility in establishing their TDR programs. Based on the TDR experiences of municipalities in Lancaster County and other parts of Pennsylvania, there are a number of steps for establishing a basic TDR ordinance and administration of the TDR program. These steps are presented in the following subsection and in the sample TDR ordinance provided in Appendix 2 of this Handbook. Again, refer to Section 2 of this Handbook.



Recommended Steps for Establishing the Sending Area:

- 1) Identify the TDR sending area boundary based on agricultural, natural or cultural resources desired for permanent protection, such as prime farmland soils, high value woodlands, or historic landscapes. Ideally these sending areas will coincide with relatively restrictive zoning districts, creating an incentive for landowners to sell TDRs. For example, most of a municipality's prime farmland might be located in an agricultural zoning district that limits residential subdivisions to one house or lot per 20, 25, or 50 acres.
- 2) Add the severance of TDRs to the list of permitted uses in the zoning district(s) that are in the TDR sending area(s).
- 3) Establish in the zoning ordinance how TDRs will be allocated to the sending area parcels so that the severance and sale of TDRs is generally a financially attractive alternative to the subdivision of building lots allowed in the zoning district, e.g., one TDR for every five acres versus one lot for every 25 acres. It is recommended that the allocation be based on a simple gross tract acreage.
- 4) Establish eligibility standards for sending area parcels, such as a minimum size of parcel or parcels in active farm use or other minimum standards.

Recommended Steps for Establishing the Receiving Area:

- 1) Identify areas of the municipality that are appropriate for accommodating residential, commercial, industrial, or institutional uses or a mix of uses. These areas may already be zoned for accommodating such land uses and should be within either the County's Urban Growth Areas or Village Growth Areas as defined and identified in *Balance*, Lancaster County's Growth Management Element of its Comprehensive Plan.
- 2) Add the receipt of TDRs to the list of permitted uses in the appropriate zoning districts.

Special Note: Alternatively, a municipality may choose to allow the use of TDRs in a receiving area subject to conditional use approval. The conditional use option gives the governing body the ability to impose reasonable development conditions that can help minimize the impacts of a TDR receiving area development.

- 3) Add a TDR conversion rate to the zoning district. For example, 1 TDR from the sending area is equivalent to one dwelling unit or lot in the receiving area, or one TDR from the sending area is equivalent to a specified amount of impervious coverage or building height increase in the receiving area.
- 4) Establish within the zoning district specific increases in density (or intensity, e.g., building height or impervious coverage) achievable through the use of TDRs. For example, a single-family residential zoning district might permit up to three dwelling



units per acre without use of TDR but could permit one additional dwelling unit per acre with the use of a TDR. The increase in density allowed through the use of TDRs should reflect existing or expected market demand for the additional development. Consider adjusting area and bulk requirements (standards) within the district (e.g., setbacks, open space, impervious coverage) for TDR receipt to allow developers to fully utilize the density bonus.

Special Note: Certain uses may be added to the district through TDR receipt, such as a retirement community where not otherwise permitted.

5) Establish a maximum permitted density, height, or impervious coverage limit to a development project that uses TDRs. Make it clear that to achieve the maximum intensity of development using TDR, the developer must submit a sufficient number of TDRs through a Deed of Transferable Development Rights (see Appendix 3).

Recommended Steps for Administering the TDR Ordinance Provisions:

1) Establish procedures within the zoning ordinance for certifying the severance of TDRs from properties in the sending area.

2) Prior to the severance approval, require the sending area landowner, or receiving area developer, to submit an executed Deed of Transferable Development Rights (Appendix 3) and an accompanying Conservation Easement (Appendix 5) or Declaration of Restriction of Development (Appendix 4) for the permanent protection of the sending area parcel. After a review by the municipal solicitor, require documents to be recorded at the County Courthouse prior to, or as a condition of, approval of the TDR receiving area development.

3) Establish a parcel tracking system to monitor a sending area parcel's TDR history, particularly when partial TDR severance and transfer are permitted by ordinance (e.g., the Manheim Township information in Appendix 9).

Special Note: The municipality may have its solicitor draft a sample deed of transferable development rights for the municipality to distribute to landowners and developers considering TDR transactions. This will likely save the municipality and the TDR user time in the receiving area development approval process. A sample deed is included in Appendix 3 of this Handbook.

4) Establish site plan submittal and approval procedures for development applications in TDR receiving areas. The site plan should be required to indicate the total number of dwelling units, lots, gross square footage, or impervious coverage available with receipt of TDRs, the number of dwelling units, lots, gross square footage, or impervious coverage permitted without the use of TDRs, and the difference between the two totals, indicating the extent of the use of TDRs.

Special Note: These plan submittal procedures may not be necessary where the TDR option is enabled through use of a special overlay district such as in Manheim Township, described in Section 3 of this Handbook.



Sample Plug-Ins for Modifying the Basic TDR Ordinance and Administrative Set-Up for a Single Municipality

A municipality can modify the steps recommended for setting up a TDR ordinance and its administration to better fit its preservation and development goals. Some sample “plug-ins” or options are presented in the next sub-section for a municipality to consider, and are not intended to be all-inclusive. The TDR tool is intended to be flexible in its application, and its success depends in part on the creativity of the municipality.

Examples of Sending Area Plug-Ins:

- 1) Instead of mapping a general TDR sending area, consider establishing specific eligibility criteria for TDR severance and sale (e.g., agricultural parcels with over 20 acres of prime farmland soils are eligible for TDR severance).
- 2) If the municipality’s agricultural zoning allows more than one house per 20 acres, conflicts could arise from non-farm development. When creating the TDR sending area, consider downzoning the sending area parcels to allow no more than one house per 20 acres to reduce the potential for non-farm residential subdivisions.
- 3) Expand the TDR allocation to apply to more than one natural or cultural resource and to apply to more than one zoning district for sending areas. For example, a rural conservation district can be established as a TDR sending area to provide for the protection of woodland or watershed resources, and possibly allocate fewer TDRs to such parcels than for prime farmland in an agricultural district/sending area.
- 4) Modify the TDR allocation formula to provide landowners of non-prime or low-scoring farmlands within the same sending areas/zoning districts with greater TDR incentives than those provided to landowners of prime farmlands. Such a provision would be based on the assumption that the County’s farmland preservation program is more likely to preserve the prime farmland parcels, while other lands can be conserved through the use of a municipality’s TDR program.
- 5) Rather than basing the TDR allocation formula on the gross acreage of a parcel, net-out “unbuildable lands” before applying the TDR allocation formula. For instance, exclude lands occupied by buildings, rights-of-way, and utility or drainage easements and make, for example, a 75 percent reduction for lands comprised of floodplains, wetlands, or steep slopes above 20 percent grade. Netting out of constraining natural resource features should be based on available data. The municipality may even use Geographic Information System mapping to pre-determine the allocation for each eligible property, yet allow landowners, at their own expense, to demonstrate a greater allocation of TDRs.
- 6) As part of certifying the TDR severance, the municipality may require that at least one development right be retained for the sending area parcel so that whoever subsequently purchases this



parcel still has the right to build a farm house or private residence on the property. An exception to this requirement is appropriate where a parcel from which all development rights have been severed is attached by deed to another parcel that has reserved rights for development of one or more dwelling units.

7) Provide opportunity for severance of only some of the available TDR allocation on any single parcel. The municipality may wish to establish a minimum number of TDRs that must be sold or a minimum acreage amount that can remain unrestricted after the TDR severance.

Examples of Receiving Area Plug-Ins:

1) Instead of identifying one or more receiving area locations, establish eligibility criteria for TDR receiving areas, e.g., undeveloped or underdeveloped parcels within the Urban Growth Areas or Village Growth Areas. This option may provide a strategic advantage over a specifically mapped receiving area where residents within or adjoining the area may be opposed to the higher density development that may be available through the use of TDRs.

2) Adjust the zoning for receiving area parcels, to reduce their development potential without using TDRs, in order to promote the TDR option. Landowner opposition to such zoning adjustments may be minimal if the density permitted by the base district prior to the zoning adjustment was not cur-

rently supported by the local real estate market, but would be supported over time as development pressure increased. Such ordinance adjustments can:

- a) create incentives for developers to purchase and use TDRs;
- b) help to achieve the municipality's community development objectives; and

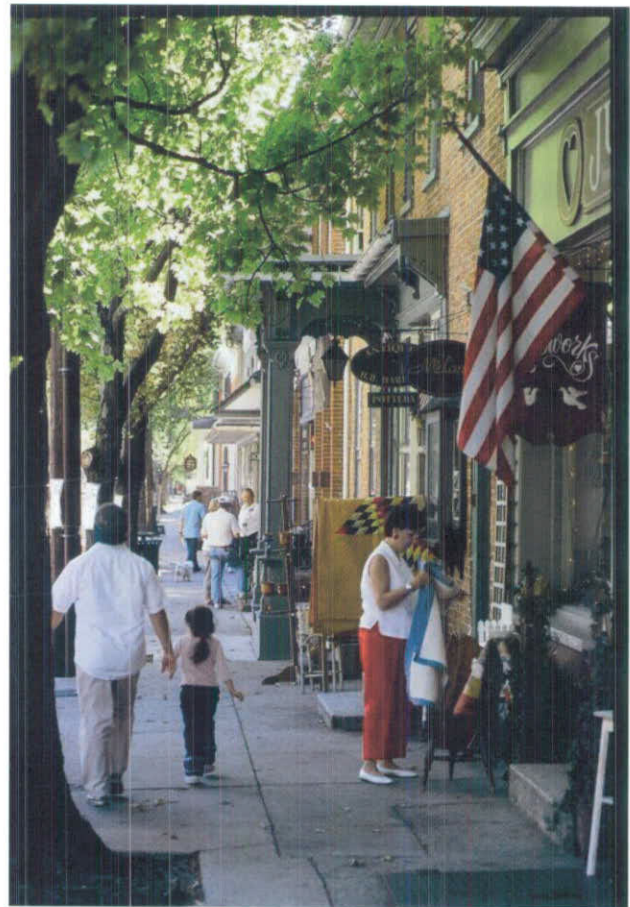


Photo: Courtesy of Warwick Township



- c) help to avoid public opposition to a TDR receiving area development since the resulting density will be similar to that of surrounding land uses.
- 3) A receiving area could be rezoned to encourage mixed commercial and residential uses or Traditional Neighborhood Design, based on existing or anticipated market trends.
- 4) To increase receiving area opportunities, or to minimize public opposition to a TDR program, establish opportunities in the receiving area to use TDRs for commercial, industrial, or institutional land uses.
- 5) Where more than one type of residential use is permitted on receiving area parcels, more than one TDR conversion rate may be needed. For example, one TDR from a sending area may allow for one additional single family house or two additional townhouse units.
- 6) The receipt of TDRs is often associated with high density residential developments, or more intense commercial, industrial, institutional, or other non-residential developments that require public water and sewer. The municipality or region implementing a TDR program should seriously consider the availability of supporting public infrastructure when planning the TDR receiving areas. If necessary, the municipality can provide public financing and/or build the necessary infrastructure either in advance of, or concurrent with, a TDR receiving area development.

7) Another way to minimize public opposition to a TDR program is to allow the use of TDRs within the receiving area only for special uses, such as residential retirement communities, life-care facilities, or a Traditional Neighborhood Development overlay option as enabled by the Pennsylvania Municipalities Planning Code.

8) Require use of TDR at both ends of the density spectrum.

Special Note: A key recommendation of the County's Urban Growth Area strategy is for urban and suburban municipalities to use buildable lands more efficiently within areas planned for or served by public infrastructure. As a result, there will be less development pressure on the County's rural and agricultural lands. To be consistent with this strategy, municipalities inside the Urban Growth Area are encouraged by the County to adopt zoning that allows higher density residential uses, more intensive commercial uses, or a mix of residential and commercial uses in more compact forms, such as Traditional Neighborhood Developments. Regardless of these eventual "upzonings," some developers will develop properties at residential densities well below the maximum densities allowed by the zoning. This practice frustrates the goal of more efficient use of buildable lands. Some municipal officials would like to discourage or penalize inefficient land use. This can be done through a practice known as "reverse TDR."

A reverse TDR allows lower densities inside a growth area through the use of TDRs. If a developer proposes to build a development at less than the maximum density allowed, the developer must purchase TDRs, such as one TDR for each dwelling unit per acre below the maximum units allowed per acre. For example, a developer owns



five acres in a residential zone that allows single family dwellings at five units per acre, but he proposes to build only three units per acre for a total of 15 dwelling units. Under a “reverse” TDR scenario, for each dwelling unit per acre proposed under the maximum permitted, the developer could be required by the zoning ordinance to purchase a TDR. So, in such a case where the developer is proposing 15 dwelling units, or ten dwelling units less than the maximum allowed by zoning, he might be required to purchase ten TDRs as part of the approval process.

The “reverse TDR” concept connects the underutilization of buildable land planned for higher densities within growth areas to the higher cost of protecting land outside the growth areas. Use of Reverse TDR is not recommended for municipalities new to TDRs, but it may be appropriate for municipalities experienced with TDR transactions.

Examples of Administrative “Plug-Ins”:

1) Rather than relying solely on private market TDR transactions to accomplish resource conservation objectives, a municipality can take a more active role in promoting the TDR program. For example, it can:

- a) establish a TDR clearinghouse at the municipality where landowners can register their TDRs for sale to developers - and developers can learn where TDRs are potentially available for purchase;
- b) acquire, hold (bank), and ultimately sell TDRs to developers to use with a receiving area development. Funds for municipi-

pal acquisition of TDRs can come from the municipality’s general fund, special tax revenues created through an open space referendum pursuant to Act 153, or through the sale of TDRs.

2) Consider specific recognition of the TDR tool in the municipal (or regional) comprehensive plan through an amendment or update so that the designated sending areas and the receiving areas are consistent with and help to achieve the municipality’s community development and conservation objectives.



Section 7: Transferring TDRs Across Municipal Boundaries

For municipalities with a multi-municipal comprehensive plan, this section describes the changes to the zoning ordinance needed to establish a multi-municipal TDR program. Alternatively, two or more municipalities without a multi-municipal comprehensive plan can still establish a multi-municipal TDR program through use of a written intermunicipal agreement.

Set-Up for Multi-Municipal Use of TDR

Section 1 noted that the Municipalities Planning Code allows the transfer of development rights from one municipality to another through any one of three different ways:

- 1) A joint zoning ordinance;
- 2) A written agreement for intermunicipal TDRs; or
- 3) By adopting a multi-municipal comprehensive plan and participating in its implementation.

While a joint zoning ordinance is one way to create a multi-municipal TDR program, this has not yet happened among any Lancaster County municipalities. The two more likely ways to establish multi-municipal TDR programs are through use of

an agreement for intermunicipal transfer and through formal participation in multi-municipal planning efforts.

The legal advantage of the multi-municipal plan for establishing TDR transfers across municipal boundaries is the ability of participating municipalities to avoid exclusionary zoning challenges by providing for a variety of development opportunities over a broader regional planning area. Intermunicipal TDR transfers can greatly benefit rural and agricultural municipalities that otherwise would have to accommodate all types of development within their borders. Through a multi-municipal TDR program, a rural municipality can do a better job of protecting its farm and other rural lands by re-directing growth to other municipalities appropriately planned for accommodating new development through the use of TDRs. Lancaster County's boroughs and the City of Lancaster can also benefit through intermunicipal transfer of TDRs to achieve specific planning goals or objectives such as economic development, downtown or neighborhood revitalization, and the protection of historic buildings and sites.

The zoning and other administrative steps for establishing a multi-municipal TDR program are similar to those for a single-municipality program. Perhaps the greatest challenge is in determining the sending area to receiving area transfer ratio when land values significantly differ from one municipality to another.

A multi-municipal TDR program takes more time and attention to set up due to the negotiations



needed among two or more municipalities over how the TDR program will operate. For example, municipalities with available land and infrastructure to accommodate receiving area development will most likely need to demonstrate to their residents the benefits they will derive from accepting development, while the neighboring municipality saves farmland or other open space. Also, TDRs work where home buyers and businesses want what the TDR provisions enable a developer to build. It needs to be clear to municipalities using a multi-municipal TDR program that developers will look for the easiest way to build what they believe is marketable. The TDR receiving area option cannot be compromised by another municipality's provision for the same or greater development levels or more attractive types of development that do not require the use of TDRs.

Adjustments to Individual Ordinances: Municipalities participating in a multi-municipal TDR program first identify and map appropriate sending and receiving areas within their common region. This collaborative mapping effort might have already been undertaken as part of a multi-municipal comprehensive plan.

Once agreement is reached on the sending and receiving areas, the zoning ordinance of each participating municipality must be amended to add the multi-municipal TDR option. The participating municipalities that wish to protect their land resources by offering landowners TDR sending rights will need to: a) amend their ordinance to permit the severing of TDRs in one or more zoning districts; b) establish a formula or ratio so land-

owners can determine their TDR allocations; and c) establish a process for approval of the severance of TDRs.

Participating municipalities that want to provide TDR receiving areas to accommodate development will also need to amend their zoning ordinances. Each municipality will need to:

- 1) Add the receipt of TDRs to the list of permitted uses or conditionally allowed uses within the zoning districts which serve as the receiving areas.
- 2) Establish the increase in development density, building height, impervious coverage, or additional uses that are made available through the use of TDRs, and include a cap on the maximum increases achievable by using TDRs.
- 3) Establish procedures for validating the TDRs used in the proposed development, regardless of the municipality from which they originated.

A municipality participating in a multi-municipal program also may designate TDR sending and receiving areas within its own boundaries, along with appropriate zoning ordinance provisions, consistent with the multi-municipal comprehensive plan's land use recommendations or intermunicipal agreement.

Administrative responsibilities identified for a single-municipality TDR program would be largely the same for a multi-municipal TDR program, with the sending area municipalities approving and tracking the severance of TDRs from its sending area



parcels, and receiving area municipalities approving and tracking the receipt of TDRs on parcels developed within their receiving areas.

Enabling Multi-Municipal TDR Transfer through a Written Agreement: The Municipalities Planning Code specifies in Article VI for intermunicipal transfers of development rights that “no development rights shall be transferable beyond the boundaries of the municipality wherein the lands from which the development rights arise are situated except that, in the case of a joint municipal zoning ordinance, or a written agreement among two or more municipalities, development rights shall be transferable within the boundaries of the municipalities comprising the joint municipal zoning ordinance or where there is a written agreement, the boundaries of the municipalities who are parties to the agreement.”

Clearly, a written agreement for the intermunicipal transfer of development rights is both more expedient and often politically easier to adopt than a joint zoning ordinance. The Municipalities Planning Code offers no instruction as to the content or form of this intermunicipal TDR agreement. Nor is there any reference to Municipalities Planning Code Article XI (which deals with intermunicipal planning and the agreements to implement such planning programs). The Intergovernmental Cooperation Act (53 Pa. C.S. Sections 2301-2307) also specifies procedures for cooperation or delegating or transferring of functions, powers, or responsibilities among local governmental agencies. The intermunicipal transfer of development rights is carried out through enacted zon-

ing ordinances, and can be considered as an exercise or performance of a governmental function or power. Therefore, two or more municipalities proposing to enter into an agreement for intermunicipal TDR should comply with the provisions of the Intergovernmental Cooperation Act. Although the Act specifies the contents of the ordinance which must be enacted by each participating municipality, some of the listed items clearly would not apply (e.g., group insurance, etc.) and can be excluded by the ordinance.

BridgewaterTND



Illustration: Courtesy of Keystone Custom Homes

A sample agreement for intermunicipal transfer of development rights is provided in Appendix 8. Municipalities may wish to be party to more than one written agreement; there is no limitation defined in the Municipalities Planning Code. It is also important to note that there is no language in the Municipalities Planning Code that requires municipalities participating in a multi-municipal TDR program to be contiguous.



Relationship to a Multi-Municipal Comprehensive Plan: A multi-municipal comprehensive plan can provide the basic framework for a multi-municipal TDR program. For example, the plan may already discuss the TDR tool as a way to implement the plan's community development and farmland preservation objectives.

The multi-municipal plan can also address TDR implementation issues such as: a) the locations of sending and receiving areas; b) how supporting infrastructure (water, sewer, roads, stormwater) will be provided (constructed or financed, or both) for receiving area sites; and c) building public consensus for conservation (sending areas) and for appropriate growth opportunity areas (receiving areas).

Municipalities that may otherwise be concerned with the potential use of TDRs generated from their lands by receiving area municipalities can be comforted by the existence of an adopted multi-municipal plan covering the sending and receiving areas.

Adjustments to TDR Transfer Rates, Favored Sending or Receiving Areas, and "Priming the Market": Adjustments between sending and receiving rates may be made in an individual municipality to reflect the local real estate market so that the severance and sale of TDRs is an attractive option for landowners and use of purchased TDRs is sufficiently profitable to attract buyers. In a multi-municipal TDR program, further adjustments may be made to reflect public policy in the receiving municipality or different market values in one or more sending municipalities.

For example, the receiving municipality may wish to favor TDRs sent from tracts within their own borders or from certain sending areas in neighboring municipalities for which there is clear local consensus as to the benefits of conservation. Receipt of TDRs from other sending areas, particularly those farther away, may nevertheless be accepted on the basis of regional or county-wide conservation objectives such as farmland preservation—but might be afforded a less favorable conversion rate, e.g., one sent TDR = 0.8 received TDRs. The degree to which this issue should be dealt with is essentially a function of local consensus in the receiving municipality regarding the value of preserving land in different sending areas.

Adjustments to TDR value also might be made to reflect different real estate markets across participating municipalities. Even where local conservation policies place equal value on sending parcels in different areas, without adjustments, TDR buyers will favor lower priced TDRs. It should be noted that lower prices may be both a function of a less expensive real estate market and of different TDR allocations across municipalities. For example, the municipality that allocates one TDR per two acres will generate less expensive TDRs than the municipality that allocates one TDR per five acres. All other things being equal, one TDR generated in the latter municipality should equal 2.5 TDRs generated in the former. Further adjustment would need to account for other factors in the various municipalities that will affect the appraisal of TDR value, such as per-acre price for raw ground or existing comparison sales prices for TDRs. If a municipality could potentially receive TDRs from sev-



eral sending municipalities, each municipality may need to be assigned a conversion factor to equate value, and the factors would need to be updated regularly.

Procedures for adjusting TDR values may be specified in the intermunicipal agreement or in the zoning ordinance of each municipality. The simplest approach may be to specify value adjustments by resolution of the local governing body incorporated by reference into the zoning ordinance. This approach allows for periodic updating by each individual municipality, without having to amend the zoning ordinance or revise the intermunicipal agreement.



Section 8: Enhancements for TDR Success

This section explores how a municipality might form a partnership with the County Agricultural Preserve Board, the Lancaster Farmland Trust, or the Lancaster County Conservancy to acquire TDRs. This section concludes with a discussion of TDR banking opportunities that exist in the County.

Partnering with the County Agricultural Preserve Board

Agricultural Preserve Board as Source of TDRs with Individual Municipalities: Section 3 reported on two townships that have partnered with the Lancaster County Agricultural Preserve Board to increase the success of the townships' TDR programs and to extend the Agricultural Preserve Board's funding for purchasing development rights. In each case, the municipality first established provisions within its zoning ordinance that enabled a landowner to use the TDR tool. Each municipality then approached the Agricultural Preserve Board, which administers the County/State purchase of development rights program, about the possibility of obtaining unused TDRs from the farms that were being preserved through the County's development rights purchase program. In return for the unused TDRs, each municipality offered to contribute funds to the Preserve Board to complete the purchase of the development rights. In each case, the Preserve Board agreed to the

TDR partnership, and the Preserve Board returned TDRs obtained from the purchase of development rights transactions to the partnering municipality.

This partnership has been a very cost-effective way for these two municipalities to obtain TDRs that otherwise would never have been used. The two townships have been able to sell the TDRs acquired from the Agricultural Preserve Board for a higher value than the "per-TDR" contributions they made to the Agricultural Preserve Board. Thus, the townships have netted a financial gain that they are using to fund their next round of TDR acquisitions.



