ML-East Windsor 5/2/83

letter to Judge Levy bringing to Judge's attention the written opinion of Albert Porroni, Legislative Counsel to NJ Legislature, which bears directly on issues raised in Pls + Δs motions for summary judgment on counts I + II of Pls complaint in the action

+ copy of Legislative opinion enclosed

p 14

ML 000787 L

ML000787L

STERNS, HERBERT & WEINROTH

A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
186 WEST STATE STREET
P. O. BOX 1298
TRENTON, NEW JERSEY 08607

(609) 392-2100

JOEL H. STERNS
RICHARD K. WEINROTH
MICHAEL J. HERBERT
FRANK J. PETRINO
WILLIAM J. BIGHAM
W. S. GERALD SKEY
JOHN H. DUMONT
JOHN M. DONNELLY
MARK D. SCHORR
PHILIP J. HEYMAN
SIMON KIMMELMAN
MICHAEL M. MATEJEK
JANE F. KELLY
VINCENT J. PALUZZI
RICHARD M. HLUCHAN
PETER J. LYNCH

10 NASSAU STREET
P. O. BOX 1246
PRINCETON, N. J. 08540
(609) 924-2108

SUITE 600
1150 SEVENTEENTH STREET, N.W.
WASHINGTON, D. C. 20036
(202) 296-3432

OF COUNSEL
RICHARD J. HUGHES

May 2, 1983

Honorable Paul G. Levy
Judge of the Superior Court
Mercer County Courthouse
Broad and Market Streets, P. O. Box 8068
Trenton, NJ 08650

RE: Centex Homes of New Jersey, Inc.
vs. The Mayor and Council of the Township of East Windsor, et al.
Docket No. L-06433-83 P.W.

My dear Judge Levy:

Very recently Albert Porroni, Legislative Counsel to the New Jersey Legislature, issued a lengthy written opinion which bears directly on issues raised by Plaintiff's and Defendants' Motions for Summary Judgment on Counts I and II of Plaintiff's Complaint in the above-captioned action. Although Your Honor has directed that counsel not submit additional written material in support of or in opposition to the pending Motions, I feel compelled to bring an opinion of such obvious significance to Your Honor's attention.

The Legislative Counsel was asked by Senator H. James Saxton for his opinion concerning "whether the municipal adoption of a transferrable development rights ordinance is authorized under State law and whether a municipality needs this legislative authorization in order to adopt a transferrable development rights ordinance." At Page 7 of his opinion, Mr. Porroni concludes:

> You are advised, therefore, that until such time as specific enabling legislation is enacted, any transferrable development rights ordinance adopted by a municipality is likely to be successfully challenged in court as ultra vires of the provisions of the Municipal Land Use Law.

A copy of this opinion is enclosed.

The duties of the Legislative Counsel and the Division of Legal Services, of which he is the Director, are set forth in N.J.S.A. 52:11-60 and 61 and include:

> "(g) To furnish to...members of the Legislature, legal assistance, information, and advice when and in relation to such matters as the commission shall from time to time determine, relating to (1) the subject matter and legal effect of the statutes and of proposals made for statutory enactment...
>
> "(h) Upon the written request of either or both Houses of the Legislature, the presiding officer of either House, a legislative committee or commission, to furnish written opinion on legal matters." Id.

Essentially, the Legislative Counsel performs many of the same functions for his clients, the members of the Legislative Branch of State government, as the Attorney General performs for his clients, the members of the Executive Branch of State government. Accordingly, the opinions of the Legislative Counsel interpreting statutes, like those of the Attorney General, may be considered as "strongly persuasive." Evans-Aristocrat Industries, Inc. v. North, 140 N. J. Super. 226,222-230 (App. Div. 1976), affd. 75 N.J. 84 (1977); Clark v. Degnan, 163 N.J. Super. 344,371 (L. Div. 1978), modified on other grounds and affd. 83 N.J. 393 (1980).

Inadvertently omitted from Plaintiff's Reply Brief and Appendix for Plaintiff in Support of Motion for Summary Judgment as to Count I of the Complaint and Brief in Support of Plaintiff's Cross-Motion as to Count II and in Opposition to Defendants' Motion for Summary Judgment as to Counts I, II, and IX, is a portion of the legislative history of East Windsor Township's TDR Ordinance, which demonstrates beyond any doubt that the TDR provisions of the Ordinance served as the principal inducement for its passage. Of particular significance are the statements made by the Township's Solicitor on November 23, 1982 and found at Pages 57-59 and 81-84 of the Transcript of that portion of the public hearing (Exhibit C of Defendants' Appendix). Specifically, Mr. Pane states unequivocally that the "township has made a decision and it does not feel agricultural zoning pure and

simple which imposes heavier burdens on farmers is an appropriate vehicle" (Page 83, emphasis added) and that the "social cost" of preservation should not be borne solely by the "people who own agricultural land." (Page 59)

Respectfully submitted,

Frank J. Petrino

FJP/lcr
HAND DELIVERED
cc: Michael A. Pane, Esq.
Gary S. Rosensweig, Esq.
Lewis Goldshore, Esq.
Stewart M. Hutt, Esq.
Thomas Norman, Esq.

New Jersey State Legislature
OFFICE OF LEGISLATIVE SERVICES
DIVISION OF LEGAL SERVICES
SECOND FLOOR, STATE HOUSE ANNEX, CN-052
TRENTON, NEW JERSEY 08625
TELEPHONE (609) 292-4625

April 25, 1983

Honorable H. James Saxton
223 High Street
Mount Holly, New Jersey 08060

Dear Senator:

You have asked for an informal opinion concerning the validity of transferable development rights ordinances adopted as zoning devices by certain municipalities in this State. More specifically, you have asked whether the municipal adoption of a transferable development rights ordinance is authorized under State law and whether a municipality needs this legislative authorization in order to adopt a transferable development rights ordinance. For the reasons outlined below, you are advised that: (1) zoning is inherently an exercise of the State's police power to protect the public health, safety and morals and to promote the general welfare of its citizens, and therefore, municipalities have no power to adopt zoning ordinances unless this power is delegated to them by the Legislature; (2) this delegation of zoning power is embodied in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., the comprehensive enabling act designed to regulate the land use planning and development activities of municipalities; (3) the Municipal Land Use Law does not expressly authorize or prohibit the adoption of transferable development rights ordinances; (4) whether the umbrella of the Municipal Land Use Law is large enough to cover the concept of transferable development rights is a question which has yet to be considered by a court of this State; however, there is broad language in the purposes and zoning powers sections of that law which could be construed by a court as authorizing the development of this type of land use device; however, (5) it has been the general consensus of attorneys and land use planners since the mid-1970's that specific enabling legislation, expressly authorizing and setting forth the framework for the adoption of transferable development rights ordinances, is the preferred course of action for this State; and (6) because the concept of transferable development rights goes beyond the mere physical use of the land, straight to the heart of title to property, it is unlikely that this type of ordinance could survive a court challenge because it stretches the outer limits of the home rule power given to municipalities and touches on matters traditionally thought to have been in need of uniform treatment under the aegis of the State.

The concept of transferable development rights is relatively new to the law of zoning, first coming into vogue in the 1970's. It is a land use management device designed to permit preservation of historic, agricultural or environmentally sensitive areas, while minimizing the financial loss to property owners in these preserved areas. The concept recognizes that a property owner owns not only the parcel of land, but also the right to develop that land. A standard transferable development rights ordinance would authorize the property owners of preserved land to sell their

development rights to property owners of land where future development is permitted, thereby enabling the buyers of these development rights to build at a higher density in the growth area than would be permissible without the use of these development rights. Several New Jersey municipalities now are operating under transferable development rights ordinances and more municipalities are considering these ordinances for future implementation. However, no court of this State has yet rendered an opinion as to whether these ordinances are authorized under law.

Zoning is inherently an exercise of the State's police power to protect the public health, safety and morals and to promote the general welfare of its citizens. Rockhill v. Chesterfield Tp., 23 N.J. 117 (1957). Schmidt v. Newark Bd. of Adjustment, 9 N.J. 405 (1952). Therefore, municipalities have no power to adopt zoning ordinances unless this power has been delegated to them by the Legislature. J.D. Construction Corp. v. Freehold Tp. Bd. of Adjustment, 119 N.J. Super. 140 (Law Div. 1972). In this regard, Article IV, section VI, paragraph 2 of the Constitution of the State of New Jersey (1947) states:

> The Legislature may enact general laws under which municipalities, other than counties, may adopt zoning ordinances limiting and restricting to specified districts and regulating therein, buildings and structures, according to their construction, and the nature and extent of their use, and the nature and extent of the uses of land, and the exercise of such authority shall be deemed to be within the police power of the State. Such laws shall be subject to repeal or alteration by the Legislature.