Photo: Courtesy of Lancaster Farmland Trust

This partnership also focuses the township's TDR efforts on the preservation of the most high-value, and/or threatened farms. The partnership can also increase the number of farms preserved by the Agricultural Preserve Board in the township, since the Agricultural Preserve Board dollars are extended by the township's funding contributions.



Municipal Ownerships/Banking of TDRs: Municipalities that obtain TDRs from the Preserve Board can bank (hold) them and then sell them at a future date through the public bidding process. The money earned through the sale of the TDRs can be returned to the municipality's earmarked fund for future TDR purchases – as a form of a revolving fund. In the Warwick Township example, the Township offered the TDRs for an affordable bid price to attract developers interested in using the TDRs in the Campus Industrial District receiving area. However, the Township earned more from the sale of the TDRs than they had contributed to the Agricultural Preserve Board development rights purchase price. The partnership with the Agricultural Preserve Board enabled Warwick Township landowners to receive quicker action from the Preserve Board for the purchase of their development rights.

Potential TDR Banking Opportunities

Banking of TDRs is simply the purchase of TDRs by a private entity or local government which holds the TDRs for future sale to buyers who intend to use the TDRs for development in designated receiving areas. There are many opportunities for TDR banking to advance community conservation and development objectives, whether in a single or multi-municipal TDR program. In the private sector, a land trust or a private party (such as a real estate agent) can purchase TDRs and hold them for future re-sale. This is occurring in Honey Brook Township, Chester County.

Municipal TDR Banking: A municipality can “prime” the market for use of TDRs by purchasing TDRs, holding them temporarily in a bank, and re-selling them to buyers. If the municipality acquires TDRs through cooperation with the Agricultural Preserve Board (as described herein and in Section 5), there may be little cost to the municipality in acquiring the TDRs. Municipalities also may acquire TDRs from landowners by using general funds, funds derived from a bond issue (including those that may specifically be earmarked for purchase of TDR interests), or funds derived from revenues earmarked for acquisition of open space interests under Act 153. This Act is an amendment of Act 442 (see Section 2) that enables municipalities to hold open space referenda and generate tax revenues for open space acquisition. TDRs held by a single municipality may be re-sold within the municipality, or, where an intermunicipal agreement allows the transfer of development rights across municipal boundaries, TDRs could be re-sold for use in receiving areas in other municipalities.

The banking of TDRs by a municipality can have several advantages:

- 1) The municipality may sell any number of TDRs at one time, offering buyers the ability to buy exactly the number they need from a single source, eliminating any need to negotiate with multiple sellers or landowners.
- 2) The municipality is not required to profit from the sale of TDRs nor is it precluded from receiving a profit. This means that, subject to compli-



ance with the provisions of the appropriate municipal code, the municipality may sell its TDRs at any price that it deems appropriate from the standpoint of meeting community development objectives. As part of the bidding, the municipality should set a minimum bid or refuse to accept any bids where the bid price does not meet municipal objectives.

3) TDR banking enables the municipality to target both the purchase and sale of TDRs. It can focus on the acquisition of TDRs from properties that comprise priority open space or other significant resource values. Also, the municipality can condition the sale of TDRs on the construction of specific developments in designated growth areas.

4) The sale of TDRs from a TDR bank enables the municipality to set a floor price for TDRs that developers will have to match in purchasing TDRs from landowners in the sending areas.

5) The purchase of TDRs for the municipal TDR bank can also provide landowners in the sending areas a market for their TDRs during slow economic times when there are few private buyers of TDRs.

The banking of TDRs involves a higher level of commitment to the program on the part of the municipality, versus simply letting the private market determine sales. While administering a TDR bank may be relatively simple, the municipality may need to provide significant funding outlays to purchase TDRs without a

guarantee of when the TDRs will be sold or for what price. Depending on municipal policies for the purchase and sale of TDRs, municipal involvement in the TDR market might hinder private sales where the municipality may be perceived as a more advantageous buyer from the landowner's perspective, or a more advantageous seller from a developer's perspective, whether due to price or ease of transaction.

Lancaster Farmland Trust as a TDR Bank: The Lancaster Farmland Trust is a private non-profit organization dedicated to farmland preservation. The Farmland Trust has purchased and banked TDRs in Warwick and Manheim Townships. The Farmland Trust is capable of making TDR deals more easily than the Agricultural Preserve Board or municipalities since it is not bound by the regulations and limitations that are applicable to local government. Plain Sect landowners may be more comfortable dealing with a private non-profit organization than a government agency.



Photo: Courtesy of Lancaster Farmland Trust



The Farmland Trust has the capacity to negotiate TDR deals and track and administer “banked” TDRs. The Farmland Trust can partner with municipalities to assist in the administration of municipal TDR programs or partner in banking TDRs. As a TDR bank, the Farmland Trust also can target both sending and receiving sites, so as to achieve community conservation and development objectives. Although not currently active in municipal TDR programs, the Lancaster County Conservancy could also serve as a TDR bank.

Potential Banking Role(s) for Lancaster County:

Lancaster County could play a more active role in the banking of TDRs to facilitate TDR transactions throughout the County. In addition to the TDR partnering between municipalities and the Agricultural Preserve Board, the County could serve as a TDR information clearinghouse. The County could track and keep comprehensive electronic records of TDR transactions, so that at any point in time, the County could tell landowners in sending areas or prospective TDR buyers exactly how many TDRs were available, where they may be used, and from whom they may be purchased. The County could keep track of TDRs in individual municipal TDR programs and TDRs in multi-municipal TDR programs.

The County also could acquire and bank TDRs, and then re-sell them. In townships that have a TDR program, the Agricultural Preserve Board can already acquire TDRs when it purchases development rights to farmland and then gives the TDRs to the township. But banking TDRs is not yet within the Agricultural Preserve Board’s scope of work. But just as the Agricultural Preserve Board can transfer or sell the severed TDRs to a municipality, as it already has in West Hempfield and Warwick, it could transfer them to an appropriate County agency, or it could add the banking role to its list of functions.

The County also could establish dedicated funding for open space conservation which could be used to acquire TDRs on lands less likely to be protected by the Agricultural Preserve Board. County owned TDRs would be resold to developers in accordance with the municipal or multi-municipal regulations. County banking activity can target both acquisition and sale of TDRs in accordance with County land use policy and complement municipal TDR banking.



Section 9: TDR Information and Marketing Plan

Warwick Township's success with Transferable Development Rights demonstrates that a thoughtful information and marketing plan is critical to an effective TDR program. Like a business plan, a TDR program must advertise how the program works, be customer-friendly, have a clearly identified market, continually monitor success (or failure), and make improvements when appropriate to meet customers' needs. Implementing an effective municipal TDR program requires a commitment to creating a quality program that is market-driven and results in both land preservation and land development.

As Section 2 of this Handbook explains, a municipality or group of municipalities must take several steps to create a successful TDR program; these steps should include the opportunity for future refinements to the TDR program. The seven steps, listed below, build on each other, so it is important for each of them to occur in order. The TDR program might fail or be of little use if one of these seven steps is omitted or not fully implemented. Municipalities with successful TDR programs can often point to the leadership and strategic thinking of its elected and appointed officials as well as their staffs; another valuable component is the experienced consultant(s) who can offer technical assistance in the seven aspects of a TDR program.

Important Steps for a Successful Municipal TDR Program:

- 1) Build consensus to support municipal objectives such as farmland protection and growth management. An educational program for landowners, developers, and the general public is essential. It is important to emphasize the benefits of farmland preservation and the protection of other natural or cultural resources to residents of potential TDR receiving areas. Also, contact municipalities with active TDR programs to learn how they built consensus (See Contacts in Appendix 1).

Example: Warwick Township emphasized that their TDR program would achieve two objectives: a) permanent protection of important farmland, and b) implementation of the Township's growth management plan since development was directed to areas identified in the plan. A secondary benefit of this approach was protection of the aquifer recharge areas in the sending area.

Example: West Hempfield Township conducted a "Community Values Survey" and held community meetings during the development of its 20-year Comprehensive Plan, learning that farmland preservation was the number one goal of Township residents. West Hempfield's TDR program helps to achieve that goal.

Example: Pennsylvania's "Buy Fresh, Buy Local" campaign has been adopted by at least one neighborhood farmer's market in the City of Lancaster; the City is also exploring serving as a TDR receiving area on a regional basis.



The “Buy Fresh, Buy Local” promotion could be a venue to educate City dwellers about the source of their produce from farmland protected through TDRs sent to the City for redevelopment that creates more vibrant neighborhoods, protects historic sites, etc.

2) Thoroughly understand the TDR tool and its benefits (Sections 2, 3, and 5).

3) Fully meet the needs of your TDR sending area customers (Section 6).

4) Clearly identify the development types that would be acceptable in the TDR receiving area (Section 5).

Example: Campus-industrial uses were an easier sell in Warwick Township’s TDR receiving area than increased residential density or new retail-commercial uses because they: a) avoided “NIMBY” issues; b) did not increase the population of school-aged children; c) generated more tax revenue than residential uses; and d) avoided competition with nearby Lititz Borough’s retail-oriented historic district.

5) Identify your partners.

Example: West Hempfield and Warwick Townships are partnering with the Agricultural Preserve Board to obtain TDRs from township landowners and coordinating with the Lancaster Farmland Trust during their conservation easement negotiations with these landowners.

6) Convince developers to take the risk (Sections 5 and 6).

7) The TDR Information and Marketing Plan—market your TDR program to landowners, developers, and the general public, measure and advertise its successes, and seek to continuously improve it.

Example: West Hempfield’s Fall 2007 Township newsletter contained a front-page article describing how two successful TDR transactions achieved residents’ farmland preservation goals. This article was a follow-up to the Spring 2005 front-page article that explained the concept of TDRs and highlighted the Township’s first TDR purchase. This sequence helped readers understand the relationship between increased numbers of dwelling units per acre (density) through the receipt of TDRs (with the added benefit of a lower rate of land consumption) and the reduction of development pressure on open farmlands through the sending of TDRs.

The TDR information and marketing plan should address communication with local residents and stakeholders both as the TDR program is established and continually as the program operates over time. A municipality can document “base-line” conditions showing the need for the TDR program and refer to these conditions as the TDR program is implemented. The municipality can use the base-line conditions to measure the results of the TDR program—systematically, objectively, and at regular intervals. As with zoning and other regulations, municipal officials must expect that refinements to the TDR program will be necessary. It is impossible to foresee all circumstances under which the TDR tool might apply, and since the tool is market-driven, it will require adjustments to remain



marketable. Equally important, the municipality must be accountable to landowners, developers, and the general public for the performance of the TDR program. The municipality should celebrate the successes of its TDR program as well as obtain feedback from TDR program participants for suggestions about how to improve the program.

Additional features of the TDR information and marketing plan are:

Communication: *“Communication is forever, and perception is everything.”* A local government must make a commitment to educate and inform landowners, developers, and the general public about the TDR program. The transfer of development rights involves the sensitive topics of property rights and property values. Clear and accurate information about the TDR program is essential to avoid misunderstandings with landowners and other stakeholders.



Photo: Courtesy of Lancaster Farmland Trust

What is the message to be communicated? TDR program administrators should develop a concise summary of the program explaining what TDRs are and how the transfer of development rights works. The summary, in the form of a brochure or pages on the municipality's website, can serve as the starting point for further communications.

Who is the audience? These are the stakeholders who can support, remain neutral, or question the benefits of TDR in your municipality. The stakeholders include taxpayers, landowners, developers, realtors, neighborhood associations, land conservation groups, and others. Stakeholders involved in the municipal or multi-municipal TDR program should be kept informed of progress and future opportunities for participation. Uninformed stakeholders may focus on perceived negatives of a TDR program and try to damage its credibility.

Form Alliances: Identify the institutions, organizations, and municipal consultants who can help a municipality or group of municipalities communicate its message and help support the TDR program.

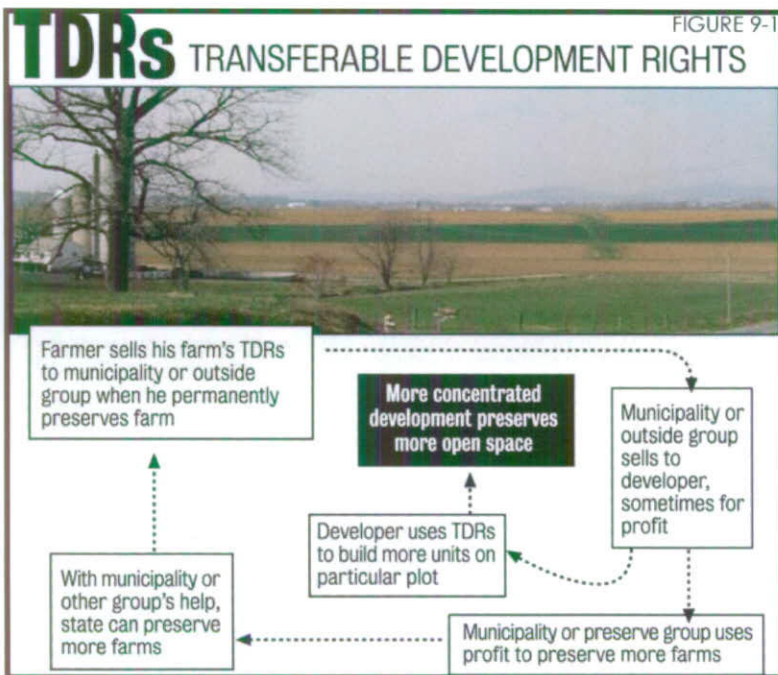
Who are the media in your area, what relationship do you have with local reporters, and how do they report news? There are a variety of traditional to modern communication venues that can be used—from public announcements posted at the local feedstore, library, community center, or municipal building to personal interviews with newspaper, radio, or television reporters to municipal websites and internet blogs.



What organizations can help get the word out? Excellent examples include the Lancaster Farmland Trust, the Agricultural Preserve Board, the Lancaster County Conservancy, or the Lancaster Inter-Municipal Committee.

Evaluation, Time Frames, and “Reportables”: Has the TDR program helped to meet community objectives? For example, has it “saved the land that needs to be saved and facilitated development that meets growth management plans?” If the TDR program has not achieved local objectives, municipalities should determine

what is preventing the program from working properly. It is often likely that some part of the program needs to be changed. Municipalities or regions should adopt a schedule for evaluating the program at least every few years. Even if the TDR program seems to be going well, municipalities should continue to follow an established schedule to ensure consistent and timely evaluation. Report the results of these evaluations to all stakeholders on a regular basis. Most importantly, publicize the program’s successes, and do not be afraid to make adjustments to the program to make it work better.



Example: Warwick Township’s TDR program received considerable publicity through its initiatives with the local press. The Township’s outreach to the Lancaster New Era (Figure 9-1) resulted in an informative article on TDRs which reached a wide audience. The newspaper article included the simple and clearly explained flow chart above.

What about your municipality’s consultants; how can they help the TDR program? Municipal consultants (e.g., engineer, planner) are often the “front line” with landowners or developers, so they need to be well-informed advocates for the TDR program.

Customer Service: Good customer service will help the municipality or regional organization remain in favor with current stakeholders and even earn new supporters. Also, TDR may be a new concept for many of these stakeholders, requiring municipal officials and municipal consultants to be patient and provide additional information and discussions about how TDRs work. Finally, landowners and developers who have participated in the TDR program should be asked what they like about the program and how the TDR program can be improved. For example, in developing this Handbook, the au-



thors met with a representative group of developers, attorneys, and planners who had participated in TDR transactions in Lancaster County, and they learned a great deal from these individuals regarding their experiences (Appendix 10).

Special Note: Warwick Township has been able to document that its TDR program is: a) both saving farmland and protecting its groundwater aquifer, thus meeting previously established public goals; b) generating new tax revenue, jobs, and economic prosperity; c) not costing taxpayers since TDR sales now fund future TDR purchases, and infrastructure investments were paid off with initial revenues; d) supported by landowners, developers, and the general public; and e) creating higher priority for the Township's farmers in Lancaster County's farmland preservation program.



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LIST OF MUNICIPAL AND OTHER CONTACTS WITH TDR EXPERIENCE

Municipalities with Active TDR Programs:

Warwick Township:

Dan Zimmerman, Manager
(717) 626-8900; dzimmerman@warwicktownship.org

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Solicitor: William Crosswell, Esq.
Morgan Hallgren Crosswell & Kane, P.C.
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West Hempfield Township:

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Solicitor: Josele Cleary, Esq.
Morgan Hallgren Crosswell & Kane, P.C.
(717) 299-5251

Manheim Township:

Lisa Douglas, Director of Planning & Zoning
(717) 569-6406, ext.71; ldouglas@manheimtownship.org

Solicitor to the Planning Commission:
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Morgan Hallgren Crosswell & Kane, P.C.
(717) 299-5251

West Lampeter Township:

Ray D'Agostino, Jr., Manager
(717) 464-3731; ray@westlampeter.com

Solicitor: William Crosswell, Esq.
Morgan Hallgren Crosswell & Kane, P.C.
(717) 299-5251

Honey Brook Township, Chester County: Michael Brown, Manager
(610) 273-3970; hbtwp@ptd.net

Potential TDR Program Partners:

Lancaster County Agricultural Preserve Board: Matt Knepper, Director
(717) 299-8355; knepperm@co.lancaster.pa.us

Lancaster Farmland Trust: Karen Martynick, Executive Director
(717) 687-8484; Karen@lancasterfarmlandtrust.org

Jeff Swinehart, Deputy Director
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Brandywine Conservancy: John Goodall, Western Area Manager
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Lancaster County Planning Commission: Dean Severson, Principal Agricultural & Rural
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Lancaster Inter-Municipal Committee: John Ahlfeld, Executive Director
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City of Lancaster: Paula Jackson, Chief Planner
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TDR Program Consultants:

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Lancaster Farmland Trust: Karen Martynick, Executive Director
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ARTICLE X
TRANSFERABLE DEVELOPMENT RIGHTS (TDR)

SECTION 1001. PURPOSE

The primary purpose of establishing a transferable development rights (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 whose land is intended for preservation to transfer their right to develop to other areas of (MUNICIPALITY) deemed appropriate for higher density development based on the availability of community facilities and infrastructure.

SECTION 1002. BASIC CONCEPT AND AUTHORIZATION

- A. The provisions of this Zoning Ordinance which permit transferable development rights allow landowners in areas of (MUNICIPALITY) proposed for conservation, called “sending areas,” to voluntarily sell or convey the right to develop all, or a portion of their land to landowners in areas of (MUNICIPALITY) proposed for additional development, called “receiving areas.” The transferable development rights provisions set forth below are specifically authorized under Sections 603 (c)(2.2) and 619.1 of the Pennsylvania Municipalities Planning Code, under the terms of which development rights are acknowledged to be severable and separately conveyable from a sending area to a receiving area.
- B. When landowners in the sending area sell or convey their right to develop all or a portion of their land, they must restrict that portion of land from which development rights are conveyed against any future development as provided in this Ordinance, although the land may still be used for purposes that do not involve residential, commercial, industrial or institutional development, such as agriculture or forestry. When landowners in the receiving area buy the development rights from landowners in the sending area, they receive the right to build more homes on their land than they would have been allowed had they not purchased development rights. The monetary value of TDRs is completely determined between the seller and buyer.
- C. Restrictions imposed in the sending area through a conservation easement will not prohibit the landowner's sale of the land after the development rights have been severed, although such land cannot thereafter be used for residential, commercial, industrial or institutional development purposes. The conservation easement on the land from which the development rights have been severed shall run in favor of the (MUNICIPALITY) or an approved conservation organization.
- D. The owner of the tract in the sending area from which the development rights are severed or any subsequent purchaser or purchasers of the development rights may declare the development rights for sale, may hold the development rights or may resell or convey the development rights. The only use which may be made of the development rights is the ultimate transfer to a developer with a tract in the receiving area. The (MUNICIPALITY)

shall have no obligation to purchase the development rights which have been severed from a tract in the sending area

SECTION 1003. SALE OR CONVEYANCE OF TDRS FROM SENDING AREA

Owners of tracts which meet the following requirements may sever and sell or convey their development rights:

A. **Sending Area Qualifications** *[SAMPLE]*

1. The sending area tract of land shall be located within the Agricultural Preservation (Zoning) District.
2. At least eighty (80) percent of the sending area tract, or portion thereof from which development rights are being severed, must be restricted from future development in accordance with Section 1003.E., below.
3. The acreage to be restricted shall be contiguous and shall not extend less than seventy-five (75) feet in the narrowest dimension at any point except for such lands specifically serving as trail links.
4. The portion of the parcel which will not be restricted shall be usable under the use, area, dimensional, performance and other standards of the Ordinance.

B. **Calculation of Transferable Development Rights** *[SAMPLE]*

1. The total number of development rights available on a sending tract shall be determined by multiplying the net tract area by 0.6. For purposes of this Section, net tract area may be calculated on the basis of available generalized mapping and shall not require aerial photogrammetric or field survey, subject to review and approval by the Municipal Engineer.

(The paragraph above nets out constrained land (e.g., floodplains, wetlands, steep slopes) prior to the TDR allocation calculation. This “net out” requirement is optional, and is a policy decision for the municipality creating a TDR program – how much “development value” should be assigned to lands which may not physically support their development? Use of the “net out” is also a way to reduce the number of TDRs that are generated within the sending area. However, for ease in landowner understanding of the TDR option, a simple allocation based on gross acres can also be used (e.g., 1 TDR for every 2 gross acres.))

2. Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for calculation of transferable development rights unless and until such time as said covenant, restriction or easement is dissolved or rescinded with agreement of all beneficiaries of such covenant, restriction or easement.

3. Any sending tract shall retain at least one development right, unless the tract is joined in a single deed with an adjacent tract or tracts with retained or remaining development right(s). All remaining development rights may be severed from the tract.

(The paragraph above is intended to reserve one development right on a parcel where all the TDRs are being transferred, so that if the sending area parcel is sold, the buyer will be able to build a house. This is an optional provision, and if a house already exists on the sending area property, the requirement for one residual development right may not be necessary.)

4. 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.

C. **Declaration of Transferable Development Rights and Certification by (MUNICIPALITY)**

Any owner in the sending area may elect to declare the development rights that may be severed from a tract of land, based on application of the provisions of subsection 1003.B, and may request a written certification from the (MUNICIPALITY) of the number of rights that may be severed, which certification shall not be unreasonably withheld.

D. **Severance of Transferable Development Rights**

1. Transferable development rights which have been severed shall be conveyed by a Deed of Transferable Development Rights duly recorded with the Lancaster County Recorder of Deeds. The Deed of Transferable Development Rights shall specify the tract of land to which the rights shall be permanently attached or that the rights shall be transferred to the (MUNICIPALITY), retained by the owner of the sending tract, or another person in gross.
2. The Deed of Transferable Development Rights which severs the development rights from the sending tract shall be accompanied by restrictive covenant(s) or conservation easement(s) which shall permanently restrict development of the sending tract as provided below and which shall be recorded in the Office of the Recorder of Deeds at the same time as or prior to the Deed of Transferable Development Rights.
3. All Deeds of Transferable Development Rights and restrictive covenants or conservation easements shall be endorsed by the (MUNICIPALITY) prior to recording, which said endorsement shall not be unreasonably withheld.
 - a. Deeds submitted to the (MUNICIPALITY) for endorsement shall be accompanied by a title search of the sending area tract(s) and a legal opinion of title affirming that the development right(s) being transferred by the Deed

(Sample ordinance language – single municipality)

(Source: Brandywine Conservancy, Inc.)

have not been previously severed from or prohibited upon the sending area tract.