The delegation of zoning power to municipalities is embodied in the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., a comprehensive enabling act designed as a framework for the land use planning and development activities throughout this State. An ordinance adopted by a municipality under this grant of power is presumed to be valid, a presumption which can only be overcome by an affirmative showing that the ordinance is arbitrary or unreasonable. Bow and Arrow Manor v. Town of West Orange, 63 N.J. 335 (1973); Harvard Enterprises, Inc. v. Madison Tp. Bd. of Adjustment, 56 N.J. 362 (1970). However, a municipality cannot zone in excess of the power delegated to it under the enabling act. Taxpayers Assn. of Weymouth Tp. v. Weymouth Tp., 71 N.J. 249 (1976), cert. denied, sub nom. Feldman v. Weymouth Tp., 430 U.S. 977, 97 S.Ct. 1672, 52 L.Ed. 2d 373 (1977); Sussex Woodlands, Inc. v. Mayor and Council of Tp. of West Milford, 109 N.J. Super. 432 (1970). The basic test for the validity of a zoning ordinance is whether there is a substantial relationship between the ordinance and the furtherance of any of the general objectives enumerated in the enabling act. Taxpayers Assn. of Weymouth Tp. v. Weymouth Tp., 71 N.J. at 264. Speakman v. Mayor of Borough of N. Plainfield, 8 N.J. 250 (1951). Therefore, it is necessary to examine the relevant provisions of the Municipal Land Use Law to determine the validity of an ordinance on transferable development rights.

The Municipal Land Use Law does not expressly authorize or prohibit the adoption of transferable development rights ordinances, and the available legislative history makes no specific reference to the concept of transferable development rights. There are, however, several provisions in this law which are relevant to this type of land use device. In the purposes section of the law, N.J.S.A. 40:55D-2, subsections c., e., g., i., j. and m. appear to be applicable to the concept of transferable development rights:

> c. To provide adequate light, air and open space; (Emphasis added.)

The preservation of open space is one of the primary features of the transferable development rights concept.

> e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment; (Emphasis added.)

Transferable development rights ordinances often are enacted for the purpose of preserving certain environmentally sensitive areas and using other portions of land within the municipality for the build-up of population density.

> g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens; (Emphasis added.)
>
> i. To promote a desirable visual environment through creative development techniques and good civic design and arrangements; (Emphasis added.)
>
> j. To promote the conservation of open space and valuable natural resources and to prevent urban sprawl and degradation of the environment through improper use of land;
>
> m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

Under the transferable development rights concept, permitting owners of land in preserved zones to sell their development rights is considered to be an effective means of reducing the financial impact of the rezoning. See also the section of the law setting forth the permitted contents of a zoning ordinance, subsection b. of N.J.S.A. 40:55D-65, which states:

> b. Regulate the bulk, height, number of stories, orientation, and size of buildings and the other structures, and require that buildings and structures use renewable energy sources, within the limits of practicability and feasibility, in certain places; the percentage of lot or development area that may be occupied by structures; lot sizes and dimensions; and for these purposes may specify floor area ratios and other ratios and regulatory techniques governing the intensity of land use and the provision of adequate light and air. (Emphasis added.)

It is significant that the Municipal Land Use Law authorizes both creative development techniques and other regulatory techniques governing the intensity of land use. The breadth of these provisions could be construed by a court as favorable to a transferable development rights land use plan.

Land use planners and attorneys involved in developing the concept of transferable development rights, from the outset of the surge in interest in this land use device, have been in favor of specific enabling legislation which would expressly recognize the concept of transferable development rights as a valid exercise of police power and would set forth a comprehensive framework under which these types of ordinances would be adopted. In fact, two such comprehensive bills were introduced but never enacted, Assembly Bill No. 3192 of 1975 and Assembly Bill No. 1509 of 1978. The need for specific enabling legislation also was addressed at a seminar on transferable development rights held in 1977 by the National Conference of State Legislatures, in conjunction with the New Jersey Law Revision and Legislative Services Commission, in which Lewis Goldshore of the County and Municipal Government Study Commission posed the following question to Assemblyman John Paul Doyle, the Honorable Frederick W. Hall, Justice (Retired) of the New Jersey Supreme Court and the Honorable Charles D. Breitel, Chief Justice of the New York State Court of Appeals:

> MR. LEWIS GOLDSHORE: I am Lewis Goldshore, County and Municipal Government Study Commission.
>
> I wonder if in New Jersey there is the need for specific enabling authority for municipalities to adopt TDR ordinances. As I read the New York cases - and I could be wrong - there was no specific state statute granting that power to municipalities in the State of New York. In New Jersey, in connection with this question and thinking about it, I referred to the municipal land use law

which grants fairly broad authority to municipalities to adopt zoning ordinances and land use ordinances to promote the general welfare, but, of course, nowhere it states that they can adopt TDR ordinances. But, on the other hand, at least in the Mount Laurel case, I think it was, certain kinds of density bonuses, certain types of density bonuses, while not authorized specifically in the municipal land use law were held to be a proper exercise of municipal powers. And, in addition, the police power, itself, in New Jersey has been broadly construed in a number of cases.

So, in essence, my question is whether specific enabling authority is an absolute necessity, especially given the history of TDR legislation or proposals for legislation in the state.

ASSEMBLYMAN DOYLE: Did you want a judicial answer or a political answer to that?

MR. GOLDSHORE: I would suggest perhaps, Assemblyman Doyle, that the best person to answer that would be Mr. Norman because he is not here.

ASSEMBLYMAN DOYLE: Next question. No, seriously, let me take a whack at that and maybe Justice Hall will want to take a whack at it. For those of you who are not Jerseyans -- and the bottom line question is: Doesn't our new revised municipal land use act with its rather broad grant of police powers to municipalities in the land use area, grant, to wit, TDR powers without a separate enabling statute? The question is answered in the political context in that the bill that was introduced by Assemblyperson Totaro in last year's session, while it passed the Assembly, failed by two votes in the Senate and the Governor had previously said he would sign it. This year, the bill I have introduced is still in committee and it is undergoing some difficulties with the builders' community and the realtors and what not.

I, personally, think that you should have separate enabling legislation. I think that some of the technical questions that have to be resolved, right down to the very point of recording the certificates with the County Clerk mandate it. Secondly, I think the kinds of preliminary commissions that would be set up within each municipality require separate legislation. Thirdly, the need for legislative oversight, how it works in these municipalities, the taking onto themselves to become laboratories -- I think that has to be in legislation. None of those things -- the technicalities, the need for

prestudy-type municipal commissions, and, thirdly, the requirement of legislative oversight -- is sufficiently contained within the new municipal land use act, so that new legislation would be appropriate. Whether judicially it is necessary, I will leave that to Justice Hall.

JUSTICE HALL: Well, I agree with Assemblyman Doyle; I think legislation is not only desirable, but I would go further and I think probably it is necessary. You want to get some guidelines down, some ways of handling this. You heard Professor Neiswand this morning and Budd Chavooshian talk about all of the complexities in getting one of these programs going in a single municipality. And I think there ought to be enabling legislation, which is something more than just saying you can do it. I think it would help also in any attack on the concept -- judicial attack -- in that you have a legislative expression of policy by such a statute that it is a desirable thing from a social, economic and land use point of view.

You mentioned about the New York situation. That occurred to me when I read the opinions. But I think the reason is, isn't it Judge Breitel, that New York City has full powers of its own?

JUDGE BREITEL: I hesitate to say full powers. First of all, we have very strong home rule provisions in our State Constitution and, by statute, for the municipalities. Then in the case of New York City, it has always had extremely broad home rule powers and in this area too. So nobody ever made any attack on the lack of power of the city to adopt legislation of that kind.

I said to Professor Costonis just a moment ago that had the same thing arisen outside of New York City, I am sure the question would be raised and the outcome would be very dubious.

The New York cases referred to in the quote above are Fred F. French Inv. Co. v. City of New York, 350 N.E. 2d 381 (N.Y. Ct. App. 1976), app. dism. , 429 U.S. 990, 97 S.Ct. 515, 50 L.Ed. 2d 602 (1976) and Penn Central Transp. Co. v. City of New York, 366 N.E. 2d 1271 (1977), aff'd, 438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed. 2d 631 (1978). Both of these cases involved transferable development rights ordinances adopted by the City of New York for landmark preservation purposes and did not challenge whether the State of New York enabling act permitted the City of New York to adopt these ordinances. Rather, the issue addressed in these cases was the constitutional implication of "taking without just compensation" under the Fifth and Fourteenth Amendments of the United States Constitution.