- b. A title report should be prepared within ten (10) days prior to submission of the Deed and the legal opinion of title must meet the reasonable approval of the Municipal Solicitor.
4. The severance of development rights from a sending area tract shall not affect the ability of the tract owner to develop the tract's existing historic structures under the provisions for renovation and reuse of historic structures set forth in Section ____ of this Ordinance.

(The above provision is an optional incentive to encourage the preservation of a municipality's historic resources (structures) even after TDRs have been severed from the parcel or tract. Provisions for renovation and reuse of historic structures will need to be included elsewhere within the zoning ordinance.)

5. If the agreement of sale of development rights would entail less than an entire parcel, the portion of the parcel from which the development rights are transferred shall be clearly identified on a plan of the entire parcel, drawn to scale, the accuracy of which shall be satisfactory to the (MUNICIPALITY). Such plan shall also include a notation of:
 - a. The number of development rights applicable to the entire parcel,
 - b. The number of development rights applicable to the identified portion of the parcel from which the development rights are to be transferred, and
 - c. The number of development rights which remain available to the remaining portion of the parcel.
6. If the agreement of sale of development rights would entail less than the entire number of development rights represented by a recorded Deed of Transferable Development Rights, the applicant shall indicate in the Deed the disposition of the remaining development rights.

E. **Sending Area Conservation Easement**

Any sending area tract from which development rights have been severed must be permanently restricted from future development by a conservation easement which meets the following requirements:

1. Except where any development rights are retained, the conservation easement shall permanently restrict the land from future development for any purpose other than principal or accessory agricultural uses, public park land, conservation areas and similar uses. Structural development for such permitted uses shall be

(Sample ordinance language – single municipality)

(Source: Brandywine Conservancy, Inc.)

permitted subject to compliance with the standards set forth in Section ____ and the area and bulk regulations set forth in Subsection ____ of this Ordinance.

2. The conservation easement shall be approved by the (MUNICIPALITY), in consultation with the Municipal Solicitor.
3. The conservation easement shall designate the (MUNICIPALITY), and/or a bona fide conservation organization acceptable to the (MUNICIPALITY) 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 conservation easement:
 - a. All future owners of any portion of the sending parcel, and
 - b. All future owners of any portion of any parcel to which the transferable development rights shall be permanently attached.
4. The conservation easement shall apply to the tract of land or portion thereof from which development rights are sold (sending area tract), and shall specify the number of development rights to be severed as well as any to be retained. No portion of the tract area used to calculate the number of development rights to be severed shall be used to satisfy minimum yard setbacks or lot area requirements for any development rights which are to be retained or for any other development except as permitted under Section 1003.E.1 above.
5. On any portion of a parcel from which development rights are severed, retained development rights may not exceed one (1) dwelling unit per twenty (25) acres. Notwithstanding the foregoing, tracts within the Agricultural Preservation District existing at the time of adoption of this Section which are less than twenty (20) acres in gross area may retain no more than one development right.

(The above provision is intended to remove the possibility for a landowner to sever and sell only a few development rights and develop the rest of the property, thereby thwarting the conservation benefits of the TDR tool. The remaining development right allocation (e.g. 1 dwelling right per 25 acres) can vary, depending on the municipality's minimum parcel size or maximum residential density limitation existing for the sending area zoning district.)

6. On any portion of a parcel from which development rights are severed, retained development rights may be developed with traditional farm/estate building groupings including, in addition to one (1) primary residence, customary accessory agricultural structures and one (1) tenant residence which shall be less than fifty (50) percent of the total habitable square footage of the primary residence. In order to be utilized, this option must be specified in the conservation easement and on the Conservation Plan.

(Sample ordinance language – single municipality)

(Source: Brandywine Conservancy, Inc.)

7. All owners of all legal and beneficial interest in the tract from which development rights are severed shall execute the conservation easement(s). All lienholders of the tract from which development rights are severed shall execute a joinder and/or consent to the conservation easement(s).
8. Final approval for any subdivision or land development plan utilizing transferred development rights shall not be granted prior to the recording of the conservation easement at the Lancaster County Recorder of Deeds.

SECTION 1004. RECEIVING AREA QUALIFICATIONS AND CALCULATIONS

Owners of tracts which meet the following requirements may use development rights that are purchased or conveyed from sending area landowners, the (MUNICIPALITY), or an eligible conservation organization that offered such rights after purchasing, or having conveyed to it, development rights from eligible landowners within the sending area of the (MUNICIPALITY).

(Sections 1004.A, 1004.B, and 1004.C. below are from the West Hempfield Township Zoning Ordinance, Article 1100, and reflect the Township's interest in encouraging TDR receipt in their residential districts located within the UGB and where public utilities already exist. The Township also employs the use of a conservation design tool called the Open Space Design Option, which permits a modest amount of development design flexibility (e.g. area and bulk standards modifications), and use flexibility (e.g. allowing townhouses where they would not otherwise be permitted "by-right"), in return for achieving specific community development objectives such as woodland resource protection, riparian buffer protection or enhancement, innovative stormwater management, etc., through significant open space set-asides as part of the overall development. Subjecting the receipt of TDRs to the Township's conditional use process and the use of the Open Space Design Option also increases the Township's ability to influence the receiving area development's design, which can be used to address neighborhood concerns, for example, when raised during the conditional use public hearings.)

A. Receiving Area Qualifications [SAMPLE]

The receiving tract of land shall be:

1. Located in the R-1, R-2, or R-3 Residential Districts and within the UGB;
2. Served by public sewer and water; and
3. Developed under the provision of the Open Space Design Option where approved as a conditional use.

B. Provision for Transfer of Development Rights in Receiving Sites [SAMPLE]

1. Except as provided in Section 1004.B.2. below, for each development right purchased from sending area parcel(s) in accordance with this Article, landowners in receiving area districts have the right to build one additional dwelling unit in

(Sample ordinance language – single municipality)

(Source: Brandywine Conservancy, Inc.)

addition to what is otherwise allowed pursuant to the Open Space Design Option provisions of this Ordinance.

2. In the R-3 District only, for each development right purchased from sending area parcel(s) in accordance with this Article, landowners have the right to build 1.5 dwelling units in addition to what is otherwise allowed pursuant to the Open Space Design Option, where such dwelling units are quadraplex dwellings, multiple family dwellings and/or garden apartments. Additional density for all other dwelling unit types shall be permitted in accordance with Section 1004.B.1 above.

(Paragraph 2. above recognizes the real estate market valuation differences between single-family detached or attached dwelling units and multiple family dwellings, for example. A developer would typically be able to sell a single-family dwelling on its own lot at a higher asking price than a condominium unit which is part of a larger residential complex, for example. However, the price that the developer pays for TDRs in the sending area will typically reflect a value that approaches that of a single-family detached house had it been developed on the sending area parcel. As such, a higher residential yield (dwelling units per acre) is offered to developers of multiple family dwellings in this example to compensate for the difference in TDR sending vs. receiving area values. Without this value adjustment, it is likely that the developer would either pursue another residential unit type at a lower density, or would not pursue the TDR option at all.)

C. Calculation of Maximum Receiving Area Development Rights [SAMPLE]

The maximum total number of additional dwelling units permitted to be developed by the owner of the receiving area tract of land shall be computed by multiplying the gross area of the tract, less existing public rights-of-way, by the incremental multiplier stipulated for each zoning district as follows:

1. In the R-1 District - 1.0;
2. In the R-2 District – 1.5;
3. In the R-3 District – 2.0, except on that portion of any tract devoted to quadraplex dwellings, multiple family dwellings and/or garden apartments, where the incremental multiplier may be increased to 3.0 (2.0 X 1.5) as per Section 1004.B.2 above.

(For the same reasons as those explained above, the incremental increase in the multipliers shown in subsections 1, 2, and 3 above attempts to compensate the TDR buyer for an anticipated reduction in TDR sending to receiving area value as the R-1, R-2, and R-3 zoning districts increase in permitted density and residential use options.)

D. Design Requirements and Modification of Area and Bulk Standards

Any development using Transferable Development Rights 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) Transferable Development Rights are received, applicable area and bulk requirements may be modified up to twenty-five (25) percent subject to conditional use approval by the (MUNICIPALITY). Any conditional use approval to permit such modification(s) shall be subject to the following criteria:

- a. The design and modifications shall be consistent with the purposes and the land-use standards contained in this Ordinance.
- b. 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.
- c. The applicant shall demonstrate to the (MUNICIPALITY) that the proposed modification(s) will produce equal or better development design and open space conservation results than could be achieved without the requested modification(s) and that they represent the minimum modification necessary.
- d. If the (MUNICIPALITY) determines that the applicant has met his/her burden of proof, it may grant modification(s) of the requirements herein. In granting modifications, the (MUNICIPALITY) may impose such conditions as will, in its judgment, secure the objectives and purposes of this Ordinance.

(Increasing the maximum permitted density in a residential district, as illustrated in Sections 1004. above, will likely result in a development design that cannot always meet all zoning ordinance (area and bulk, etc.) requirements due to the developer's need to take full advantage of the TDR bonus. In such cases, TDR ordinance provisions can be written that enable the elected body of the municipality to grant a limited number of modifications (e.g., reducing the minimum open space requirement from 50% to 35% of the gross tract area) specifically identified within the text during a conditional use approval process. Otherwise the developer would need to seek variances from the ordinance provisions, and could be both a costly and time-consuming step which discourages a developer from utilizing the TDR option. In granting modifications, the municipality can require the developer to demonstrate how the desired flexibility will benefit the community as well as the developer, or at least have the same effect as if the full standard were applied.)

SECTION 1005. PLAN SUBMITTAL PROCESS

- A. All applicants for use of transferable development rights shall submit conditional use application as provided in Section ____ and applicable subdivision/land development plans as required under the (MUNICIPALITY) Subdivision and Land Development Ordinance for the use to which transferable development rights will be added. Submitted subdivision or

land development plans and/or conditional use applications, as applicable, 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 all development rights proposed to be purchased from the sending area site(s). The applicant must prove ownership or equitable ownership of the appropriate number of development right(s), up to the maximum additional increment calculated as above.
 2. For residential TDR transfer, a note on the plan showing the total number of dwelling units proposed on the receiving area site, the total number that could be built not using TDR's, and the incremental difference between the two. This difference represents the number of additional dwelling units that could be constructed using received development rights.
 3. If the development rights have previously been severed from a tract in the sending area, a copy of the recorded Deed of Transferable Development Rights shall be submitted.
 4. Where the applicant proposes to purchase development rights from a sending property or properties where rights have not been previously severed, a plan of the sending site(s) shall be submitted. This plan shall show all information needed to determine the number of development rights which may be sold, as required herein. In addition, the plan shall be accompanied by a metes and bounds description of the subject property(s), as well as each tax parcel number, and owner name. If the applicant is purchasing development rights from a portion of a sending area site, this portion shall be shown on the plan and described with metes and bounds.
 5. A title search of the tract from which the transferable development rights will be transferred sufficient to determine all owners of the tract and all lienholders. If the development rights have previously been severed from the tract in the sending area, a title search of the rights set forth in the Deed of Transferable Development Rights sufficient to determine all of the owners of the development rights and all lienholders shall be furnished to the (MUNICIPALITY).
- B. In order to receive final plan approval, the applicant must provide documentation that appropriate conservation easements have been recorded for all sending area lands whose development rights are being used by the applicant. These conservation easements must meet the requirements stipulated herein. The conservation easement on the sending area land shall be recorded first, followed by a Deed of Transfer, in accordance with the provisions of the Pennsylvania Municipal Planning Code, as amended, which transfers the development rights from the sending area landowner to the receiving area landowner.

SECTION 1006. PUBLIC ACQUISITION

(MUNICIPALITY) may purchase development rights and may accept ownership of development rights through transfer by gift. All such development rights may be held or resold by the

(Sample ordinance language – single municipality)

(Source: Brandywine Conservancy, Inc.)

(MUNICIPALITY). Any such purchase or gift shall be accompanied by a conservation easement as specified in Section 1003.E.

SECTION 1007. TRANSFERS OF TDRS IN GROSS

TDRs may be transferred in gross by the owner of a sending tract to an organization which possesses a tax exempt status under Section 501(c)(3) of the Internal Revenue Code [26 U.S.C. Section 501(c)(3)] and which has as its primary purpose the preservation of land for historic, scenic, agricultural or open space purposes or to the Lancaster County Agricultural Preserve Board. If such organization or the Preserve Board purchases or acquires TDRs by gift or otherwise, the organization or Preserve Board shall be entitled to resell such TDRs only if the proceeds from the sale of the TDRs are used to purchase TDRs from other lands in (MUNICIPALITY).

SECTION 1008. AMENDMENT AND/OR EXTINGUISHMENT

The (MUNICIPALITY) reserves the right to amend this Ordinance in the future, and the (MUNICIPALITY) expressly reserves the right to change the manner in which the number of development rights shall be calculated for a tract in the sending area and the manner in which development rights can be conveyed. The (MUNICIPALITY) further expressly reserves the right to terminate its transferable development rights program at any time. No owner of the land or owner of development rights shall have any claim against the (MUNICIPALITY) for damages resulting from a change in this Ordinance relating to the regulations governing the calculation, transfer and use of development rights or the abolition of the transferable development rights program. If the transferable development rights program is abolished by the (MUNICIPALITY), no developer may attach development rights to any tract in the receiving area after the effective date of the ordinance abolishing the transferable development rights 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 continuously 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.

PREPARED BY: LANCASTER FARMLAND TRUST
RETURN TO: LANCASTER FARMLAND TRUST
125 LANCASTER AVENUE
STRASBURG, PA 17579
TELEPHONE: (717) 687-8484

PARCEL ID#: 600-J9999-9-9999

TITLE NOT CERTIFIED OR INSURED

DEED OF TRANSFERABLE DEVELOPMENT RIGHTS

THIS DEED of Transferable Development Rights made this _____ day of _____, 2007, by and between _____ and _____, of _____, Address, City, State, Zip, hereinafter referred to as "Grantors", and **LANCASTER FARMLAND TRUST**, a qualified non-profit corporation created and organized under the laws of the Commonwealth of Pennsylvania and being tax exempt under Section 501(c)(3) of the Internal Revenue Code, with an address at 125 Lancaster Avenue, Strasburg, Pennsylvania 17579, hereinafter referred to as "Grantee".

WITNESSETH:

That in consideration of One Dollar (\$1.00) in hand paid, receipt of which is hereby acknowledged by Grantors, said Grantors, intending to be legally bound, do hereby grant and convey to Grantee, its successors and assigns, all _____ () transferable development rights which are attributable to all that certain tract of land situated in Warwick Township, Lancaster County, Pennsylvania, more particularly bounded and described as set forth in Exhibit "A" which is attached hereto and incorporated herein by reference, said tract of land being a farm located within the Agricultural Zone as shown on the Official Zoning Map of Warwick Township and such transferable development rights having been apportioned to said tract by a determination of the Warwick Township Zoning Officer.

BEING all of the transferable development rights attributable to the Warwick Township portion of the same premises which was conveyed to _____, by deed recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania, in Record Book _____, Page _____.

AND the said development rights herein conveyed shall be transferred to the Grantee in gross. Grantee shall have the right, in its sole discretion, to determine the lands in the receiving area of Warwick Township to which the development rights herein conveyed shall be transferred. At the time of their transfer, the development rights herein conveyed shall be attached to lands in the receiving area of Warwick Township and shall be used in accordance with the provisions of the Warwick Township Zoning Ordinance, as amended, and as hereinafter further amended, and in accordance with all other applicable laws and regulations.

As a result of the transfer of all of the development rights attributable to the premises to Grantee, the premises described in Exhibit "A" shall be permanently restricted from development, except such development as may be permitted by the Conservation Easement dated and intended to be recorded contemporaneously herewith.

Grantors covenant that they will warrant specially the transferable development rights hereby conveyed.

THIS CONVEYANCE is to a conservancy which possesses a tax exempt status under section 501(c)(3) of the Internal Revenue Code and which has as its primary purpose preservation of land for agricultural opportunities, and is therefore exempt from Pennsylvania realty transfer taxes pursuant to 61 PA. Code § 91.193 (b) (18).

IN WITNESS WHEREOF, Grantors have executed this Deed of Transferable Development Rights the day and year first above written.

WITNESS:

GRANTOR

GRANTOR

COMMONWEALTH OF PENNSYLVANIA)

COUNTY OF LANCASTER)

SS:

On this _____ day of _____, 2007, before me, the subscriber, a notary public in and for the aforesaid state and county, came the above-named _____ and _____, known to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the foregoing Deed of Transferable Development Rights for the purposes contained therein.

WITNESS my hand and notarial seal the day and year aforesaid.

Notary Public

My Commission Expires:

I certify that the precise address of the within Grantee is 125 Lancaster Avenue, Strasburg, PA 17579.

By: _____
Jeffery E. Swinehart
On behalf of Grantee

ENDORSEMENT BY TOWNSHIP OF WARWICK

In accordance with the requirements of Section 619.1(c) of the Pennsylvania Municipalities Planning Code, Act of July 31, 1968, P.L. 805, No. 247, as amended and reenacted, 53 P.S. §10619.1(c), the Board of Supervisors of the Township of Warwick, Lancaster County, Commonwealth of Pennsylvania, has approved the sale of the transferable development rights to which the instant Deed relates. This endorsement shall remain valid for sixty (60) days. The attached Deed of Transferable Development Rights must be recorded on or before _____, 2007.

Dated: _____, 2007

TOWNSHIP OF WARWICK
Lancaster County, Pennsylvania

Attest: _____
Secretary

By: _____
Chairman
Board of Supervisors

[TOWNSHIP SEAL]

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF LANCASTER)

On this, the _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of the Township of Warwick, Lancaster County, Pennsylvania, and that he, as such officer, being authorized to do so, executed the foregoing Endorsement for the purposes therein contained by signing the name of such Township by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

Notary Public

My Commission Expires:

Exhibit "A"

(legal description)

PREPARED BY: LANCASTER FARMLAND TRUST
RETURN TO: LANCASTER FARMLAND TRUST
125 LANCASTER AVENUE
STRASBURG, PA 17579
TELEPHONE: (717) 687-8484

UPI#: 600-J9999-9-9999

DECLARATION OF RESTRICTION OF DEVELOPMENT

This grant of easement in the nature of a restriction on the use of land for the purpose of preserving productive agricultural land is made this _____ day of _____, 2007, by and among _____ and _____, of _____, Lancaster, Pennsylvania _____, hereinafter called the "Grantors"; TOWNSHIP OF WARWICK, Lancaster County, Pennsylvania, a Pennsylvania municipal corporation with its municipal offices at 315 Clay Road, Lititz, Pennsylvania 17543, hereinafter called the "Township"; and LANCASTER FARMLAND TRUST, a qualified non-profit corporation created and organized under the laws of the Commonwealth of Pennsylvania and being tax exempt under Section 501(c)(3) of the Internal Revenue Code, with an address at 125 Lancaster Avenue, Strasburg, Pennsylvania 17579, hereinafter called "LFT".

WHEREAS, a tract of land located on the _____ side of _____ Road in the Township of Warwick, Lancaster County, Pennsylvania, containing approximately _____ acres (the "Property"), was conveyed to the Grantors, by deed recorded _____, 2007 in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania, at Document ID _____ ("Property Deed"). The Property is more fully described in Exhibit "A" which is attached hereto and made a part hereof.

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania, by Act 170 of 1988, authorized municipalities as a part of zoning ordinances to establish a program of transferable development rights and to permit landowners to sell and purchase such development rights. The Township of Warwick has, through the enactment of the Warwick Township Zoning Ordinance, codified as Chapter 27 of the Code of Ordinances (the "Zoning Ordinance"), established a program of transferable development rights ("TDRs") in the Township in accordance with the authorization and requirements of the Pennsylvania Municipalities Planning Code. Section 1502(a) of the Second Class Township Code authorizes the Board of Supervisors to "purchase . . . any real and personal property it judges to be to the best interest of the township", and Section 619.1(a) of the Pennsylvania Municipalities Planning Code provides that TDRs are an interest in real estate. Section 321 of the Zoning Ordinance authorizes the Township to acquire TDRs.

WHEREAS, as part of its regulations regarding transferable developments rights established by the Zoning Ordinance, landowners who donate transferable development rights must totally and permanently restrict future development of the tract from which the rights are

donated or transferred. Grantors desire to convey all of the _____ () transferable development rights associated with the Property, and this restriction of development rights is granted in compliance with the Township's regulations and to insure the preservation of the Property for agricultural use. Grantors, by a Deed of Transferable Development Rights dated as of even date herewith, have transferred _____ () transferable development rights associated with the Property to LFT.

NOW, THEREFORE, in consideration of the foregoing and intending to be legally bound, the undersigned Grantors grant and convey to LFT a conservation easement (the "Easement") on the Property, the purpose of which is to assure that the Property will be retained forever in its agricultural and open space condition and to prevent any future development of the Property that will impair the agricultural and open space values of the Property. To carry out this purpose the following restrictions are hereby recorded against the Property.

ARTICLE I. COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS GOVERNING USE OF THE PROPERTY

With the preceding Background paragraphs incorporated by reference and intending to be legally bound, Grantors declare, make known, and covenant for themselves and their heirs, legal representatives, and assigns, that the Property shall be restricted to agricultural and directly associated uses as hereafter defined and to those uses specifically authorized herein. However, more restrictive applicable State and local laws, including but not limited to the provisions of the Zoning Ordinance and the Warwick Township Subdivision and Land Development Ordinance as the same may exist from time to time, shall prevail in the determination of permitted uses and development of the land subject to these restrictions.

1. Agricultural uses of land are defined for the purpose of this instrument as the use of land for the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; other livestock and fowl and livestock and fowl products, including the breeding and grazing of any or all such animals; bees and apiary products; fruits and vegetables of all kinds; nursery, floral and greenhouse products; silviculture; aquaculture; and the primary processing and storage of the agricultural production of the Property and other similar and compatible uses. Agricultural uses of land shall not include sod or turf removal.

2. Directly associated uses are defined as customary, supportive and agriculturally compatible uses of farm properties in Lancaster County, Pennsylvania, and are limited to the following:

(1) The direct sale to the public of agricultural products produced principally on the Property.

(2) Any and all structures contributing to the production, primary

processing, direct marketing and storage of agricultural products produced principally on the Property.

(3) Structures associated with the production of energy for use principally on the Property including wind, solar, hydroelectric, methane, wood, alcohol fuel and fossil fuel systems and structures and facilities for the storage and treatment of animal waste produced on the Property.

(4) The provision of services or production and sale, by persons in residence, of agricultural goods, services, supplies and repairs and/or the conduct of on-farm businesses and traditional trades and the production and sale of home occupation goods, arts and crafts, so long as: (1) these uses remain incidental to the agricultural and open space character of the Property and are limited to occupying existing residential and/or principally agricultural structures.

(5) Structures and facilities associated with irrigation, farm pond impoundment and soil and water conservation.

(6) The accommodation of tourists and visitors within existing residential structures on the Property so long as this use is incidental to the agricultural and open space character of the Property.

(7) Other similar uses approved upon written request to the Township and to LFT.

(8) All structures permitted hereunder are subject to the impervious surface restrictions of Article I, Paragraph 6.

3. Grantors acknowledge that no dwelling presently exists on the Property.

(1) One (1) single-family detached dwelling to be utilized by members of the owner's or operator's family ("Dwelling") may be constructed on the Property if:

(a) The residential structure and its curtilage occupy no more than two acres of the Property;

(b) The location of the residential structure and its driveway will not significantly harm the economic viability of the Property for agricultural production; and

(c) Prior to the undertaking of construction of the Dwelling, Grantors shall provide written notice to the Grantee as to the location of the Dwelling on the Property.

(2) Grantors shall be permitted to maintain, repair and expand the Dwelling. In the event the Dwelling is destroyed or substantially damaged, GRANTORS may construct a replacement Dwelling, as improved, at the location of the Dwelling, or in an alternative location with written approval by the Township and by LFT. The construction, reconstruction or expansion of the Dwelling is subject to the impervious surface restrictions imposed by Article I, Paragraph 6.

(3) No other residential structures are permitted on the Property.

4. Any activity on or use of the Property inconsistent with the purpose of this Declaration is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(1) Institutional, industrial and commercial uses other than those uses described in Article I, Paragraphs 1 and 2.

(2) The commercial extraction of minerals by surface mining and the extraction and removal from the Property of topsoil. The extraction of subsurface or deep-mined minerals, including natural gas and oil, and the noncommercial extraction of minerals, including limestone, shale and other minerals for on-farm use, shall be permitted, but may occupy, at any time, no more than one percent (1%) of the total surface acreage.

(3) Use of the Property for the dumping, storage, processing or landfilling of nonagricultural solid or hazardous wastes generated off-site, excepting the use of organic nonagricultural solid waste generated off-site for fertilizer and tilth subject to the prior written approval of the Township and LFT.

(4) Commercial and/or nonpassive recreational development and use involving structures or extensive commitment of land resources (i.e. golf courses, racetracks, and similar uses). Passive recreational uses shall be defined as those recreational pursuits that do not leave evidence that the activity has taken place and/or require trails or allow trails to be created on the Property. Equine breeding and training facilities shall not be interpreted to be commercial recreational uses for the purposes of this paragraph.

(5) New dwellings and new residential uses except as permitted by Article I, Paragraph 3 above.

5. It is the intention of the Grantors to promote agricultural production on the Property. No subdivision of the Property shall be permitted. Notwithstanding the foregoing, this restriction shall not apply to lands transferred in connection with eminent domain proceedings or by deed in lieu of condemnation.

6. Impervious surface coverage shall be limited to 100,000 square feet. For purposes of this Paragraph 6, impervious surfaces shall be defined as any material which covers land which prohibits the percolation of stormwater directly into the soil, including, without limitation, buildings, structures without permanent foundations and the area covered by the roofs of nonpermanent structures.

7. Signs, billboards and outdoor advertising may not be displayed on the Property; provided, however, that signs, the combined area of which may not exceed 25 square feet, may be displayed to state only the name of the Property and the name and address of the occupant, to advertise an on-site activity permitted herein, and to advertise the Property for sale or rent.

8. Agricultural lands shall be managed in accordance with sound soil and water conservation practices in a manner which will not destroy or substantially and irretrievably diminish the productive capability of the Property. However, there shall be no limitations or prohibitions on any agricultural production or farming methods.

9. Grantors, the Township and LFT acknowledge that there are existing Pennsylvania laws and regulations governing agricultural operations, including, without limitation, accelerated soil erosion, nutrient management, the application of restricted-use pesticides and the application of treated municipal sewage sludge. These laws include, without limitation, the Pennsylvania Clean Streams Law (35 P.S. §§691.1 et seq.), the Nutrient Management Act (3 P.S. §§1707 et seq.), the Solid Waste Management Act of 1980, as amended (35 P.S. §6018.104(18)) and the regulations promulgated thereunder in Title 25 of the Pennsylvania Code, and the Pennsylvania Pesticide Control Act (3 P.S. §§111.21 et seq.). Grantors, their heirs, successors and assigns agree to conduct all agricultural operations on the Property in compliance with the above-mentioned laws, as amended and superceded, and the regulations promulgated thereunder, and such similar or related laws, statutes, ordinances and regulations which may be enacted from time to time.

10. The parties recognize that this Declaration cannot address every circumstance that may arise in the future, and the parties agree that the purpose of the Easement is to preserve the Property predominantly in its present condition, and to protect or enhance the Property's agricultural and open space values. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in this Article I and which is inconsistent with the purposes of the Easement or which materially threatens the purposes of the Easement is prohibited.

ARTICLE II. ENFORCEMENT OF RESTRICTIONS

1. If the Township or LFT determines that a violation of the terms of this Declaration has occurred or is threatened to occur, such party shall give notice to the

Grantors. The written notice shall specify the violation or threatened violation and demand action necessary to cure the violation, including but not limited to restoration of the Property injured to its prior condition in accordance with a plan approved by the Township and LFT, which approval shall not be unreasonably withheld.

2. The Township and LFT, their successors and assigns, shall have the right to enforce these restrictions by injunction and other appropriate proceedings in equity and at law. Grantors specifically acknowledge that the Township and LFT, their successors and assigns, shall have the right to require Grantors, their heirs, legal representatives and assigns, to restore the Property to its condition existing before the commission of any violation of this Declaration.

3. The Township shall have the right to refuse to grant any permit or approval for a use or structure which would violate the provisions of this Declaration.

4. Nothing contained in this Declaration shall be construed to entitle the Township or LFT to bring any action against Grantors, their heirs, legal representatives, and assigns, for any injury to or change in the condition of the Property resulting from causes beyond Grantors' control, including, without limitation, fire, flood, storm, and acts of trespassers that Grantors could not have reasonably anticipated or prevented, or from any prudent action taken by Grantors under emergency conditions to prevent, abate or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Declaration are violated by acts of trespassers that Grantors could not have reasonably anticipated or prevented, Grantors agree that the Township and/or LFT shall have the right to pursue enforcement actions against the responsible parties.

5. Any cost, except monitoring, notices and inspections, incurred by the Township and/or LFT in enforcing the terms of this Declaration against Grantors, including, without limitation, costs of suit and attorneys' fees, and any cost of restoration necessitated by Grantors' violation of the terms of this Declaration, shall be borne by Grantors.

6. This Declaration shall, upon recordation, constitute an acceptance by the Township and LFT of their right to enforce this Easement.

7. Forbearance by the Township or LFT to exercise its rights under this Declaration in the event of any breach of any term of this Declaration by Grantors shall not be deemed or construed to be a waiver by the Township or LFT of such term or of any subsequent breach of the same or any other term of this Declaration or of any of the Township's or LFT's rights under this Declaration. No delay or omission by the Township or LFT in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

ARTICLE III. GENERAL PROVISIONS

1. No right of public access is provided for, nor will result from, the recordation of these restrictions.

2. Representatives of the Township, its successors or assigns, and/or LFT, its successor or assigns, may enter upon the Property at reasonable times and in a reasonable manner for the purposes of inspection and enforcement of the terms of this Declaration; provided that, except in cases where the Township and LFT determine that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to Grantors.

3. The restrictions contained herein shall apply to the land as an open space and agricultural preservation easement in gross in perpetuity. The covenants, terms, conditions and restrictions of this Declaration shall be binding upon, and inure to the benefit of, the parties hereto and their respective legal representatives, heirs, successors and assigns and shall continue as a servitude running in perpetuity with the Property.

4. If circumstances arise in the future such as to render the purposes of this Declaration impossible to accomplish, this Declaration can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. Grantors have considered the possibility that the uses prohibited by the terms of this Declaration may become more economically valuable than permitted uses and that neighboring properties may be in the future put to such prohibited uses.

5. Upon written request by Grantors, the Township and/or LFT shall within thirty (30) days execute and deliver to Grantors, or to any party designated by Grantors, any document which certifies, to the best of the Township's and/or LFT's knowledge, Grantors' compliance with Grantors' obligations under this Declaration or which otherwise indicates the status of this Declaration. Such certification shall be limited to the condition of the Property as of the most recent inspection by the Township and/or LFT. If Grantors request a more current certification, the Township and/or LFT shall conduct an inspection within thirty (30) days after receiving Grantors' request for such inspection, at Grantors' expense.

6. If the Declaration is taken, in whole or in part, by the exercise of the power of eminent domain, LFT shall be entitled to compensation in accordance with applicable law. This Declaration constitutes a real property interest immediately vested in LFT which, for the purposes of Article III, Paragraph 6, the Grantors and LFT stipulate to have a fair market value determined by multiplying:

- (1) the fair market value of the Property at the time of sale, exchange or involuntary conversion, unencumbered by the Declaration (minus any increase in value after the date of this grant attributable to improvements) by
- (2) the ratio x/y , where x is the value of the Declaration as stated in the

Baseline Documentation and y is the value of the Property, unencumbered by the Declaration, as stated in the Baseline Documentation.

For the purposes of this Paragraph 6, the ratio in Paragraph 6, (2) shall remain constant. The provisions of this Paragraph 6 are illustrated by the following example. The example is for illustration purposes only.

Example: Assume that the fair market value of the Property, at the time of sale, exchange or involuntary conversion, unencumbered by the Declaration (minus any increase in value after the date of this grant attributable to improvements) is \$500. Furthermore, assume that the value of the Declaration at the time of the grant was \$10 and the value of the Property, unencumbered by the Declaration, at the time of the grant was \$100. Based on these assumptions, the ratio in Paragraph 6, (2) is 10/100. Therefore, the stipulated fair market value of the Declaration is \$50 and the LFT will be entitled to \$50 of the proceeds from the sale or exchange of the Property.

7. Grantors agree to incorporate the terms of this Declaration and the Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantors further agree to give written notice to the Township and to LFT of the transfer of any interest at least ten (10) days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Declaration and the Easement or limit their enforceability in any way.

8. Grantors shall hold harmless, indemnify and defend the Township, and its elected and appointed officials, officers, employees, and agents, and LFT, its officers, employees, and agents (collectively the "Indemnified Parties"), from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation reasonable attorneys' fees and costs of defense, arising from or in any way connected with: (a) a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, the Act of October 18, 1988 (P.L. 756, No. 108) known as the Hazardous Sites Cleanup Act, and statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials and (b) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, unless due to the negligence of an Indemnified Party and only that negligent party shall be deprived of this protection.

9. Nothing in this Declaration shall be construed as giving rise to any right or ability of the Township or LFT to exercise physical or managerial control over day-to-day operations of the Property, or any of Grantors' activities on the Property, or otherwise to become an operator with respect to the Property within the meaning of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

10. Grantors shall retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage and the payment, as and when due, of all real estate taxes.

11. Notwithstanding provisions hereof to the contrary, if any, Grantors shall be solely responsible for complying with all federal, state and local laws and regulations in connection with the conduct of any use of the Property or the erection of any structure permitted hereunder, and Grantors shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.

12. LFT shall record this Declaration in a timely fashion in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania, at the expense of LFT.

13. If any provision of this Declaration, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

14. The provisions of this Declaration shall not be deemed to interfere with, abrogate, annul, supersede or cancel any easements, covenants, restrictions or reservations contained in any deeds or other agreements affecting the Property.

15. Grantors are seized of the Property in fee simple title. Grantors have the right to grant and convey this Easement. The Property is free and clear of any and all liens and encumbrances except liens for taxes not yet due and payable and mortgage or deed of trust liens that are not subordinate to this Easement by virtue of any executed form of Joinder of Mortgagee attached hereto and incorporated herein.

16. If circumstances arise under which an amendment to or modification of this Declaration would be appropriate, Grantors, the Township and LFT are free to jointly amend this Declaration; provided that no amendment shall be allowed that will affect the qualification of this Declaration or the status of LFT under any applicable laws or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Declaration and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania.

17. This Declaration is transferable, but the Township and LFT agree that they will hold this Declaration exclusively for conservation purposes and that they will not transfer their rights and obligations under this Declaration except to an entity (a)

qualified, at the time of the subsequent transfer, as an eligible donee under then applicable state and federal statutes and regulations to hold and administer this Declaration, and (b) which has the commitment, resources and ability to monitor and enforce this Declaration so that the purposes of this Declaration shall be preserved and continued. The Township and LFT further agree to obtain as part of such a transfer the new entity's written commitment to monitor and enforce this Declaration.

18. It is the intent of the parties to this Declaration that the personal liability of Grantors for compliance with these restrictions, for restoration of the Property and for indemnification shall pass to subsequent title owners upon change in ownership of the Property, and such subsequent owners shall assume all personal liability for compliance with the provisions of this Declaration.

19. This Declaration is constructed with the intention of conforming with the requirements for conservation easements under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter.

TO HAVE AND TO HOLD the easements and rights set forth in this Declaration unto the Township and LFT, their successors and assigns, forever.

IN WITNESS WHEREOF, GRANTORS, THE TOWNSHIP AND LFT have executed this Declaration of Restriction of Development on the day and year first above written.

WITNESS:

| | |
|-------|--------------|
| _____ | _____ (SEAL) |
| _____ | _____ (SEAL) |

TOWNSHIP OF WARWICK
Lancaster County, Pennsylvania

Attest: _____

[TOWNSHIP SEAL]

By: _____
Chairman, Board of Supervisors

LANCASTER FARMLAND TRUST

By: _____
Chairman

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF LANCASTER)

On this _____ day of _____, 2007, before me, the subscriber, a notary public in and for the aforesaid state and county, came the above-named _____ and _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he/she/they executed the foregoing Declaration of Restriction of Development for the purposes contained therein.

WITNESS my hand and notarial seal the day and year aforesaid.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF LANCASTER)

On this, the _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of the Board of Supervisors of the Township of Warwick, Lancaster County, Pennsylvania, and that as such officer, being authorized to do so, executed the foregoing Declaration of Restriction of Development for the purposes therein contained by signing the name of such Township by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

Notary Public

My Commission Expires:

COMMONWEALTH OF PENNSYLVANIA)
) SS:
COUNTY OF LANCASTER)

On this, the _____ day of _____, 2007, before me, the undersigned officer, personally appeared _____, who acknowledged himself to be the Chairman of Lancaster Farmland Trust, a non-profit corporation, and that as such officer, being authorized to do so, executed the foregoing Declaration of Restriction of Development for the purposes therein contained by signing the name of Lancaster Farmland Trust by himself as such officer.

IN WITNESS WHEREOF, I set my hand and official seal.

Notary Public

My Commission Expires:

LANCASTER FARMLAND TRUST GRANT OF CONSERVATION EASEMENT

This Grant of Conservation Easement ("Easement") in the nature of a restriction on the use of land for the purpose of preserving productive agricultural land is made by and between _____, Address, City, Pennsylvania Zip ("GRANTOR") and **LANCASTER FARMLAND TRUST**, its successors, nominees or assigns, a qualified non-profit corporation created and organized under the laws of the Commonwealth of Pennsylvania, with its mailing address at 125 Lancaster Avenue, Strasburg, Pennsylvania 17579 ("GRANTEE").

WHEREAS, GRANTOR is the owner in fee of a farm located in _____, Lancaster County, Pennsylvania, being Account Number _____ and being land more fully described in a deed recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania in Record Book _____, Page _____ and in Exhibit "A" and Exhibit "B" attached hereto (the "Property"). The Property consists of *.** acres, more or less. ** dwelling units are presently situated on the Property; and

WHEREAS, the Pennsylvania General Assembly, in enacting the Conservation and Preservation Easements Act, has recognized the importance and significant public and economic benefits of conservation easements; and

WHEREAS, the Legislature of the Commonwealth of Pennsylvania ("Legislature") authorizes the Commonwealth of Pennsylvania and counties thereof, as well as non-profit conservancies, to preserve, acquire, or hold lands for open space uses, and to preserve land in or acquire land for open space uses, which specifically include farmland; and that actions pursuant to these purposes are for public health, safety, and general welfare of the citizens of the Commonwealth of Pennsylvania and for the promotion of sound land development by preserving suitable open spaces; and

WHEREAS, the Legislature has declared that public open space benefits result from the protection and conservation of farmland, including the protection of scenic areas for public visual enjoyment from public rights-of-way; that the conservation and protection of agricultural lands as valued natural and ecological resources provide needed open spaces for clean air, as well as for aesthetic purposes; and that public benefit will result from the conservation, protection, development and improvement of agricultural lands for the production of food and other agricultural products; and

WHEREAS, the Policy Plan of the Lancaster County Comprehensive Plan, adopted in 1999, sets forth county-wide community goals which include permanently preserving large areas of farmland; and

WHEREAS, the Property is zoned agriculture by the _____ Township Zoning Ordinance; and

WHEREAS, the _____ Township Zoning Ordinance, adopted in _____, sets forth the intended purpose of encouraging the preservation of the most productive farmland within the township as a valuable resource which is lost and not economically reclaimable once it is developed for building purposes; and

WHEREAS, GRANTEE has declared that the preservation of prime agricultural land is vital to the public interest of Lancaster County, the region, and the nation through its economic, environmental, cultural, and productive benefits; and

WHEREAS, GRANTORS, as owners in fee of the Property, intend to identify and preserve the agricultural and open space values of the Property; and

WHEREAS, the Property contains open space including approximately _____ () acres of tillable farmland; and

WHEREAS, the Property contains greater than _____ (_____) feet of frontage along the _____ side of _____ Road and the public traveling this road is afforded scenic views of the agricultural lands, whose beauty and open character shall be protected by this Easement; and

WHEREAS, _____ percent (%) of the Property consists of prime agricultural soils, Chester Loam (CbB), and _____ percent (%) consists of soils of statewide importance, Glenelg silt loam (GbC), according to the Lancaster County Soil Survey published by the Soil Conservation Service; and

WHEREAS, the specific agricultural and open space values of the Property are documented in an inventory of relevant features of the Property, dated _____ on file at the offices of the GRANTEE and incorporated herein and made a part hereof by this reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement; and

WHEREAS, the value of this Easement is defrayed by consideration to the GRANTORS of _____ Dollars (\$,000), and GRANTORS believe said consideration is below the current fair market value of the Easement, as stated in the Baseline Documentation. The GRANTORS intend that the difference between the consideration and current fair market value of the Easement be a charitable gift to the GRANTEE; and

WHEREAS, GRANTORS desire and intend to transfer those rights and responsibilities of protection and preservation of the Property to the GRANTEE in perpetuity; and

WHEREAS, GRANTORS desire and intend that the agricultural and open space character of the Property be preserved, protected and maintained and further desire to conserve and protect the Property from soil erosion, water pollution, and other man-induced disturbance of the Property and its resources; and

WHEREAS, GRANTEE is a qualified conservation organization under Pennsylvania Acts and the Internal Revenue Code, whose primary purposes are the preservation and protection of land in its agricultural and open space condition; and

WHEREAS, GRANTEE agrees by acquiring this Easement to honor and defend the intentions of GRANTORS stated herein and to preserve and protect in perpetuity the agricultural

and open space values of the Property for the benefit of this generation and the generations to come; and

NOW THEREFORE, in consideration of the foregoing and intending to be legally bound, the GRANTORS grant and convey to GRANTEE an easement on the Property for which the purpose is to assure that the Property's present agricultural, scenic, natural, wildlife habitat, open space and water resource values will be retained forever and to prevent any use that will impair the aforementioned values of the Property (the "purpose"). To carry out this purpose the following deed restrictions are recorded.

I. COVENANTS, TERMS, CONDITIONS AND RESTRICTIONS

With the preceding Background paragraphs incorporated by reference and intending to be legally bound, GRANTORS declare, make known, and covenant for themselves, their heirs, successors, and assigns, that the Property shall be restricted to agricultural and directly associated uses as hereafter defined. However, more restrictive applicable state and local laws shall prevail in the determination of permitted uses of land subject to these restrictions.

1. Agricultural uses of land are defined for the purposes of this instrument as:

The use of land for the production of plants and animals useful to man, including, without limitation, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; other livestock and fowl and livestock and fowl products, including the breeding and grazing of any or all such animals; bees and apiary products; fruits and vegetables of all kinds; nursery, floral and greenhouse products; tobacco; silviculture; aquaculture; and the primary processing and storage of the agricultural production of the Property.

2. Directly associated uses are defined as customary, supportive and agriculturally compatible uses of farm properties in Lancaster County, Pennsylvania, and are limited to the following:

- a. The direct sale to the public of agricultural products produced principally on the Property;
- b. Any and all structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Property;
- c. Structures associated with the production of energy for use principally on the Property including wind, solar, hydroelectric, methane, wood, alcohol fuel, and fossil fuel systems and structures and facilities for the storage and treatment of animal waste produced on the Property;
- d. The provision of services or production and sale, by persons in residence, of agricultural goods, services, supplies and repairs and/or the conduct of on-farm businesses and traditional trades and the production and sale of home occupation goods, arts and crafts, so long as:
 - (1) these uses remain incidental to the agricultural and open space character of the Property, and
 - (2) the total impervious surface coverage of the Property for structure(s) associated with the uses permitted under this Paragraph 2.d. does not exceed six thousand (6,000) square feet, provided the six thousand (6,000) square feet limitation shall not apply to the use of structures existing on the Property at the time of this grant, as stated in the Baseline Documentation, for a use permitted under this Paragraph 2.d.;
- e. Structures and facilities associated with irrigation, farm pond impoundment, and soil and

water conservation on the Property;

- f. The accommodation of tourists and visitors within principally residential and/or agricultural structures on the Property, so long as this use is incidental to the agricultural and open space character of the Property; and
- g. Other similar uses considered upon written request to the GRANTEE.

All structures permitted under this Paragraph 2 are subject to the restrictions imposed by Article I, Paragraph 5. Furthermore, all structures permitted under Article I, Paragraph 2.d. are subject to the further restrictions set forth in such Paragraph.

3. Dwellings permitted on the Property. GRANTORS and GRANTEE acknowledge that ____
() ____-family detached dwelling unit ("Existing Dwelling") currently exists on the

Property.

- a. GRANTORS reserve the right to construct ____ () single-family detached dwelling ("Farmhouse Dwelling") on the Property. Such Farmhouse Dwelling shall be utilized by members of the owner's or operator's family and may be constructed on either subdivided portion of the Property that will result after a subdivision under Article I, Paragraph 4.a.
- b. GRANTORS also reserve the right to construct ____ () additional single-family detached dwellings ("Reserved Dwellings"). To accommodate each Reserved Dwelling, GRANTORS may subdivide the Property, in accordance with Article I, Paragraph 4.b.
- c. Prior to the undertaking of construction of either the Farmhouse Dwelling or either Reserved Dwelling, GRANTORS shall provide written notice to the GRANTEE as to the location of the Farmhouse Dwelling or Reserved Dwellings on the Property.
- d. GRANTORS shall hereafter be permitted to maintain, repair and expand the Existing Dwelling, and the Farmhouse Dwelling so that multiple generations of the owner's or operator's family may live and work together on the Property.
- e. In the event the Existing Dwelling, Farmhouse Dwelling or either Reserved Dwelling is destroyed or substantially damaged, GRANTORS may construct a replacement Existing Dwelling, Farmhouse Dwelling or Reserved Dwelling, as improved, at the location of the Existing Dwelling, Farmhouse Dwelling or Reserved Dwelling, or in an alternative location with written approval by GRANTEE.
- f. The construction, reconstruction or expansion of the Existing Dwelling, Farmhouse Dwelling or Reserved Dwellings, as permitted under this Paragraph 3, is subject to the impervious surface restrictions imposed by Article I, Paragraph 5.
- g. Other residential uses of the Property are prohibited.

4. Subdivision of the Property. It is the intention of the GRANTORS to promote agricultural production. No subdivisions of the Property shall be permitted except as provided for in Article I, Paragraphs 4.a. and 4.b.

- a. **General Subdivision.** This Paragraph 4.a. shall permit only one (1) subdivision of the Property subject to the following criteria:

- (1) Each subdivided portion of the Property shall consist of more than ten (10) acres, and
- (2) All terms set forth in this Easement shall continue to apply in all respects to the subdivided portions of the Property.

GRANTORS shall obtain the written approval of GRANTEE prior to filing any sketch, preliminary plan or final plan (as the case may be) for such subdivision. GRANTEE

expressly reserves the right to refuse such written approval if GRANTEE determines (in GRANTEE's sole and absolute discretion) that the subdivision of the Property is inconsistent with or potentially detrimental to the expressed purposes of this Easement.

- b. Subdivision of Reserved Dwellings.** In addition to the subdivision permitted by Article I, Paragraph 4.a., the Property may be subdivided to provide for a lot for each Reserved Dwelling which the GRANTORS may construct under Article I, Paragraph 3. The lot size for each lot shall not be in excess of one (1) acre. Furthermore, in the event GRANTORS desire to subdivide the Property to provide for a lot for either Reserved Dwelling, GRANTORS shall provide written notice to GRANTEE of GRANTORS' intent to subdivide the Property, and shall provide written notice to GRANTEE when GRANTORS have obtained all necessary final municipal approvals for such subdivision.

In the event that the one (1) acre maximum lot size set forth herein conflicts with the minimum lot size requirement set forth in any then applicable state, county or municipal statute, ordinance or regulation, GRANTORS shall obtain the written approval of GRANTEE prior to filing any sketch, preliminary plan or final plan (as the case may be) for a subdivision otherwise permitted under this paragraph 4.b. GRANTEE expressly reserves the right to refuse such written approval if GRANTEE determines (in GRANTEE's sole and absolute discretion) that the subdivision of the Property to provide for lots in excess of one (1) acre is inconsistent with or potentially detrimental to the expressed purposes of this Easement.

- c. Subdivision Plan Notes.** It is the intent of the GRANTORS and GRANTEE that the rights reserved by the GRANTORS under Article I, Paragraph 3 and the impervious surface restrictions imposed by Article I, Paragraphs 2.d and 5 shall, after a subdivision under Article I, Paragraph 4.a. or 4.b., continue to apply to the Property as a whole and not independently to each subdivided portion of the Property. Therefore, GRANTORS and GRANTEE agree that:
- (1) The subdivision plan notes for any subdivision under Article I, Paragraph 4.a. shall specify which subdivided portion retains the right to construct any Reserved Dwelling or Farmhouse Dwelling that has not yet been constructed;
 - (2) The subdivision plan notes for any subdivision under Article I, Paragraph 4.a. or 4.b. shall specify how the impervious surface restrictions under Article I, Paragraphs 2.d. and 5 shall be apportioned among the subdivided portions of the Property, and
 - (3) The subdivision plan notes for any subdivision under Article I, Paragraph 4.a. or 4.b. shall state that the subdivided portions of the Property shall be subject to the Easement and shall contain the recording reference to this Easement.

- 5. Maximum Impervious Surface Coverage.** The total surface coverage (excluding walkways, driveways, parking areas, etc.) of the Property by impervious surfaces for existing and all other permitted structures constructed hereafter shall not exceed one hundred thousand (100,000) square feet. In addition to the one hundred thousand (100,000) square feet of impervious surface coverage permitted above, the total surface coverage of the Property by impervious surfaces for all walkways, driveways, parking areas, etc. shall not exceed forty thousand (40,000) square feet. For purposes of this Paragraph 5, impervious surfaces shall be defined as any material which covers land which prohibits the percolation of stormwater directly into the soil, including, without limitation, buildings, structures without permanent foundations and the area covered by the roofs of nonpermanent structures.

6. **Non-Agricultural Uses.** Institutional, industrial, and commercial uses other than those uses described in Article I, Paragraphs 1 and 2 are prohibited.
7. **Recreation.** Non-commercial, passive recreational uses (e.g., hiking, hunting and fishing, picnicking, birdwatching, cross-country skiing) are permitted on the Property. Passive recreational uses shall be defined as those recreational pursuits that do not leave evidence that the activity has taken place and/or require trails or allow trails to be created on the Property. Non-passive and/or commercial recreational development and use of the Property, including, without limitation, uses involving structures or extensive commitment of land resources (e.g., golf courses, racetracks for uses other than equestrian use, tennis clubs, baseball, soccer and other ball fields, and similar uses), shall be prohibited. Equine breeding and training facilities shall be interpreted to be non-commercial, passive recreational uses for purposes of this Paragraph 7.
8. **Removal of Natural Resources.** The extraction of minerals by surface mining and/or the removal of topsoil from the Property by methods including, without limitation, bulk or sod-farming practices shall be prohibited. The extraction of subsurface or deep-mined minerals, including, without limitation, gas and oil, shall be permitted; provided, however, that (a) the extraction of such subsurface or deep-mined minerals may occupy, at any time, no more than one percent (1%) of the total surface acreage of the Property and (b) GRANTORS shall promptly repair any damage to the Property caused by the extraction of subsurface or deep mined minerals and replace the surface of the ground to the state that existed immediately prior to the mining so as not to affect the agricultural viability and uses of the Property.
9. **Hazardous Wastes.** Use of the Property for dumping, storage, processing or landfill of solid or hazardous wastes produced on-site or off-site is prohibited, except when such solid wastes are used as an integral part of the farm operation and the use receives prior written approval by the GRANTEE.
10. **Signs and Advertising.** Signs, billboards, and outdoor advertising structures may not be displayed on the Property; however, signs, the combined area of which may not exceed twenty-five (25) square feet, may be displayed to state only the name of the Property and the name and address of the occupant, to advertise an on-site activity permitted herein, and to advertise the Property for sale or rent.
11. **Utilities.** Notwithstanding any other provision of this Easement, the voluntary sale or leasing of any portion of the Property for the purpose of construction and installation of above-ground public utility systems, including, without limitation, sewerage pumping stations and free-standing communication towers shall be permitted, so long as the total square footage of the Property sold or leased for these uses does not exceed ten thousand (10,000) square feet and the impervious surface coverage restrictions imposed by Article I, Paragraph 5, as to the Property as a whole, are not violated. Any structures constructed on the Property and related to uses permitted by this Paragraph 11 shall be dismantled and removed from the Property within two years of non-use and/or non-functioning status.
12. **Laws Governing Agricultural Production.** GRANTORS and GRANTEE acknowledge that there are existing Pennsylvania laws and regulations governing agricultural operations, including, without limitation, accelerated soil erosion, nutrient management, the application of

restricted-use pesticides and the application of treated municipal sewage sludge. These laws include, without limitation, the Pennsylvania Clean Streams Law (35 P.S. §§691.1 et seq.), the Nutrient Management Act (3 P.S. §§1707 et seq.), the Solid Waste Management Act of 1980, as amended (35 P.S. §6018.104(18)) and the regulations promulgated thereunder in Title 25 of the Pennsylvania Code, and the Pennsylvania Pesticide Control Act (3 P.S. §§111.21 et seq.). GRANTORS, their heirs, successors and assigns agree to conduct all agricultural operations on the Property in compliance with the above-mentioned laws, as amended and superceded, and the regulations promulgated thereunder, and such similar or related laws, statutes, ordinances and regulations which may be enacted from time to time. All agricultural production on the Property shall be conducted in a manner that will not destroy or substantially and irretrievably diminish the productive capability of the Property.

II. GENERAL PROVISIONS

1. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.
2. **Rights of GRANTEE.** To accomplish the purpose of this Easement the following rights are conveyed to GRANTEE by this Easement:
 - a. To preserve and protect the conservation values of the Property;
 - b. To enter upon the Property at reasonable times in order to monitor compliance with and otherwise enforce the terms of this Easement in accordance with Article II, Paragraph 3; provided that, except in cases where GRANTEE determines that immediate entry is required to prevent, terminate, or mitigate a violation of this Easement, such entry shall be upon prior reasonable notice to GRANTORS, and GRANTEE shall not in any case unreasonably interfere with GRANTORS' use and quiet enjoyment of the Property; and
 - c. To prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to the remedies set forth in Article II, Paragraph 3.
3. **GRANTEE's Remedies.**
 - a. **Notice of Violation; Corrective Action.** If GRANTEE determines that a violation of the terms of this Easement has occurred or is threatened, GRANTEE shall give written notice to GRANTORS of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by GRANTEE.
 - b. **Injunctive Relief.** The GRANTEE, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, without limitation, the right to require the GRANTORS to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement.
 - c. **Costs of Enforcement.** All reasonable costs incurred by GRANTEE in enforcing the terms of this Easement against GRANTORS, including, without limitation, costs of suit and attorneys' fees, and any cost of restoration necessitated by GRANTORS' violation of the terms of this Easement shall be borne by the GRANTORS; provided, however, that if



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For the purposes of this Paragraph 6.b., the ratio in Paragraph 6.b.(2) shall remain constant. The provisions of this Paragraph 6.b. are illustrated by the following example. The example is for illustration purposes only.

Example: Assume that the fair market value of the Property, at the time of sale, exchange or involuntary conversion, unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) is \$500. Furthermore, assume that the value of the Easement at the time of the grant was \$10 and the value of the Property, unencumbered by the Easement, at the time of the grant was \$100. Based on these assumptions, the ratio in Paragraph 6.b.(2) is 10/100. Therefore, the stipulated fair market value of the Easement is \$50 and the GRANTEE will be entitled to \$50 of the proceeds from the sale or exchange of the Property.

- c. **Change in Economic Condition.** In making this grant, GRANTORS have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. GRANTORS believe that any such changes in the use of neighboring properties will increase the benefit to the public of the continuation of this Easement, and GRANTORS and GRANTEE intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement pursuant to Article II, Paragraph 6.a.
 - d. **Condemnation.** If all or any part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, whether by public, corporate, or other authority, so as to terminate this Easement, in whole or in part, GRANTORS and GRANTEE shall act jointly to recover the full value of the interests in the Property subject to the taking or the purchase in lieu thereof and all direct or incidental damages resulting therefrom. All expenses reasonably incurred by GRANTORS and GRANTEE in connection with the taking or purchase in lieu thereof shall be paid out of the amount recovered. GRANTEE's share of the balance of the amount recovered shall be determined by multiplying that balance by the ratio set forth in Article II, Paragraph 6.b.(2).
7. **Application of Proceeds.** GRANTEE shall use any proceeds received under the circumstances described in Article II, Paragraph 6 in a manner consistent with its conservation purposes, which are exemplified by this Easement.
8. **Subsequent Transfers of Property.** GRANTORS and each subsequent owner of the Property shall incorporate the terms of this Easement by reference in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. GRANTORS and future owners further agree to give written notice to GRANTEE of the transfer of any interest at least ten (10) days prior to the date of such transfer. The failure of GRANTORS or any future owner of the Property to perform any act required by this Paragraph 8 shall not impair the validity of this Easement or limit its enforceability in any way; provided, however, nothing contained herein shall be deemed to require the joinder of the GRANTEE in any instrument by which GRANTORS transfer an interest in the Property.
9. **Hold Harmless.** GRANTORS and their heirs, legal representatives, successors and assigns shall hold harmless, indemnify and defend GRANTEE and its members, directors, officers, employees, agents and contractors and their respective heirs, legal representatives, successors

and assigns (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees arising from or in any way connected with (a) the result of a violation or alleged violation of, the enforcement of and/or any contribution action relating to any state or federal environmental statute or regulation including, without limitation, the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101 et seq.) and statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials; (b) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition or other matter related to or occurring on or about the Property, regardless of costs, unless due solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection; (c) the presence or release in, on, from, or about the Property, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties and only that negligent party shall be deprived of this protection; and (d) the obligations, covenants, representations, and warranties of Article II, Paragraphs 10 and 11.

- 10. Costs, Legal Requirements, and Liabilities.** GRANTORS, their heirs, legal representatives, successors and assigns, retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage and payment, as and when due, of all real estate taxes.
- 11. Control.** Nothing in this Easement shall be construed as giving rise, in the absence of a judicial decree, to any right or ability in GRANTEE to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9602 et seq.) and the Hazardous Sites Cleanup Act (35 P.S. §§ 6020.101 et seq.).
- 12. Recordation.** GRANTEE shall record this instrument in a timely fashion in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania and may re-record it at any time as may be required to preserve its rights in this Easement.
- 13. Estoppel Certificates.** Upon request by GRANTORS, GRANTEE shall within thirty (30) days execute and deliver to GRANTORS, or to any party designated by GRANTORS, any document, including an estoppel certificate, which certifies, to the best of GRANTEE's knowledge, GRANTORS' compliance with any obligation of GRANTORS contained in this Easement or otherwise evidencing the status of this Easement. Such certification shall be limited to the condition of the Property as of GRANTEE's most recent inspection. If GRANTORS request more current documentation, GRANTEE shall conduct an inspection and provide a certification, at GRANTORS' expense, within thirty (30) days of receipt of GRANTORS' written request therefor.
- 14. Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, GRANTORS and GRANTEE are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this

Easement or the status of GRANTEE under any applicable laws or Section 170(h) of the Internal Revenue Code, and any amendment shall be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall be recorded in the Office of the Recorder of Deeds of Lancaster County, Pennsylvania.

- 15. Transfer of Easement.** This Easement is transferable, but GRANTEE agrees that it will hold this Easement exclusively for conservation purposes and that it will not transfer its rights and obligations under this Easement except to an entity (a) qualified, at the time of the subsequent transfer, as an eligible donee under then applicable state and federal statutes and regulations to hold and administer this Easement, and (b) which has the commitment, resources and ability to monitor and enforce this Easement so that the purposes of this Easement shall be preserved and continued. GRANTEE further agrees to obtain as part of such a transfer the new entity's written commitment to monitor and enforce this Easement.
- 16. Termination of Obligations.** It is the intent of the parties to this Easement that the personal liability of GRANTORS for compliance with these restrictions, for restoration of the Property and for indemnification shall pass to subsequent title owners upon change in ownership of the Property, and such subsequent owners shall assume all personal liability for compliance with the provisions of this Easement.
- 17. Merger of Tracts.** The GRANTORS, their heirs, successors and assigns, hereby surrender their right that the subject land may ever be subdivided, except in conformity with the terms hereof. The subject land is hereby deemed to be one (1) parcel that must be conveyed as one (1) parcel (except for any allowed subdivision as set forth above) even though described in Exhibit "A" as two (2) tracts in two (2) separate legal descriptions. This covenant shall run with the land and be enforceable by the GRANTEE hereto and its successors and assigns.
- 18. Captions.** The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- 19. Severability.** If any provision of this Easement, or the application thereof to any person or circumstances, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- 20. Construction.** This Easement is constructed with the intention of conforming with the requirements for conservation easements under the Pennsylvania Conservation and Preservation Easements Act, Act 29 of 2001, and as amended thereafter.

TO HAVE AND TO HOLD unto GRANTEE, its successors and assigns, forever.

IN WITNESS WHEREOF, the GRANTORS have set their hand and seal this _____ day of _____, 2007.

WITNESS:

Grantor

Grantor

COMMONWEALTH OF PENNSYLVANIA)

) SS:

COUNTY OF LANCASTER)

ON THIS, the _____ day of _____, 2007, before me, the undersigned Notary Public, personally appeared

known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public



Chairman

COMMONWEALTH OF PENNSYLVANIA)

) SS:

COUNTY OF LANCASTER

who acknowledged himself to be the Chairman of Lancaster Farmland Trust, a Pennsylvania non-profit corporation, and that he as such Chairman, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as Chairman.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal.

Notary Public

Exhibit “A”

Exhibit “B”

(Site Plan of Property)

DEED OF AGRICULTURAL CONSERVATION EASEMENT
TO THE COMMONWEALTH OF PENNSYLVANIA IN PERPETUITY

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT, made this
day of , 20 , by and between (hereinafter, "Grantor") and the Commonwealth
of Pennsylvania (hereinafter "Grantee") is made pursuant to the Agricultural Area Security Law
(P.L. 128, No. 43) as amended (hereinafter "Act").

WHEREAS, Grantor is the sole owner of all that certain land situate in Township,
County, Pennsylvania more particularly described in Exhibit "A" attached hereto
consisting of acres and all buildings and improvements erected thereon ("the subject
land"); and

WHEREAS; the State Agricultural Land Preservation Board has determined to purchase
an agricultural conservation easement in the subject land pursuant to the Act; and

WHEREAS; the Agricultural Land Preservation Board of County, Pennsylvania
has recommended that the Commonwealth purchase an agricultural conservation easement in the
subject land pursuant to the Act; and

WHEREAS; all holders of liens or other encumbrances upon the subject land have agreed
to release or subordinate their interests in the subject land to this Deed of Agricultural
Conservation Easement and to refrain from any action inconsistent with its purpose.

NOW THEREFORE; in consideration of the sum of (\$) dollars, the receipt
and sufficiency of which is hereby acknowledged, Grantor does voluntarily grant, bargain and
sell, and convey to the Grantee, its successors and assigns and the Grantee voluntarily accepts, an
agricultural conservation easement in the subject land, under and subject to the Act and the
following terms and conditions:

1. Permitted Acts - During the term of the agricultural conservation easement conveyed herein, the subject land shall be used solely for the production for commercial purposes of crops, livestock and livestock products, including the processing or retail marketing of such crops, livestock or livestock products if more than fifty percent of such processed or merchandised products are produced on the subject land (hereinafter "agricultural production"). For purpose of this Deed, "crops, livestock and livestock products" include, but are not limited to:
 - (a) Field crops, including corn, wheat, oats, rye, barley, hay, potatoes and dry beans;
 - (b) Fruits, including apples, peaches, grapes, cherries and berries;
 - (c) Vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions and mushrooms;
 - (d) Horticultural specialties, including nursery stock ornamental shrubs, ornamental trees and flowers;
 - (e) Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs;
 - (f) Timber, wood and other wood products derived from trees; and
 - (g) Aquatic plants and animals and their by-products.

Except as permitted in this Deed, neither Grantor nor his agents, heirs, executors, administrators, successors and assigns, nor any person, partnership, corporation or other entity claiming title under or through Grantor, or their agents, shall suffer, permit, or perform any activity on the subject land other than agricultural production.

2. Construction of Buildings and Other Structures - The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:
 - (a) The erection of fences for agricultural production and protection of watercourses such as lakes, streams, springs and reservoirs is permitted.
 - (b) The construction of one additional residential structure is permitted if;
 - (i) The construction and use of the residential structure is limited to providing housing for persons employed in farming the subject land on a seasonal or full-time basis,
 - (ii) No other residential structure has been constructed on the restricted land at any time since the delivery of the Deed,

- (iii) The residential structure and its curtilage occupy no more than two acres of the subject land, and
 - (iv) The location of the residential structure and its driveway will not significantly harm the economic viability of the subject land for agricultural production.
 - (c) The construction or use of any building or other structure for agricultural production is permitted.
 - (d) The replacement of a residential structure existing on the restricted land on the date of the granting of the easement is permitted.
3. Subdivision - The subject land may be subdivided if subdividing will not harm the economic viability of the subject land for agricultural production. If the subject land is subdivided, the Deeds to all of the subdivided parcels shall state on which of the subdivided parcels the residential structure permitted by this Deed may be constructed. Deeds to all other parcels shall recite that no additional residential structure is permitted.

SUBJECT, ALSO, to the Subdivision Guidelines of the County of _____ Agricultural Land Preservation Program, as approved by the State Agricultural Land Preservation Board on _____, and recorded in the office of the Recorder of Deeds for the County of _____ in Deed Book & Page/Document I.D.# _____, in accordance with the Guidelines and/or Regulations of the said State Board, which County Subdivision Guidelines are incorporated herein by reference and are made a part hereof.

4. Utilities - The granting of rights-of-way by the Grantor, his heirs, executors, administrators, successors and assigns, or any person, partnership, corporation or other entity claiming title under or through Grantor in and through the subject land for the installation, transportation, or use of, lines for water, sewage, electric, telephone, coal by underground mining methods, gas, oil or oil products is permitted. The term "granting of rights-of-way" includes the right to construct or install such lines. The construction or installation of utility lines other than of the type stated in this paragraph is prohibited on the subject land.
5. Mining - The granting of leases, assignments or other conveyances or the issuing of permits, licenses or other authorization for the exploration, development, storage or removal of coal by underground mining methods, oil and gas by the owner of the subject land or the owner of the underlying coal by underground mining methods, oil and gas or the owner of the rights to develop the underlying coal by underground mining methods, oil and gas, or the development of appurtenant facilities related to the removal of coal by underground mining methods, oil or gas development or activities incident to the removal or development of such minerals is permitted.
6. Rural Enterprises - Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted.

7. Soil and Water Conservation - All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated every ten years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board the conservation plan shall require that:
- (i) The use of the land for growing sod, nursery stock ornamental trees, and shrubs does not remove excessive soil from the subject land, and
 - (ii) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production.
8. Responsibilities of Grantor Not Affected - Except as specified herein, this Deed does not impose any legal or other responsibility on the Grantee, its successors or assigns. Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the subject land and all improvements erected thereon. Grantor shall continue to be solely responsible for the maintenance of the subject land and all improvements erected thereon. Grantor acknowledges that Grantee has no knowledge or notice of any hazardous waste stored on or under the subject land. Grantee's exercise or failure to exercise any right conferred by the agricultural conservation easement shall not be deemed to be management or control of activities on the subject land for purposes of enforcement of the Act of October 18, 1988, (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act.

Grantor, his heirs, executors, administrators, successors or assigns agree to hold harmless, indemnify and defend Grantee, its successors or assigns from and against all liabilities and expenses arising from or in any way connected with all claims, damages, losses, costs or expenses, including reasonable attorneys fees, resulting from a violation or alleged violation of any State or Federal environmental statute or regulation including, but not limited to, statutes or regulations concerning the storage or disposal of hazardous or toxic chemicals or materials.

9. Enforcement - Annually, Grantee, its successors, assigns or designees shall have the right to enter the subject land for the purpose of inspecting to determine whether the provisions of this Deed are being observed. Written notice of such annual inspection shall be mailed to the Grantor, his heirs, executors, administrators, successors or assigns at least ten (10) days prior to such inspection. The annual inspection shall be conducted between the hours of 8 a.m. and 5 p.m. on a weekday that is not a legal holiday recognized by the Commonwealth of Pennsylvania or at a date and time agreeable to the county and the landowner.

Grantee, its successors, assigns or designees shall also have the right to inspect the subject land at any time, without prior notice, if Grantee has reasonable cause to believe the provisions of this Deed have been or are being violated.

Grantor acknowledges that any violation of the terms of this Deed shall entitle Grantee, its successors, assigns or designees to obtain an injunction against such violation from a court of competent jurisdiction along with an order requiring Grantor, his heirs, executors, administrators, successors or assigns to restore the subject land to the condition it was in prior to the violation, and recover any costs or damages incurred including reasonable attorney's fees. Such relief may be sought jointly, severally, or serially.

10. Duration of Easement - The agricultural conservation easement created by this Deed shall be a covenant running with the land and shall be effective in perpetuity. Every provision of this Deed applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.
11. Conveyance or Transfer of the Subject Land - Grantor, his heirs, executors, administrators, successors or assigns, and any person, partnership, corporation, or other entity claiming title under or through Grantor, shall notify Grantee in writing of any conveyance or transfer of ownership of the subject land. Such notification shall set forth the name, address and telephone number of the Grantor and the party or parties to whom ownership of the subject land has been conveyed or transferred. This obligation shall apply to any change in ownership of the subject land.

The restrictions set forth in this Deed shall be included in any Deed purporting to convey or transfer an ownership interest in the subject land.

12. Applicability - Every provision of this Deed applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.
13. Interpretation - This Deed shall be interpreted under the laws of the Commonwealth of Pennsylvania. For purposes of interpretation, no party to this Deed shall be considered to be the drafter of the Deed. All provisions of this Deed are intended, and shall be interpreted, to effectuate the intent of the General Assembly of the Commonwealth of Pennsylvania as expressed in Section 2 of the Act.

To have and to hold this Deed of Agricultural Conservation Easement unto the Grantees, its successors and assigns in perpetuity.

AND the Grantor, for himself, his heirs, executors, administrators, successors and assigns does specially warrant the agricultural conservation easement hereby granted.

IN WITNESS WHEREOF, the undersigned have duly executed this Deed on the day first written above.

GRANTOR

Witness: _____[Seal]

_____ [Seal]

_____ [Seal]

_____ [Seal]

ACKNOWLEDGMENT

COUNTY OF

SS:

COMMONWEALTH OF PENNSYLVANIA

On this _____ day of _____, _____, before me, the subscriber, a Notary Public for the Commonwealth of Pennsylvania, residing in the City of _____ personally appeared the above named _____ and _____, and in due form of law acknowledged the above Deed of Agricultural Conservation Easement to be their voluntary act and deed, and desired the same to be recorded as such.

WITNESS my hand and Notarial Seal the day and year aforesaid.

Notary Public

My Commission expires:

Prepared by:

Name:

Address:

Telephone:

Return to:

Name:

Address:

Tax Parcel(s):

CONSERVATION EASEMENT

THIS CONSERVATION EASEMENT dated as of _____ (the "Easement Date") is by and between _____ ("the undersigned Owner or Owners") and _____ (the "Holder").

Article I. Background

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:

Municipality:

County:

Parcel Identifier:

State: Pennsylvania

Acreage:

1.02 Conservation Plan

Attached as Exhibit "B" is a survey or other graphic depiction of the Property (the "Conservation Plan") showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area and the Minimal Protection Area.

1.03 Conservation Objectives

This Conservation Easement provides different levels of protection for the areas shown on the Conservation Plan so as to achieve the goals and resource protection objectives (collectively, the "Conservation Objectives") for the Property set forth below:

(a) Resource Protection Objectives

- (i) **Water Resources.** This Conservation Easement seeks to protect the quality of water resources within or in the vicinity of the Property by implementing measures that help protect water resources from sediment and non-point pollution and promote the infiltration, detention and natural filtration of storm water. Protecting water resources also helps preserve habitat for Native Species dependent on water resources.
- (ii) **Forest and Woodland Resources.** This Conservation Easement seeks to promote biological diversity and to perpetuate and foster the growth of a healthy and unfragmented forest or woodland. Features to be protected include Native Species; continuous canopy with multi-tiered understory of trees, shrubs, wildflowers and grasses; natural habitat, breeding sites and corridors for the migration of birds and wildlife. Species other than Native Species often negatively affect the survival of Native Species and disrupt the functioning of ecosystems. Trees store carbon, offsetting the harmful by-products of burning fossil fuels and trap air pollution particulates, cleaning air.
- (iii) **Wildlife Resources.** This Conservation Easement seeks to protect large intact areas of wildlife habitat and connect patches of wildlife habitat. Large habitat patches typically support greater biodiversity and can maintain more ecosystem processes than small patches. Large intact habitats

allow larger, healthier populations of a species to persist; thus, increasing the chance of survival over time. Fragmentation of large habitats often decreases the connectivity of systems, negatively affecting the movement of species necessary for fulfilling nutritional or reproductive requirements.

- (iv) **Scenic Resources.** This Conservation Easement seeks to preserve the relationship of scenic resources within the Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Property.
- (v) **Sustainable Land Uses.** This Conservation Easement seeks to ensure that Agriculture, Forestry, and other uses, to the extent that they are permitted, are conducted in a manner that will neither diminish the biological integrity of the Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes. Agricultural and Forestry activities are regulated so as to protect soils of high productivity; to ensure future availability for Sustainable uses; and to minimize adverse effects of Agricultural and Forestry uses on water resources described in the Conservation Objectives.
- (vi) **Compatible Land Use and Development.** Certain areas have been sited within the Property to accommodate existing and future development taking into account the entirety of the natural potential of the Property as well as its scenic resources.

(b) Goals

- (i) **Highest Protection Area.** This Conservation Easement seeks to protect natural resources within the Highest Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly Native Species.
- (ii) **Standard Protection Area.** This Conservation Easement seeks to promote good stewardship of the Standard Protection Area so that its soil and other natural resources will always be able to support Sustainable Agriculture or Sustainable Forestry.
- (iii) **Minimal Protection Area.** This Conservation Easement seeks to promote compatible land use and development within the Minimal Protection Area so that it will be available for a wide variety of activities, uses and Additional Improvements subject to the minimal constraints necessary to achieve Conservation Objectives outside the Minimal Protection Area.

1.04 Baseline Documentation

As of the Easement Date, the undersigned Owner or Owners and Holder have signed for identification purposes the report (the "Baseline Documentation"), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Conservation Plan and other information sufficient to identify on the ground the protection areas identified in this Article; that describes Existing Improvements; that identifies the conservation resources of the Property described in the Conservation Objectives; and that includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date.

1.05 Structure of Conservation Easement

This Conservation Easement is divided into eight Articles. Articles II, III and IV contain the restrictive covenants imposed by the undersigned Owner or Owners on the Property. In Article V the undersigned Owner or Owners grant to Holder and Beneficiaries (if any) certain rights to enforce the restrictive covenants in perpetuity against all Owners of the Property ("Enforcement Rights"). Article V also contains the procedure for Review applicable to those items permitted subject to Review under Articles II, III and IV. Article VI details the procedures for exercise of Enforcement Rights. Article VII contains provisions generally applicable to both Owners and Holder. The last Article entitled "Glossary" contains definitions of capitalized terms used in this Conservation Easement and not defined in this Article I.

1.06 Federal Tax Items

(a) Qualified Conservation Contribution

The rights granted to Holder under this Conservation Easement have been donated in whole or in part by the undersigned Owner or Owners. This Conservation Easement is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a qualified organization (a "Qualified Organization") as defined in §1.170(A-14(c)(1) of the Regulations.

(b) Public Benefit

The undersigned Owner or Owners have entered into this Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(2)(i) of the Regulations). In addition to the public benefits

described in the Conservation Objectives, the Baseline Documentation identifies public policy statements and other factual information supporting the significant public benefit of this Conservation Easement.

(c) Mineral Interests

No Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of any such interest is prohibited and Holder has the right to prohibit the exercise of any such right or interest if granted in violation of this provision.

(d) Notice Required under Regulations

To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Conservation Easement, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests associated with the Property.

(e) Property Right

In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that the grant of this Conservation Easement gives rise to a property right, immediately vested in the Holder, that entitles the Holder to compensation upon extinguishment of the easement. The fair market value of the property right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that this Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the "Proportionate Value"). If the Proportionate Value exceeds the compensation otherwise payable to Holder under Article VI, Holder is entitled to payment of the Proportionate Value. Holder must use any funds received by application of this provision in a manner consistent with the Conservation Objectives.

(f) Qualification under §2031(c) of the Code

To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, and only to the extent such activity is not otherwise prohibited or limited under this Conservation Easement, Owners agree that commercial recreational uses are not permitted within the Property.

(g) Acknowledgment of Donation

Except for such monetary consideration (if any) as is set forth in this Article, Holder acknowledges that no goods or services were received in consideration of the grant of this Conservation Easement.

1.07 Beneficiaries

As of the Easement Date, no Beneficiaries of this Conservation Easement have been identified by the undersigned Owner or Owners and Holder.

1.08 Consideration

The undersigned Owner or Owners acknowledge receipt of the sum of \$1.00 in consideration of the grant of this Conservation Easement to Holder. The consideration has been paid in full to the undersigned Owner or Owners as of the Easement Date.

Article II. Subdivision

2.01 Prohibition

No Subdivision of the Property is permitted except as set forth below.

2.02 Permitted Subdivision

The following Subdivisions are permitted:

(a) Lot Line Change

Subdivision resulting in (i) no additional Lot; and (ii) no material decrease in the acreage of the Property; or (iii) subject to Review, other change in the boundary of the Property or any Lot not creating any additional Lot.

(b) Transfer to Qualified Organization

Subdivision to permit the transfer of a portion of the Property to a Qualified Organization for use by the Qualified Organization for park, nature preserve, public trail or other conservation purposes consistent with and in furtherance of Conservation Objectives.

(c) Lease

Transfer of possession (but not ownership) of land by lease for Sustainable Agriculture or Sustainable Forestry purposes in compliance with applicable requirements of this Conservation Easement.

2.03 Subdivision Requirements

(a) Establishment of Lots; Allocations.

Prior to transfer of a Lot following a Subdivision, Owners must (i) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of the each Lot created or reconfigured by the Subdivision; (ii) mark the boundaries of each Lot with permanent markers; and (iii) allocate in the deed of transfer of a Lot created by the Subdivision those limitations applicable to more than one Lot under this Conservation Easement. This information will become part of the Baseline Documentation incorporated into this Conservation Easement.

(b) Amendment

Holder may require Owners to execute an Amendment of this Conservation Easement to reflect changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

Article III. Improvements

3.01 Prohibition

Improvements within the Property are prohibited except as permitted below in this Article.

3.02 Permitted Within Highest Protection Area

The following Improvements are permitted within the Highest Protection Area:

(a) Existing Improvements

Any Existing Improvement may be maintained, repaired and replaced in its existing location. Existing Improvements may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.

(b) Existing Agreements

Improvements that Owners are required to allow under Existing Agreements are permitted.

(c) Additional Improvements

The following Additional Improvements are permitted:

- (i) Fences, walls and gates.
- (ii) Regulatory Signs.
- (iii) Habitat enhancement devices such as birdhouses and bat houses.
- (iv) Trails covered (if at all) by wood chips, gravel, or other highly porous surface.
- (v) Subject to Review, footbridges, stream crossing structures and stream access structures.
- (vi) Subject to Review, Access Drives and Utility Improvements to service Improvements within the Property but only if there is no other reasonably feasible means to provide access and utility services to the Property.

3.03 Permitted Within Standard Protection Area

The following Improvements are permitted within the Standard Protection Area:

(a) Permitted under Preceding Sections

Any Improvement permitted under a preceding section of this Article is permitted.

(b) Additional Improvements

The following Additional Improvements are permitted:

- (i) Agricultural Improvements.

- (ii) Utility Improvements and Site Improvements reasonably required for activities and uses permitted within the Standard Protection Area.
- (c) **Limitations on Additional Improvements**
Additional Improvements permitted within the Standard Protection Area are further limited as follows:
 - (i) The Height of Improvements must not exceed ___ feet except for Utility Improvements (such as windmills) providing alternative sources of energy approved by the Holder after Review.
 - (ii) Impervious Coverage must not exceed a limit of ___ square feet per roofed Improvement. Impervious Coverage must not exceed a limit of ___ square feet in the aggregate for all Improvements within the Standard Protection Area. The limitation on aggregate Impervious Coverage excludes Impervious Coverage associated with ponds and Access Drives.
 - (iii) Access Drives and farm lanes are limited to ___ feet in width and are further limited, in the aggregate, to ___ feet in length.
 - (iv) Ponds are limited, in the aggregate, to ___ square feet of Impervious Coverage.
 - (v) In addition to Regulatory Signs, signs are limited to a maximum of ___ square feet per sign and ___ square feet in the aggregate for all signs within the Property.
 - (vi) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground or where used as a means of providing alternative sources of energy (such as wind or solar). The following Utility Improvements are not permitted unless Holder, without any obligation to do so, approves after Review: (A) exterior storage tanks for petroleum or other hazardous or toxic substances (other than reasonable amounts of oil, petroleum or propane gas for uses within the Property permitted under this Conservation Easement); and (B) Utility Improvements servicing Improvements not within the Property.

3.04 Permitted Within Minimal Protection Area

The following Improvements are permitted within Minimal Protection Area:

- (a) **Permitted under Preceding Sections**
Any Improvement permitted under a preceding section of this Article is permitted.
- (b) **Additional Improvements**
The following Additional Improvements are permitted:
 - (i) Residential Improvements.
 - (ii) Utility Improvements and Site Improvements servicing activities, uses or Improvements permitted within the Property. Signs remain limited as set forth for the Standard Protection Area.
- (c) **Limitations**
 - (i) Not more than ___ Improvements (whether an Existing Improvement or Additional Improvement) may contain Dwelling Units (if any) permitted under Article IV.
 - (ii) Additional Improvements are subject to a Height limitation of ___ feet.

Article IV. Activities; Uses; Disturbance of Resources

4.01 Prohibition

Activities and uses are limited to those permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives.

4.02 Density Issues under Applicable Law

- (a) **Promoting Development outside the Property**
Neither the Property nor the grant of this Conservation Easement may be used under Applicable Law to increase density or intensity of use or otherwise promote the development of other lands outside the Property.
- (b) **Transferable Development Rights**
Owners may not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under Applicable Law.

4.03 Permitted Within Highest Protection Area

The following activities and uses are permitted within the Highest Protection Area:

(a) Existing Agreements

Activities, uses and Construction that Owners are required to allow under Existing Agreements.

(b) Disturbance of Resources

- (i) Cutting trees, Construction or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons, property or health of Native Species on or about the Property. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
- (ii) Planting a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.
- (iii) Removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of and maintain access to Improvements within the Highest Protection Area with restoration as soon as reasonably feasible by replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.
- (iv) Vehicular use (including motorized vehicular use) in connection with an activity permitted within the Highest Protection Area or otherwise in the case of emergency.
- (v) Except within Wet Areas, cutting trees for use on the Property not to exceed ____ cords per year.
- (vi) Subject to Review, removal of vegetation to accommodate replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials.
- (vii) Other resource management activities that Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Objectives and are conducted in accordance with the Resource Management Plan approved for that activity after Review.

(c) Release and Disposal

- (i) Application of substances (other than manure) to promote health and growth of vegetation in accordance with manufacturer's recommendations and Applicable Law. Within Wet Areas only substances approved for aquatic use are permitted.
- (ii) Piling of brush and other vegetation to the extent reasonably necessary to accommodate an activity permitted within the Highest Protection Area under this Conservation Easement.

(d) Recreational and Educational Uses

Activities that do not require Improvements other than those permitted within the Highest Protection Area and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (i) walking, horseback riding on trails, cross-country skiing on trails, bird watching, nature study, fishing and hunting; and (ii) educational or scientific activities consistent with and in furtherance of the Conservation Objectives.

4.04 Permitted Within Standard Protection Area

The following activities and uses are permitted within the Standard Protection Area:

(a) Permitted under Preceding Sections

Activities and uses permitted under preceding sections of this Article are permitted within the Standard Protection Area.

(b) Agricultural and Forestry Uses; Disturbance of Resources

- (i) Uses and activities that maintain continuous vegetative cover (other than Invasive Species) such as pasture and grazing use, meadow, turf or lawn.
- (ii) Sustainable Agricultural uses that do not maintain continuous vegetative cover (such as plowing, tilling, planting and harvesting field crops, equestrian, horticultural and nursery use) if conducted in accordance with a Soil Conservation Plan furnished to Holder.
- (iii) Removal of vegetation and other Construction activities reasonably required to accommodate Improvements permitted within the Standard Protection Area.

- (iv) Sustainable Forestry uses in accordance with a Resource Management Plan approved after Review. Woodland Areas within the Standard Protection Area may not be used for or converted to Agricultural uses unless Holder, without any obligation to do so, approves after Review.
 - (v) Subject to Review, Sustainable Agricultural uses within Steep Slope Areas if conducted in accordance with a Soil Conservation Plan implementing measures to minimize adverse effects on water resources such as a conservation tillage system, conservation cover, conservation cropping sequence, contour farming or cross slope farming.
 - (vi) Subject to Review, Agricultural uses that involve removal of soil from the Property (such as sod farming and ball-and-burlap nursery or tree-farming uses) if conducted in accordance with a Resource Management Plan providing for, among other features, a soil replenishment program that will qualify the activity as a Sustainable Agricultural use.
 - (vii) Subject to Review, removal or impoundment of water for activities and uses permitted within the Standard Protection Area under this Conservation Easement but not for sale or transfer outside the Property.
- (c) Release and Disposal**
- (i) Piling and composting of biodegradable materials originating from the Property in furtherance of Agricultural Uses within the Property permitted under this Article. Manure piles must be located so as not to create run-off into Wet Areas.
 - (ii) Subject to Review, disposal of sanitary sewage effluent from Improvements permitted under Article III if not reasonably feasible to confine such disposal to Minimal Protection Area.
- (d) Recreational and Open-Space Uses**
- Non-commercial recreational and open-space uses that do not require Improvements other than those permitted within the Standard Protection Area; do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and do not require vehicular use other than for resource management purposes.

4.05 Permitted Within Minimal Protection Area

The following activities and uses are permitted within the Minimal Protection Area:

- (a) Permitted under Preceding Sections**
- Activities and uses permitted under preceding sections of this Article are permitted within the Minimal Protection Area.
- (b) Disturbance of Resources**
- Disturbance of resources within the Minimal Protection Area is permitted for residential landscaping purposes and other purposes reasonably related to uses permitted within the Minimal Protection Area. Introduction of Invasive Species remains prohibited.
- (c) Release and Disposal**
- (i) Disposal of sanitary sewage effluent from Improvements permitted under this Article.
 - (ii) Other piling of materials and non-containerized disposal of substances and materials but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Minimal Protection and Area; and does not adversely affect Conservation Objectives applicable to the Minimal Protection Area including those pertaining to scenic views.
- (d) Residential and Other Uses**
- (i) Residential use is permitted but limited to not more than ____ Dwelling Units.
 - (ii) Any occupation, activity or use that is wholly contained within an enclosed Improvement permitted under Article III is permitted. Subject to Review, exterior vehicular parking and signage accessory to such uses may be permitted by Holder.

Article V. Rights and Duties of Holder and Beneficiaries

5.01 Grant to Holder

(a) Grant in Perpetuity

By signing this Conservation Easement and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a conservation servitude over the Property in perpetuity for the purpose of administering and enforcing the restrictions and limitations set forth in Articles II, III, and IV in furtherance of the Conservation Objectives.

(b) Superior to all Liens

The undersigned Owner or Owners warrant to Holder that the Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Owners have obtained and attached to this Conservation Easement as an Exhibit the legally binding subordination of any Liens affecting the Property as of the Easement Date.

5.02 Rights and Duties of Holder

The grant to Holder under the preceding section gives Holder the right and duty to perform the following tasks:

(a) Enforcement

To enforce the terms of this Conservation Easement in accordance with the provisions of Article VI including, in addition to other remedies, the right to enter the Property to investigate a suspected, alleged or threatened violation.

(b) Inspection

To enter and inspect the Property for compliance with the requirements of this Conservation Easement upon reasonable notice, in a reasonable manner and at reasonable times.

(c) Review

To exercise rights of Review in accordance with the requirements of this Article as and when required under applicable provisions of this Conservation Easement.

(d) Interpretation

To interpret the terms of this Conservation Easement, apply the terms of this Conservation Easement to factual conditions on or about the Property, respond to requests for information from Persons having an interest in this Conservation Easement or the Property (such as requests for a certification of compliance), and apply the terms of this Conservation Easement to changes occurring or proposed within the Property.

5.03 Other Rights of Holder

The grant to Holder under this Article also permits Holder, without any obligation to do so, to exercise the following rights:

(a) Amendment

To enter into an Amendment with Owners if Holder determines that the Amendment is consistent with and in furtherance of the Conservation Objectives; will not result in any private benefit prohibited under the Code; and otherwise conforms to Holder's policy with respect to Amendments.

(b) Signs

To install one or more signs within the Property identifying the interest of Holder or one or more Beneficiaries in this Conservation Easement. Any signs installed by Holder do not reduce the number or size of signs permitted to Owners under Article III. Signs are to be of the customary size installed by Holder or Beneficiary, as the case may be, and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owners.

5.04 Review

The following provisions are incorporated into any provision of this Conservation Easement that is subject to Review:

(a) Notice to Holder

At least thirty (30) days before Owners begin or allow any Construction, activity or use that is subject to Review, Owners must notify Holder of the change including with the notice such information as is

reasonably sufficient to comply with Review Requirements and otherwise describe the change and its potential impact on natural resources within the Property.

(b) Notice to Owners

Within thirty (30) days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (i) accept Owners' proposal in whole or in part; (ii) reject Owners' proposal in whole or in part; (iii) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (iv) reject Owners' notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (iii), commencement of the proposed Improvement, activity, use or Construction constitutes acceptance by Owners of all conditions set forth in Holder's notice.

(c) Failure to Notify

If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.

(d) Standard of Reasonableness

Holder's approval will not be unreasonably withheld; however, it is not unreasonable for Holder to disapprove a proposal that may adversely affect natural resources described in the Conservation Objectives or that is otherwise inconsistent with maintenance or attainment of Conservation Objectives.

5.05 Reimbursement

Owners must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Conservation Easement other than monitoring in the ordinary course. These costs and expenses include the allocated costs of employees of Holder.

Article VI. Violation; Remedies

6.01 Breach of Duty

(a) Failure to Enforce

If Holder fails to enforce this Conservation Easement, or ceases to qualify as a Qualified Organization, then the rights and duties of Holder under this Conservation may be (i) exercised by a Beneficiary or a Qualified Organization designated by a Beneficiary; and/or (ii) transferred to another Qualified Organization by a court of competent jurisdiction.

(b) Transferee

The transferee must be a Qualified Organization and must commit to hold this Conservation Easement exclusively for conservation purposes as defined in the Code.

6.02 Violation of Conservation Easement

If Holder determines that this Conservation Easement is being or has been violated or that a violation is threatened or imminent then the provisions of this Section will apply:

(a) Notice

Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Property damaged or altered as a result of the violation.

(b) Opportunity to Cure

Owners' cure period expires thirty (30) days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:

- (i) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;
- (ii) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation;
- (iii) Owners commence to cure within the initial thirty (30) day period; and
- (iv) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.

(c) Imminent Harm

No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Property described in the Conservation Objectives.

6.03 Remedies

Upon expiration of the cure period (if any) described in the preceding Section, Holder may do any one or more of the following:

(a) Injunctive Relief

Seek injunctive relief to specifically enforce the terms of this Conservation Easement; to restrain present or future violations of this Conservation Easement; and/or to compel restoration of resources destroyed or altered as a result of the violation.

(b) Civil Action

Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Conservation Easement together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.

(c) Self-Help

Enter the Property to prevent or mitigate further damage to or alteration of natural resources of the Property identified in the Conservation Objectives.

6.04 Modification or Termination

If this Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

(a) Compensatory Damages

Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred.

(b) Restitution

Holder or any Beneficiary is entitled to recover from the Person seeking the modification or termination, (i) restitution of amounts paid for this Conservation Easement (if any) and any other sums invested in the Property for the benefit of the public as a result of rights granted under this Conservation Easement plus (ii) reimbursement of Litigation Expenses as if a violation had occurred.

6.05 Remedies Cumulative

The description of Holder's remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

6.06 No Waiver

If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with this Conservation Easement or a waiver of Holder's rights to exercise its rights or remedies at another time.

6.07 No Fault of Owners

Holder will waive its right to reimbursement under this Article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

6.08 Multiple Owners; Multiple Lots

If different Owners own Lots within the Property, only the Owners of the Lot in violation will be held responsible for the violation.

6.09 Multiple Owners; Single Lot

If more than one Owner owns the Lot in violation of this Conservation Easement, the Owners of the Lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

6.10 Continuing Liability

If a Lot subject to this Conservation Easement is transferred while a violation remains uncured, the transferor Owners remain liable for the violation jointly and severally with the transferee Owners. This provision does not apply if Holder has issued a certificate of compliance evidencing no violations within thirty (30) days prior to the transfer. It is the responsibility of the Owners to request a certificate of compliance to verify whether violations exist as of the date of transfer.

Article VII. Miscellaneous

7.01 Notices

(a) Requirements

Each Person giving any notice pursuant to this Conservation Easement must give the notice in writing and must use one of the following methods of delivery: (i) personal delivery; (ii) certified mail, return receipt requested and postage prepaid; or (iii) nationally recognized overnight courier, with all fees prepaid.

(b) Address for Notices

Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

7.02 Governing Law

The laws of the Commonwealth of Pennsylvania govern this Conservation Easement.

7.03 Assignment and Transfer

Neither Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Conservation Easement voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this Section is void.

(a) By Holder

Holder may assign its rights and duties under this Conservation Easement, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Conservation Easement. The assigning Holder must deliver the Baseline Documentation to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Conservation Easement to another Qualified Organization if Holder becomes the Owner of the Property.

(b) By Owners

This Conservation Easement is a servitude running with the land binding upon the undersigned Owners and, upon recordation in the Public Records, all subsequent Owners of the Property or any portion of the Property are bound by its terms whether or not the Owners had actual notice of this Conservation Easement and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Conservation Easement.

7.04 Binding Agreement

Subject to the restrictions on assignment and transfer set forth in the preceding Section, this Conservation Easement binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

7.05 No Other Beneficiaries

This Conservation Easement does not confer any Enforcement Rights or other remedies upon any Person other than Owners, Holder and the Beneficiaries (if any) specifically named in this Conservation Easement.

Owners of Lots within or adjoining the Property are not beneficiaries of this Conservation Easement and, accordingly, have no right of approval or joinder in any Amendment other than an Amendment applicable to the Lot owned by such Owners. This provision does not preclude Owners or other Persons having an interest in this Conservation Easement from petitioning a court of competent jurisdiction to exercise remedies available under this Conservation Easement for breach of duty by Holder.

7.06 Amendments; Waivers

No Amendment or waiver of any provision of this Conservation Easement or consent to any departure by Owners from the terms of this Conservation Easement is effective unless the Amendment, waiver or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given.

7.07 Severability

If any provision of this Conservation Easement is determined to be invalid, illegal or unenforceable, the remaining provisions of this Conservation Easement remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive any provision of Applicable Law that renders any provision of this Conservation Easement invalid, illegal or unenforceable in any respect.

7.08 Counterparts

This Conservation Easement may be signed in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one agreement.

7.09 Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to (a) any breach or violation of this Conservation Easement or Applicable Law; and (b) damage to property or personal injury (including death) occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

7.10 Guides to Interpretation

(a) Captions

Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Conservation Easement are for convenience only and do not constitute a part of this Conservation Easement.

(b) Glossary

If any term defined in the Glossary is not used in this Conservation Easement, the defined term is to be disregarded as surplus material.

(c) Other Terms

- (i) The word "including" means "including but not limited to".
- (ii) The word "must" is obligatory; the word "may" is permissive and does not imply any obligation.

(d) Conservation and Preservation Easements Act

This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Conservation Easements Act.

(e) Restatement of Servitudes

This Conservation Easement is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of Servitudes.

7.11 Entire Agreement

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Conservation Easement. The terms of this Conservation Easement supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Conservation Easement.

7.12 Incorporation by Reference

Each Exhibit attached to this Conservation Easement is incorporated into this Conservation Easement by this reference. The Baseline Documentation (whether or not attached to this Conservation Easement) is incorporated into this Conservation Easement by this reference.

7.13 Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the requirements of the Conservation Easements Act:

NOTICE: This Conservation Easement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.

Article VIII. Glossary

8.01 Access Drive(s)

Roads or drives providing access to and from Improvements or Minimal Protection Areas and public rights-of-way.

8.02 Additional Improvements

All buildings, structures, facilities and other improvements within the Property other than Existing Improvements. The term Additional Improvements includes Agricultural Improvements, Residential Improvements, Utility Improvements and Site Improvements.

8.03 Agricultural Improvements

Improvements used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage buildings, feeding and irrigation facilities.

8.04 Agricultural or Agriculture

Any one or more of the following and the leasing of land for any of these purposes:

(a) Farming

- (i) Production of vegetables, fruits, seeds, mushrooms, nuts and nursery crops (including trees) for sale.
- (ii) Production of poultry, livestock and their products for sale.
- (iii) Production of field crops, hay or pasture.
- (iv) Production of sod to be removed and planted elsewhere.

(b) Equestrian

Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders.

8.05 Amendment

An amendment, modification or supplement to this Conservation Easement signed by Owners and Holder and recorded in the Public Records.

8.06 Applicable Law

Any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Property or this Conservation Easement as amended through the applicable date of reference.

8.07 Beneficiary

Any governmental entity or Qualified Organization that is specifically named as a Beneficiary of this Conservation Easement under Article I.

8.08 Best Management Practices

A series of guidelines or minimum standards (sometimes referred to as BMP's) recommended by federal, state and/or county resource management agencies for proper application of farming and forestry operations, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats. Examples of resource management agencies issuing pertinent BMP's as of the Easement Date are: the Natural Resource Conservation Service of the United States Department of Agriculture (with respect to soil resources); the Pennsylvania Department of Environmental Protection (with respect to soil erosion, sedimentation and water resources) and the following sources of BMP's with respect to forest and woodland management: the Forest Stewardship Council principles and criteria, Sustainable Forestry Initiative standards, Forest Stewardship Plan requirements, American Tree Farm standards and Best Management Practices for Pennsylvania Forests.

8.09 Code

The Internal Revenue Code of 1986, as amended through the applicable date of reference.

8.10 Conservation Easements Act

The Pennsylvania Conservation and Preservation Easements Act, the act of June 22, 2001 (P.L. 390, No. 29) (32 P.S. §§5051-5059) as amended through the applicable date of reference.

8.11 Construction

Any demolition, construction, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

8.12 Default Rate

An annual rate of interest equal at all times to two percent (2%) above the “prime rate” announced from time to time in *The Wall Street Journal*.

8.13 Dwelling Unit

Use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

8.14 Existing Agreements

Easements and other servitudes affecting the Property prior to the Easement Date and running to the benefit of utility service providers and other Persons that constitute legally binding servitudes prior in right to this Conservation Easement.

8.15 Existing Improvements

Improvements located on, above or under the Property as of the Easement Date as identified in the Baseline Documentation.

8.16 Existing Lots

Lots existing under Applicable Law as of the Easement Date.

8.17 Forestry

Planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat and other Conservation Objectives.

8.18 Height

The vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

8.19 Impervious Coverage

The aggregate area of all surfaces that are not capable of supporting vegetation within the applicable area of reference. Included in Impervious Coverage are the footprints (including roofs, decks, stairs and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake); bedrock and naturally occurring stone and gravel; and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

8.20 Improvement

Any Existing Improvement or Additional Improvement.

8.21 Indemnified Parties

Holder, each Beneficiary (if any) and their respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

8.22 Invasive Species

A plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases

of uncertainty, publications such as “Plant Invaders of the Mid-Atlantic Natural Areas”, by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.

8.23 Lien

Any mortgage, lien or other encumbrance securing the payment of money.

8.24 Litigation Expense

Any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Conservation Easement including in each case, attorneys’ fees, other professionals’ fees and disbursements.

8.25 Losses

Any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

8.26 Lot

A unit, lot or parcel of real property separated or transferable for separate ownership or lease under Applicable Law.

8.27 Market Value

The fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

8.28 Native Species

A plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is native.

8.29 Owners

The undersigned Owner or Owners and all Persons after them who hold an interest in the Property.

8.30 Person

An individual, organization, trust or other entity.

8.31 Public Records

The public records of the office for the recording of deeds in and for the county in which the Property is located.

8.32 Qualified Organization

A governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a Qualified Organization under the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.

8.33 Regulations

The provisions of C.F.R. §1.170A-14 as amended through the applicable date of reference.

8.34 Regulatory Signs

Signs (not exceeding one square foot each) to control access to the Property or for informational, directional or interpretive purposes.

8.35 Residential Improvements

Dwellings and Improvements accessory to residential uses such as garage, swimming pool, pool house, tennis court and children’s play facilities.

8.36 Resource Management Plan

A record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Objectives during certain

operations potentially affecting natural resources protected under this Conservation Easement. The Resource Management Plan (sometimes referred to as the "RMP") includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate) and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

8.37 Review

Review and approval of Holder under the procedure described in Article V.

8.38 Review Requirements

Collectively, any plans, specifications or information required for approval of the Subdivision, activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Conservation Easement either as an Exhibit or as part of the Baseline Documentation or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

8.39 Site Improvements

Unenclosed Improvements such as driveways, walkways, boardwalks, storm water management facilities, bridges, parking areas and other pavements, lighting fixtures, signs, fences, walls, gates, man-made ponds, berms and landscaping treatments.

8.40 Soil Conservation Plan

A plan for soil conservation and/or sedimentation and erosion control that meets the requirements of Applicable Law.

8.41 Steep Slope Areas

Areas greater than one acre having a slope greater than 15%.

8.42 Subdivision

Any transfer of an Existing Lot into separate ownership; any change in the boundary of the Property or any Lot within the Property; and any creation of a unit, lot or parcel of real property for separate use or ownership by any means including by lease or by implementing the condominium form of ownership.

8.43 Sustainable

Land management practices that provide goods and services from an ecosystem without degradation of biodiversity and resource values at the site and without a decline in the yield of goods and services over time.

8.44 Utility Improvements

Improvements for the reception, storage or transmission of water, sewage, electricity, gas and telecommunications or other sources of power.

8.45 Wet Areas

Areas within 100-feet beyond the edge of watercourses, springs, wetlands and non-impounded standing water.

8.46 Woodland Areas

Area(s) within the Property described as "wooded" or "forested" in the Baseline Documentation", or if not wooded or forested as of the Easement Date, are designated as successional woodland areas on the Conservation Plan.

(Sample Conservation Easement)
(Source: Pennsylvania Land Trust Association)

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this Conservation Easement as of the Easement Date.

Witness/Attest:

Owner's Name: _____

Owner's Name: _____

[NAME OF HOLDER]

By: _____

Name: _____

Title: _____

This document is based on the model Pennsylvania Conservation Easement (9/26/2007 edition) provided by the Pennsylvania Land Trust Association.

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised to reflect specific circumstances under the guidance of legal counsel.

(Sample Conservation Easement)
(Source: Pennsylvania Land Trust Association)

COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF _____ :

ON THIS DAY _____, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

COMMONWEALTH OF PENNSYLVANIA :

SS

COUNTY OF _____ :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

APPLICATION FOR TRANSFER AND USE OF TRANSFERABLE DEVELOPMENT RIGHTS

Manheim Township File Number: _____
(For Township Use Only)

Date of Receipt/Filing: _____
(For Township Use Only)

The undersigned hereby applies for approval under Section 2405A of the Manheim Township Zoning Ordinance to transfer, sever, and/or use transferable development rights as follows (mark one):

- _____ Transfer rights to a tract of land within the receiving area to which the rights shall be permanently attached.
- _____ Transfer rights to Manheim Township
- _____ Transfer rights which are being severed from the sending tract to the owner of the sending tract.
- _____ Transfer rights which are being severed from the sending tract to another person in gross.

Name of Applicant/Transferor: _____

Address: _____ Phone Number: _____

Name of Property Owner(s) to acquire the TDRs (if applicable and if different from Applicant): _____

Address: _____ Phone Number: _____

Number of TDRs to be transferred: _____

If this Application is to transfer rights to a tract of land within the receiving area and is in connection with a proposed development (the "Project"), please provide the following information in support thereof:

Plan Name: _____

Plan Number: _____ Plan Date: _____

Project Location: _____

Municipality (if any portion of Project is in a municipality other than Manheim Township): _____

Total Acreage: _____

Source of Title (Deed Recording Reference): _____

Is the Project presently a separate lot of record? _____ yes _____ no

If the answer to the previous question is no, will the Project be subdivided from a larger tract of land? _____ yes _____ no

Firm that Prepared the Plan for the Project: _____

Engineer/Consultant's Name for the Project: _____

Address: _____ Phone Number: _____

Has the Plan been submitted to the Lancaster County Planning Commission?
_____ yes _____ no

If this Application concerns development rights to be transferred to a tract of land within the receiving area, please indicate the manner in which TDRs will be used (mark the applicable receiving area/use):

- ☐ Receiving Area Without Bonus Density Overlay
- ☐ Receiving Area With Bonus Density Overlay
- ☐ Cluster Development

Manner in which TDRs will be acquired (mark all applicable sources):

- ☐ From the owner of land in Manheim Township's sending area (i.e. Agricultural Zone) for TDRs
- ☐ From the owner of TDRs.
- ☐ From Manheim Township
- ☐ From Lancaster Farmland Trust
- ☐ From both Manheim Township and Lancaster Farmland Trust

Name of person who or entity which is the legal owner of the sending tract: _____

Address: _____

Phone Number: _____

Have any of the development rights attributable to the sending tract been reserved or assigned to some person or entity other than the legal owner of the sending tract?

_____ yes _____ no

If the answer to the previous question is yes, please provide the name of such person/entity: _____

Address: _____

Phone Number: _____

Has the sending tract previously been preserved in whole or in part by a conservation easement or similar easement granted to the Lancaster Farmland Trust, the Lancaster County Agricultural Preserve Board or any other entity? _____ yes _____ no.

If the answer to the preceding question is yes, please provide details of the previous preservation: _____

The undersigned hereby represents that, to the best of the undersigned's knowledge and belief, all information listed above is and all application materials and additional information submitted with this Application are true, correct, and complete.

Date: _____

Signature of Applicant/Transferor

Signature of Transferee (if TDRs are to be transferred to a receiving tract)

Application Materials

Along with this Application form, the following shall be submitted, if applicable:

- 1) The name and address of the person or entity which will hold title to the land to which the TDRs will be transferred and attached.
- 2) A copy of the current deed for the land from which the TDRs will be severed and/or transferred.
- 3) A copy of the current deed for the land to which the TDRs will be transferred and attached.
- 4) If applicable, the date by which Applicant anticipates the final plan for the Project will be recorded.
- 5) The Lancaster County Tax Account Number for the land from which the TDRs will be severed and/or transferred.

- 6) The Lancaster County Tax Account Number for the land to which the TDRs will be transferred and attached.
- 7) A metes and bounds description of the receiving tract to which the TDRs will be transferred and a plot plan or survey thereof, showing total acreage of the receiving tract, the maximum number of dwelling units permitted without the use of TDRs, the maximum number of dwelling units permitted with the use of TDRs, and the actual number of TDRs proposed to be transferred to the receiving tract.
- 8) A title search of the receiving area to which the TDRs will be conveyed.
- 9) A sketch plan prepared in accordance with the Manheim Township Subdivision and Land Development Ordinance and the underlying zoning district regulations to determine the base density of the property to be developed.
- 10) A preliminary subdivision and/or land development plan of the proposed development using the transferable development rights prepared in accordance with the Manheim Township Subdivision and Land Development Ordinance. The preliminary plan must indicate the base density of the property, the proposed density of the development, the number of additional development rights transferred or to be transferred to the property, whether the tract to be developed is located within a bonus density overlay, and whether the proposed development will be a cluster development.
- 11) A title search of the tract from which the transferable development rights will be transferred.
- 12) If the development rights which shall be used by the developer have previously been apportioned to and severed from the sending tract, a copy of the Deed of Transferable Development Rights which has been recorded in the Office of the Recorder of Deeds indicating the number of development rights available and a title search demonstrating that such development rights are still held by such person and setting forth all liens affecting them.
- 13) An agreement of sale for the development rights between the owner of the tract for which development rights have been requested to be apportioned and severed or the owner of development rights which have been previously severed from a tract in the sending area as evidenced by a recorded Deed of Transferable Development Rights and the owner of the tract proposed to be developed.
- 14) A metes and bounds description of the property of the owner of the land from which the rights will be transferred and a plot plan or survey thereof, showing the total acreage of the selling owner's property, areas of land or portions thereof subject to easements in favor of governmental agencies, utilities, and non-profit corporations, land restricted against development by covenant, easement or deed

of restriction, and land utilized for nonagricultural use. If the development rights have previously been apportioned to and severed from a tract in the sending area, a copy of the recorded Deed of Transferable Development Rights shall be submitted.

- 15) If the agreement of sale for development rights entails or will entail less than an entire parcel in the sending area, the portion of the parcel from which the development rights are to be transferred shall be clearly identified on a plan of the entire parcel, drawn to scale, the accuracy of which shall be satisfactory to the Township. Such plan shall also include a notation of (i) the number of development rights applicable to the entire parcel, (ii) the number of development rights applicable to the identified portion of the parcel from which the development rights are to be transferred, (iii) the number of development rights which remain available to the remaining portion of the parcel, and (iv) the percentage of prime agricultural soils on the identified portion of the parcel from which the development rights are to be transferred.
- 16) If the agreement of sale for development rights would entail less than the entire number of development rights represented by an existing recorded Deed of Transferable Development Rights, the Applicant shall indicate the disposition of the remaining development rights.
- 17) A copy of the proposed Deed of Transferable Development Rights and Declaration of Restriction of Development for the current transaction.
- 18) If the sending tract has previously been preserved in whole or in part by a conservation easement or similar easement granted to the Lancaster Farmland Trust, the Lancaster County Agricultural Preserve Board or any other entity, a copy of such conservation easement.

NOTICE OF SALE OF TRANSFERABLE DEVELOPMENT RIGHTS

Notice is hereby given that the Board of Supervisors of the Township of Warwick, Lancaster County, Pennsylvania, will accept sealed bids for the purchase of Transferable Development Rights ("TDRs") owned by the Township until 7:00 p.m. on Wednesday, July 20, 2005, at the Warwick Township Municipal Building, 315 Clay Road, Lititz, Pennsylvania 17543-0308, at which time said bids will be opened and read aloud. All bids shall be submitted in accordance with the terms of this advertisement for bids.

The Township shall sell a maximum of ten (10) TDRs. Bidders may submit bids for one, some or all of the TDRs to be offered for sale. Bids shall indicate the number of TDRs which the bidder desires to purchase and the price the bidder will pay for each TDR. Conditional bids shall not be accepted, except as hereinafter provided, and the minimum bid which the Township will consider for the purchase of any TDR to be sold is \$3,000.00. The Township reserves the right to structure the acceptance of one or more of the bids received in the manner which will result in the highest purchase price for each TDR sold by the Township and to sell TDRs to one or more bidders.

All bids shall be submitted in a sealed envelope with the notation "Bid for Purchase of Transferable Development Rights" on the face of the envelope. All bids must include a certified, cashier's or official bank check payable to the Township of Warwick in the amount of 10% of the total bid as bid security.

All bids shall be signed by the bidder. If the bidder is a partnership, all general partners shall sign the bid. If the bidder is a corporation, the bid shall be executed by the president or vice president of the corporation and be attested by the secretary or assistant secretary. If the bidder is a limited liability company, the bid shall be executed by the manager or all members.

All bids shall remain open for a minimum of sixty (60) days from the date of the bid opening. A bidder may provide as part of the bid, by executing and including a form to be obtained from the Township, that such bid will remain open for an additional period of time if the bidder has, prior to the bid opening, submitted an application for preliminary or final subdivision and/or land development approval to the Township which contemplates the use of TDRs. Should a bidder grant such an extension of time, the award of that bid may be delayed for a period of time not to exceed one hundred twenty (120) days from the date of the bid opening (unless the Township and the bidder agree upon an additional extension of time) while subdivision and/or land development approval is being actively pursued.

A bid may be made conditional upon obtaining subdivision and/or land development approval within one hundred twenty (120) days from the date of the bid opening if the bidder has submitted an application for subdivision and/or land development approval prior to the bid opening. If a bidder has submitted a subdivision and/or land development plan prior to the bid

opening which contemplates the use of TDRs and which is subsequently denied by the Board of Supervisors or is not approved by the Board of Supervisors within one hundred twenty (120) days from the date of the bid opening (or within such additional extension of time as may be agreed upon by the Township and the bidder), the bid shall be considered null and void, and the Township shall return the bidder's bid security.

Bids may be modified or withdrawn by an appropriate written document executed by the bidder and received by the Township Secretary or Assistant Secretary prior to the time of the bid opening. Bids may not be withdrawn or modified after the opening of bids.

The Township will issue a notice of intent to award to each successful bidder setting forth the number of TDRs which will be sold to that bidder, the price for each TDR, and the total purchase price due to the Township. The successful bidder or bidders must indicate the specific tract of land in the Campus Industrial Zone (I-2), which is the receiving area for transferable development rights in Warwick Township, to which the TDRs will be attached. Payment in full for all TDRs so awarded must be received by the Township within sixty (60) days of the issuance of the formal notice of acceptance of the bid by the Township. If payment in full is not received within 60 days, the Township shall be entitled to retain the 10% bid security as liquidated damages.

All TDRs must be used in accordance with the provisions of Chapter 27, Section 322, of the Code of Ordinances of Warwick Township which is available for inspection at the Warwick Township Municipal Building. All TDRs are sold "AS IS" and without any warranty of title by the Township and shall be subject to all applicable rules and regulations for usage and future transfer set forth in Township ordinances and all other applicable laws and regulations.

The successful bidder or bidders shall be required to pay all realty transfer taxes, recording costs, fees, assessments, and other taxes, expenses and charges in connection with the transfer of the TDRs and the holding and ownership of the TDRs by the bidder.

The Township reserves the right, at its option, to waive any informalities, irregularities, defects, errors or omissions in any or all bids and to reject any or all bids for any reason.

Daniel L. Zimmerman
Township Manager-Secretary

AGREEMENT FOR
INTERMUNICIPAL TRANSFER OF DEVELOPMENT RIGHTS

THIS AGREEMENT made and entered into as of the _____ day of _____ in the year 20__ by and between or among _____ [municipality one], _____ [municipality two], and _____ [municipality three], all situated in Lancaster County, Pennsylvania (collectively referred to hereinafter as "Participating Municipalities," individually as "Participating Municipality").

WITNESSETH THAT:

WHEREAS the Participating Municipalities wish to enable the transfer of development rights across municipal boundaries in order to _____ [insert Multimunicipal TDR Program objectives here, including but not limited to: (1) preserve prime agricultural land, environmentally sensitive areas, and areas of historic significance, (2) assure the availability of a reliable, safe and adequate water supply, (3) encourage innovation and promote flexibility, economy and ingenuity in development, etc...]; and

WHEREAS the Participating Municipalities have individually determined that the intermunicipal transfer of development rights is in accordance with the goals, objectives, and policies of their respective Comprehensive Plans [or specified multimunicipal comprehensive plan(s)], and the community development objectives or other provisions of their respective zoning ordinances, as evidenced by the resolutions attached hereto as Exhibit A; and

WHEREAS, the zoning ordinances of the Participating Municipalities contain provisions for regulating transferable development rights (hereinafter "TDRs"); and

[Insert additional "WHEREAS" clauses where appropriate (e.g., "WHEREAS the _____ Multi-Municipal Comprehensive Plan specifically recommends the adoption of a Multi-Municipal TDR Program")].

NOW, THEREFORE, the Participating Municipalities do mutually agree as follows:

1. **MUTUAL COMMITMENTS:** The Participating Municipalities hereby enter into this Agreement, as authorized by Sections 603(c)(2.2) and 619.1(d) of the Pennsylvania Municipalities Planning Code to affirm that TDRs severed from eligible sending properties in any of the Participating Municipalities, in accordance with the applicable zoning provisions, may be conveyed to applicants for subdivision or land development approval in any of the Participating Municipalities, subject to the applicable standards and criteria set forth in the zoning ordinance of the receiving municipality(ies). Each Participating Municipality shall separately administer the severance and receipt of TDRs within its boundaries, regardless of the source or destination of such TDRs within or beyond the boundaries of any one municipality. Costs associated with implementation of this Agreement shall be financed individually by each

Participating Municipality as applicable. This Agreement does not establish any intermunicipal structure or organization for administration, purchase, or sale of TDRs, financing of implementation of any aspect of the Multimunicipal TDR Program, acquisition, management or disposal of real property, or contracting of insurance or any employee benefits. Individual Participating Municipalities may acquire and convey TDRs severed from sending lands in any Participating Municipality in accordance with applicable laws and regulations.

2. DURATION OF AGREEMENT: This Agreement shall remain in effect for each Participating Municipality until such time as participation is terminated by ordinance of the governing body.
3. CHANGES: Changes to this Agreement must be mutually agreed to by the Participating Municipalities and confirmed in writing prior to performance or implementation of said changes.
4. TERMINATION OF AGREEMENT: Any Participating Municipality shall have the right to terminate its participation in this Agreement by adoption of an ordinance officially terminating its participation in the Multimunicipal TDR Program. Termination of this Agreement by any single Participating Municipality shall not affect the other parties to this Agreement, which shall proceed in their implementation of this Agreement as if the now non-Participating Municipality never had been a participant in the Multimunicipal TDR program. Furthermore, termination of this Agreement by a Participating Municipality shall have the following effect on TDRs already or intended to be transferred into or out of the now non-Participating Municipality prior to its termination of this Agreement:
 - a. TDRs already severed from lands eligible for sending prior to termination of participation shall be eligible for receipt in any other Participating Municipality in accordance with applicable regulations in such municipality, provided that such TDRs, upon severance from the sending lands, had been duly recorded in a Deed of Transferable Development Rights in the Office of the Recorder of Deeds of Lancaster County.
 - b. TDRs held by or under agreement for purchase by any party proposing to transfer them to a receiving site that had been eligible for receipt prior to termination of participation shall be permitted to be so transferred in accordance with the regulations applicable at the time of termination of participation, provided that the development plans or applicable zoning application dependent upon such receipt of TDRs had been duly filed as provided in the overning ordinances of the receiving municipality prior to termination of participation and where such plans or zoning application ultimately are approved.
5. AGREEMENT: Each Participating Municipality binds itself and its successors to the terms of this Agreement until such time as participation may be terminated by

ordinance of the governing body. This Agreement is governed by the laws of the Commonwealth of Pennsylvania. Jurisdiction and venue shall be in the Court of Common Pleas of Lancaster County, Pennsylvania, in the event of any dispute.

IN WITNESS WHEREOF, INTENDING TO BE LEGALLY BOUND HEREBY,
_____ [insert Municipality One], _____ [insert Municipality Two], and
_____ [insert Municipality Three] have executed this Agreement as of the date
first above written.

MANHEIM TOWNSHIP: CURRENT AGRICULTURAL ZONE LANDOWNERS and TDR ALLOCATION

| | Tax Map Number | Tax Account Number | Name of Owner Per Tax Records | Last Name | Address 1 | Address 2 | Acreage | TDR's Allotted | TDR's Sold | TDR's Remaining |
|----|-------------------|--------------------------|--|-----------|-----------|-----------|---------|----------------|------------|-----------------|
| 1 | 9L-9-6 | | INFORMATION INTENTIONALLY OMITTED | | | | 26.548 | 20 | 0 | 20 |
| 2 | 9K-8-6 | | | | | | 22.95 | 16 | 0 | 16 |
| 3 | 9K-8-5 | | | | | | 70.42 | 51 | 0 | 51 |
| 4 | 9L-13-2 | | | | | | 49.8 | 36 | 0 | 36 |
| 5 | 11K-3-9 | | | | | | 7.7 | | | 0 |
| 6 | 11K-3-8 | | | | | | 9.529 | 6 | 0 | 6 |
| 7 | 9L-9-5 | | | | | | 15.07 | 11 | 0 | 11 |
| 8 | 9L-9-4 | | | | | | 61.4 | | | |
| 9 | 10L-5-3 | | | | | | 83.33 | 61 | 0 | 61 |
| 10 | 10L-5-5 | | | | | | 38.736 | 28 | 0 | 28 |
| 11 | 10L-5-7 | | | | | | 3.2 | | | |
| 12 | 10L-5A-1 | | | | | | 29.263 | 21 | 0 | 21 |
| 13 | 10L-5A-2 | | | | | | 30 | | | |
| 14 | 10L9-4-1 | | | | | | 3.1 | | | |
| 15 | 9K-11-4 | | | | | | 55.05 | 39 | 0 | 39 |
| 16 | 9K-11-5 | | | | | | 93.45 | 68 | 0 | 68 |
| 17 | 10K-4-1 | | | | | | 68.45 | 49 | 0 | 49 |
| 18 | 9K-12-5 | | | | | | 80.9 | 56 | 56 | 0 |
| 19 | 9L-18-9B | | | | | | 47.5 | 34 | 0 | 34 |
| 20 | 9K-12-6 | | | | | | 94.89 | 69 | 0 | 69 |
| 21 | 10L-5-1 | | | | | | 54.839 | 39 | 38 | 1 |
| 22 | 10K-7-12 | | | | | | 123.574 | 90 | 0 | 90 |
| 23 | 10K-10-5 | | | | | | 46 | 32 | 32 | 14 |
| 24 | 11K-3-3 | | | | | | 34.4 | 0 | 0 | 0 |
| 25 | 9K-11-2 | | | | | | 10.3 | 7 | 0 | 7 |
| 26 | 10K-7-14 | | | | | | 13.05 | 10 | 0 | 10 |
| 27 | 9K-11-3 | | | | | | 62.6 | 45 | 36 | 9 |
| 28 | 10L-1-1 | | | | | | 35.6 | 29 | 0 | 29 |
| 29 | 10L-3-1 | | | | | | 70.6 | 51 | 0 | 51 |
| 30 | 10K-7-3 | | | | | | 13.46 | 10 | 10 | 0 |
| 31 | 10K-7-4 | | | | | | 50.44 | 36 | 33 | 3 |
| 32 | 10K-10-1 | | | | | | 39.38 | 28 | 28 | 0 |

MANHEIM TOWNSHIP: CURRENT AGRICULTURAL ZONE LANDOWNERS and TDR ALLOCATION

| | Tax Map Number | Tax Account Number | Name of Owner Per Tax Records | Last Name | Address 1 | Address 2 | Acreage | TDR's Allotted | TDR's Sold | TDR's Remaining |
|--------|-------------------|---------------------------------------|--|-----------|-----------|-----------|----------|----------------|------------|-----------------|
| 33 | 10K-10-4 | ALL INFORMATION INTENTIONALLY OMITTED | | | | | 33.3 | 24 | 24 | 0 |
| 34 | 10K-6-2A | | | | | | 10 | 8 | 8 | 0 |
| 35 | 10K-6-2 | | | | | | 90.36 | 65 | 60 | 4 |
| 36 | 10K7-3-1 | | | | | | 10.76 | 8 | 0 | 8 |
| 37 | 10K7-3-2 | | | | | | 10.8 | | | |
| 38 | 9L 15-3 | | | | | | 17.9 | 23 | 23 | 0 |
| 39 | 9L-15-1 | | | | | | 19.82 | 15 | 0 | 15 |
| 40 | 9K-11-1 | | | | | | 62.55 | 44 | 33 | 11 |
| 41 | 9K-12-8 | | | | | | 21.63 | 16 | 16 | 0 |
| 42 | 10K-7-10 | | | | | | 96.66 | 70 | 0 | 70 |
| 43 | 9K-12-4 | | | | | | 0 | 0 | 0 | 0 |
| 44 | 9L-13-1 | | | | | | 57.34 | 41 | 0 | 41 |
| 45 | 9K-12-7 | | | | | | 66.45 | 48 | 0 | 48 |
| 46 | 9L-13-2A | | | | | | 37.43 | 27 | 0 | 27 |
| Totals | | | | | | | 1980.529 | 1,331.00 | 397.00 | 947.00 |

* On March 13, 2001 _____ sold 62 TDRs to themselves. Of those 62 TDRs, 9 TDRs were sold to Brighton Phase III and 6 TDRs were sold to LFT
 ** Includes all TDR sales.

Completed Township TDR Purchases

| <u>Date</u> | <u>Number</u> | <u>Acres</u> | <u>Tax #</u> | <u>Landowner</u> | <u>Total Amount Paid</u> | |
|-------------|---------------|--------------|--------------|------------------------------|--------------------------|----------------|
| | | | | | | per TDR |
| 1-Apr-92 | 56 | 80 | 9k-12-5 | Amos Landis | \$100,016.00 | \$1,786 |
| 27-Aug-93 | 60 | 100 | 10k-6-2 | Jacob & Rachel Stahl | \$432,000.00 | \$7,200 |
| 27-Aug-93 | 8 | 10 | 10k-6-2A | Jacob & Rachel Stahl | \$57,600.00 | \$7,200 |
| 30-Dec-97 | 30 | 46 | 10k-10-5 | Elizabeth G. Shreiner Estate | \$165,000.00 | \$5,500 |
| 28-Oct-98 | 23 | 32 | 9L-15-3 | Ruth & M.A. Stoltzfus | \$121,000.00 | \$5,260 |
| 28-Oct-98 | 30 | | | Hess | \$165,000.00 | \$5,500 |
| 19-Jan-01 | 35 | 56 | 10L-5-1 | Jay E. & Sharon J. Landis | \$192,500.00 | \$5,500 |
| Total | | | | | 242 | \$1,233,116.00 |

Completed Township TDR Sales

| <u>Date</u> | <u>Number</u> | <u>Development</u> | <u>Total Amount Paid</u> | |
|-------------|---------------|-------------------------|--------------------------|----------------|
| 30-Aug-96 | 4 | Brighton* | \$22,000.00 | |
| 26-Apr-99 | 12 | Penn's Crossing 1 | \$66,000.00 | |
| | 9 | Penns Crossing 2 | | |
| | 3 | Lauralfield | \$16,500.00 | |
| 22-Mar-01 | 7 | Brighton Ph. II* | \$385,000.00 | |
| 10-May-01 | 9 | Brighton Ph. III** | | Rohrer |
| 2-Feb-02 | 1 | Settlements of LVS** | | |
| 12-Jul-02 | 10 | Rosewood | \$55,000.00 | |
| 16-Apr-03 | 7 | Brighton Ph. IV&V* | \$38,500.00 | |
| | 5 | Sunset Ridge | \$27,500.00 | |
| 26-Jun-04 | 15 | Penns Crossing 3 | \$82,500.00 | |
| 18-Nov-05 | 16 | Landale | \$88,000.00 | |
| 14-Dec-05 | 2 | Jake Landis/Landis Xing | \$13,000.00 | |
| 17-Apr-06 | 14 | Parkridge | \$91,000.00 | |
| 14-Mar-07 | 16 | Sunset Ridge Phase II** | \$88,000.00 | Weidler |
| 6-Jun-07 | 36 | The Crossings** | \$306,000.00 | Oberholtzer |
| 14-Jun-07 | 14 | Stone Mill Estates** | \$130,000.00 | King |
| Total | | | 180 | \$1,409,000.00 |

* Original request for 40 but only 27 purchased

** Outside sale

Pending Township TDR Purchases

| <u>Date</u> | <u>Number</u> | <u>Development</u> | <u>Total Amount Paid</u> |
|-------------|---------------|-----------------------------|--------------------------|
| | 70 | Wetherburn North | |
| | 30 | Kissel Hill APTs | |
| | 244 | Gammache/Grandview Extended | |
| | ? | Berkshire PCD | |
| | 15 | Spring Haven | |
| Total | | 359 | |

Appendix 10

Stakeholder Meeting Summaries

Utilizing the practical experiences of Lancaster County's private sector was essential in creating a handbook on the transfer of development rights. Facilitated by the Brandywine Conservancy at the Heart of Lancaster Hospital, nine private-sector stakeholders, representing all aspects of successful TDR transactions, attended a focus group meeting on May 1, 2007. Private-sector planners, real estate brokers, developers/builders, attorneys, and landowners were asked to share their TDR experiences and insight based on a series of prepared questions relating to TDR program issues. The stakeholders were accommodating and supportive in their responses to such concerns as to whom is best to broker a TDR deal, what zoning ordinance provisions are desired, and how best to market a TDR program. *(One other stakeholder, unable to make the group meeting, participated in a phone survey of the same questions.)*

Appendix 10 presents 10a) the stakeholder survey questions and obtained responses, and 10b) the Conservancy prepared summary of the stakeholders' responses that was subsequently shared with the TDR handbook partnership.

Meeting Notes
Lancaster County TDR Practitioners Handbook

Stakeholders Meeting – May 1, 2007
(Receiving Zone development participants)

Question 1:

What factors helped you or your client purchase and use TDRs for your development? (Ex., creative financing; flexible ordinances; receptive local officials/neighborhood)

[The market and regulatory reasons for TDR were reiterated.]

TDR should be applicable to industrial uses, to encourage industrial growth.

Warwick also could have located hospital in residential zone. Warwick relied on commercial/industrial zoning, could have sold more TDRs through residential receiving zones.

Density more palatable in Warwick of late; also in West Hempfield, where it helped developer achieve TDR deal.

"It's value. It depends on zoning and what you can and can't do. It's market driven. The question is can we sell it. It's not creative financing; it's the ordinances."

Question 2:

What are the obstacles to your greater use of the TDR tool? (Ex., no TDR ordinance in place where active in real estate development; lack of market product to support TDRs; lack of affordable TDRs; lack of water and sewer to support TDR development; neighborhood opposition; local approval process too complicated)

TDR allows municipality to control development. But from a market/developer/builder perspective, TDR costs the buyer more and it doesn't always make sense to the buyer because the buyer wants more, not less, land.

Density could be allowed at higher levels by-right. Time is major obstacle to TDR (&TND) when ordinances don't already exist; make TDR/TND by-right and require developer to use time/money to do a project under conventional zoning.

"West Lampeter has done just that [referring to the above statements]"

"The zoning ordinance can make or break a project. We have residents that want no growth and developers that want density. The municipalities have to answer to residents, not the developer."

Zone by-right at small lot sizes, then make developer/buyer pay more for large lots – instead of making buyer pay more for an even smaller lot/higher density due to TDR.

“The Idea supporting residential density just isn’t there in some parts of the County. Ordinances aren’t supporting higher density, *and* demand needs to be there.”

“The process needs to be simplified. And there needs to be more flexibility in the ordinances. The ideal lot [perfectly shaped, the right size, etc...] doesn’t exit. We need flexibility. We need to ask, are we for agricultural preservation or density. Need stronger link between farmland preservation and increased density. Right now, we’re losing new home sales to existing homes because of site [constraints?]. Market asking for more units (vs. not in my backyard of past), but because they’re smaller, sales are lost to existing units.

“Townships are already giving up (away) the density.”

Need to have ordinances that creates incentive for farmer to sell TDRs which also creates some financial incentive (i.e., > \$800/ac that Lancaster Farmland Trust can pay), yet some farmers want a lot more money than what the Trust can pay. “The demand is out there to sell.” “Though farmers are also interested in TDR because they can get value *and* avoid neighbors.”

In 100-200-500 years, market may drive restrictions off eased land.

Many segments have different needs, but are all cogs in the same wheel of progress.

Housing prices and quality of life are bringing people to Lancaster when they work in Maryland, Philadelphia, Delaware. “It’s for work” “It’s the quality of life” “It’s the price of housing”

TDR Zoning Ordinances should be flexible enough to change, for example, lot coverage, building height, etc., to facilitate use of TDRs; in other words, don’t require variance for more height or coverage, rather just buy TDRs.

“The City is interested is going up (in building height).”

“Warwick is doing this with respect to impervious cover.”

“The key is determining what the transfer ratio is.”

“Private transactions are a very arduous process. My response was, let’s say, comprehensive. I did lots of handholding with local landowners. Farmers are looking at estate planning, tax implications. I needed the TDRs lined up to get preliminary plan approval. I got no empathy from the Township.”

Developers would rather buy from a TDR bank than the landowner.

“Ordinance requirements are too complex, too lengthy.”

Important to determine best formula for these tradeoffs: economics drive these tradeoffs, need right developer. Hospital is a good example because they could financially increase height within impervious cover limits. But developer of hospital found it easier to buy TDRs from Lancaster Farmland Trust than from Township, since the Township was required to go through public process of bids, ads, etc. Alternate example of Manheim, where developer solicited TDRs directly from landowners, but only 1 of 30 solicited had TDRs severed.

Need to tighten up TDR process – other professionals are licensed (e.g., Real Estate Broker), TDRs need more parameters. West Hempfield has a clear process, but others aren't – deals in the making where brokers are providing trust, legal, etc., advice.

Coordination now improving with Lancaster County Agricultural Preservation Board and Lancaster Farmland Trust to sever and use TDRs in combination with Township processes, instead of TDRs being retired.

Would like to use TDRs in developments in Lancaster City to help the city, since it needs the influx of money.

Question 3:

Based on your experience in today's market, identify the economic and zoning factors (in particular) that are variables in your formula for using TDRs. We are particularly interested in how the following factors influence your decision to purchase and use TDRs:

- ◆ **Consumer preferences for different unit types and densities**
- ◆ **Density without TDR vs. density with TDR (i.e., how much should these differ, at what point is additional density too much or too costly)**
- ◆ **TDR transfer ratio (e.g. 1 TDR for X single family dwelling units or Y square feet of gross floor area; or, perhaps there's no such thing as a typical transfer ratio)**
- ◆ **Infrastructure costs**

Have we missed key variables? Which are the most important, or will their importance always vary from project to project?

Clear consensus that form (ratio) impossible to fill out. If trying to get to mixed uses, impossible to pigeon hole individual uses. Also hard to pigeon hole because it is market driven, e.g., market makes TDR more valuable when it's rented as a hotel room vs. sold as a single family dwelling unit. "You can't get that complicated, the market will drive what you build. The goal is to make this more user friendly".

"I agree. Just looking at the difference in cost as we make things more dense is difficult, let alone with TDRs. It's really a question of demand".

Flexibility is key, hard because government doesn't change quickly. Difference between dynamic market vs. less-than-dynamic ordinance – need to have TDR users be aware of this. "The problem is the market is moving, but the ordinance isn't. How do we handle this?"

"I'm working on a project in Chester County where there threatening to change the TDR allocation and pushing up my costs."

"You're asking us to value TDRs. That's like giving up our corporate trade secrets. It's plain and simple, we do it [buy TDRs] because we have to."

"I can tell you there is a huge difference in value of a TDR sold versus a TDR going to rentals. TDR for rented properties is much more valuable."

Infrastructure important to consider – can't get as much density with community systems, typically.

Recommend more frequent refinement of TDR ordinances to be more in step with market. Quaint villages/boroughs/cities largely developed before zoning, and so don't require as much in new services because services already exist. So new residents in older developed areas aren't paying for infrastructure vs. new residents in new development who are paying for services.

"TDRs are just value created for landowners, and it's just being passed on to new homeowners. It's basically an impact fee."

Market will drive where density goes and what cost is. "You can put high density everywhere."
Townhouse in southern Lancaster County will be < \$150,000 and will be more affordable than a townhouse near Turnpike."

NIMBY effect of higher density: East Lampeter example where ordinance is under appeal. "Everyone is in favor of these high reaching concepts, but as soon as it reaches their backyards, they don't want it."

Importance of ordinances. "You should permit us to build 7.5 dwellings per acre by right, and tax us for anything less than that. Like a reverse TDR."

Building codes reflect old safety standards; e.g., 10' side yard setbacks aren't needed anymore.

"I've gone from (a density of) 2.2 to 2.9 (through TDR)." It's because of governance."

"Infrastructure costs will drop on a per unit basis."

Question 4:

If you were buying TDRs, would you prefer to: (a) purchase TDRs from landowners on your own; or, (b) purchase TDRs from a municipality or another "banker?" Which option works best and why?

"The whole process needs to be tightened up. We need more clear parameters and guidelines".

"Working with the Township was easy". (Two comments.)

[Room seemed split over issue, with some liking private transactions, but most preferring municipal transactions because of the high time commitment with, and low landowner response to, the private transactions. However, another developer indicated that he prefers to deal directly with the landowner because the funds go directly to that person rather than some profit remaining in the bank. Also, there are public relations and investment (i.e., can personally bank TDRs) benefits to purchasing TDRs directly from the landowner.]

Question 5:

If you were selling TDRs, would you prefer to: (a) sell them to a developer; (b) sell them to a municipality; (c) sell them to the Lancaster Farmland Trust or the Lancaster County Agricultural Preserve Board; or, (d) other (e.g., retire them)? Which option works best and why?

[Not really answered.]

Question 6:

Some who propose development using TDRs run into neighborhood opposition. If you experienced this problem, was the municipal government where your development was proposed helpful in reducing the “NIMBY” (not in my backyard) effect? What else could be done?

“We should mandate people look at the zoning map before buying a house, so they know what’s going in next door.”

“I think you have to identify what the NIMBYism is about. You need to identify the fear, and reassure them that the fear is being taken care of.” “It’s often about aesthetics.

“And I think there isn’t a direct connection for people with TDR. They can’t see the farm being preserved. The community deserves something for the density.”

Elected official leadership, especially where they educate citizens, is key. “It takes leadership. You need leaders who are willing to put reelection on the line.”

“The 1 acre lot is still desirable (to many would-be landowners – that’s why they don’t understand or relate well to a higher density development proposed for their neighboring property. They fear the worst).”

Question 7:

Other general feedback welcome.

What is needed from your perspective to increase the use of TDRs in Lancaster County? Are there other stakeholders not present that we’ve missed? If so, please tell us who they are and how to reach them.

Talk to Supervisors’ Association. “You should talk to the supervisors association. The problem lies in implementation of the growth management plan at the township level.”

Ordinances need to change more quickly to meet goals of the Balance Plan.

Lancaster Farmland Trust can't meet financial demand of those who want to sell TDRs. "Farmers are willing to sell. We can't meet demand." "There are 226 (farmers) on the County waiting list right now."

Meeting Notes
Lancaster County TDR Practitioners Handbook

Stakeholders' Meeting – May 1, 2007
(Receiving Zone development participants)

Key focal points:

- ✓ Participants were unified that the TDR tool will only work when it makes sense financially and from a zoning standpoint. There were also “emotional” reasons for pursuing TDRs – e.g., assisting farmers with their meeting their financial goals or generating economic revenue to the City of Lancaster if that is to become a receiving zone.
- ✓ Participants, in general, found buying TDRs from municipalities easier than buying them from landowners. *Landowners were either skeptical of developer's interest, or wanted or needed to be educated on estate planning, tax ramifications, and other issues or options – requiring lots of hand-holding by developer. Where municipalities had effectively “banked” sufficient TDRs to meet developers needs, it also eliminated the need to potentially contact and negotiate with multiple individual landowners. Municipally-available TDRs resulted in a streamlined process. That being said, another developer cited the public relations and business (e.g., personal banking of TDRs) benefits of buying TDRs directly from the landowner.*
- ✓ Participants, in general, found buying TDRs from Lancaster Farmland Trust (LFT) easier yet than buying them from municipalities. *Municipalities had to follow bid procedures while the land trust did not. Availability of sufficient numbers of TDRs from LFT further streamlined the process.*
- ✓ Participants find that “mandated” TDR programs can put them at a disadvantage to other buying options due to either rigorous or inflexible development standards and timing constraints. *It was felt that the cost of TDRs, added to inflexible zoning constraints on small lots, forced new home prices higher, making sales of existing houses on existing lots more attractive in the current market.*
- ✓ Participants believe that municipalities will be very slow to implement Balance's recommended density standards (7.5 du's per net acre on average). *The politics and practicality of implementing higher density districts in the near future are unknown, at best.*
- ✓ Participants believe that complicated formulae are not needed to artificially provide incentive for density. *If density is permitted, it will be built to the extent that it is acceptable in the marketplace. [Note: the intention of differing receiving values per TDR is to get at the inherent differences in value for different residential and non-residential development “products.”]*

- ✓ A number of participants believed that Balance's density recommendation should be "by-right", with TDRs required for any lower density. ("Reverse TDR") *If density is what people want, then give the developers the easier path to build the density. Penalize those developers who want to build lower than the preferred density by making them buy TDRs. [Note: "Reverse TDR" only marginally addresses key farmland preservation objectives which are an arguable trade-off for high densities within designated growth areas. High density by-right also rewards the landowner with a windfall without "compensating" farm landowners for being subjected to restrictive low density and limited opportunities.]*
- ✓ Participants felt sending zone landowners (or their advisors) are savvy enough to figure that land's sales price should reflect TDR potential, narrowing the developer's profit margin. Therefore, developer will need to recover TDR purchase price from end product buyer.
- ✓ One participant felt very strongly that a "tighter" process was needed for marketing and brokering of TDRs. Because TDRs are defined by the MPC as interests in real estate, they must be brokered by licensed real estate professionals. Too many non-licensed "practitioners" currently involved.
- ✓ One participant felt that it was important for municipalities to not change the TDR rules mid-stream. *While this person was negotiating the purchase of TDRs, the municipality was considering an amendment to its ordinance changing the TDR multiplier. The change would have added to the value of the TDR, causing the landowner to increase the asking price for the TDRs.*