To date, no major decision nationwide has specifically addressed the issue of whether the transferable development rights concept is one which is compatible

with a general State enabling act, similar to New Jersey's Municipal Land Use Law. In this State, the main argument against this compatibility is that permitting each of New Jersey's municipalities to develop and implement their own ordinances would lead to a piecemeal and diverse system for the disposition of these property rights, leaving a myriad of problems unanswered, e.g., how these property rights shall be conveyed, forfeited or taxed. The "home rule" power granted to municipalities under N.J.S.A. 40:48-2, copy appended, or under the Municipal Land Use Law, is limited by cases such as Wagner v. Newark, 24 N.J. 467 (1957), In re Public Service Electric and Gas Co., 35 N.J. 358 (1961), Summer v. Teaneck, 53 N.J. 548 (1969) and Plaza Joint Venture v. City of Atlantic City, 174 N.J. Super. 231 (1980), which indicate that certain matters, i.e., title to real property, master/servant and landlord/tenant relationships, matters of descent, the administration of estates, creditors' rights and domestic relations, among others, are subjects best reserved for uniform State-wide treatment. Taxation also requires uniform treatment under Article VIII, Section I, paragraph 1(a) of the New Jersey Constitution. Because the concept of transferable development rights goes beyond the mere physical use of the land and straight to the heart of title to the the land, especially under a system where the transfer of rights is mandatory, it is clear that the transferable development rights concept stretches the outer limits of the home rule power given to the municipalities and touches on matters traditionally thought to have been under the aegis of the State. This rationale makes it unlikely that a transferable development rights ordinance could survive a court challenge, in spite of the provisions in the Municipal Land Use Law which are favorable to creative development techniques and agricultural preservation.

You are advised, therefore, that until such time as specific enabling legislation is enacted, any transferable development rights ordinance adopted by a municipality is likely to be successfully challenged in court as ultra vires of the provisions of the Municipal Land Use Law.

For your reference, appended herein, is a survey completed by the New Jersey chapter of the American Planning Association on transferable development rights ordinance activity in this State, updated to October of 1982.

Very truly yours,

Albert Porroni
Legislative Counsel

By: E. Joan Oliver
E. Joan Oliver
Deputy Legislative Counsel

AP/EJO/js
Enclosures.

and may recover the cost of such work and labor in so protecting such adjacent property; and to make such further and other provisions in relation to the proper conduct and performance of said work as the governing body or board of the municipality may deem necessary and proper;

Sample medicines. 22. Regulate and prohibit the distribution, depositing or leaving on the public streets or highways, public places or private property, or at any private place or places within any such municipality, any medicine, medicinal preparation or preparations represented to cure ailments or diseases of the body or mind, or any samples thereof, or any advertisements or circulars relating thereto, but no ordinance shall prohibit a delivery of any such article to any person above the age of twelve years willing to receive the same;

Boating. 23. Regulate the use of motor and other boats upon waters within or bounding the municipality;

Fire escapes. 24. Provide for the erection of fire escapes on buildings in the municipality, and to provide rules and regulations concerning the construction and maintenance of the same, and for the prevention of any obstruction thereof or thereon;

Care of injured employees. 25. Provide for the payment of compensation and for medical attendance to any officer or employee of the municipality injured in the performance of his duty;

Bulkheads and other structures. 26. Fix and determine the lines of bulkheads or other works or structures to be erected, constructed or maintained by the owners of lands facing upon any navigable water in front of their lands, and in front of or along any highway or public lands of said municipality, and to designate the materials to be used, and the type, height and dimensions thereof;

Life guard. 27. Establish, maintain, regulate and control a life guard upon any beach within or bordering on the municipality;

Appropriation for life-saving apparatus. 28. Appropriate moneys to safeguard people from drowning within its borders, by location of apparatus or conduct of educational work in harmony with the plans of the United States volunteer life-saving corps in this state;

Fences. 29. Regulate the size, height and dimensions of any fences between the lands of adjoining owners, whether built or erected as division or partition fences between such lands, and whether the same exist or be erected entirely or only partly upon the lands of any such adjoining owners, or along or immediately adjacent to any division or partition line of such lands. To provide, in such ordinance, the manner of securing, fastening or shoring such fences. In the case of fences thereafter erected contrary to the provisions thereof, the governing body may provide for a penalty for the violation of such ordinance, and in the case of such fence or fences erected or existing at the time of the passage of any such ordinance, may provide therein for the removal, change or alteration thereof, so as to make such fence or fences comply with the provisions of any such ordinance;

Advertise municipality. 30. Appropriate funds for advertising the advantages of the municipality.

Sources. Pars. 1 to 27, 29, L. 1917, c. 152, Art. XIV, §1, p. 352 [1924 Suppl. §°136-1401], as am. by L. 1932, c. 87, §1, p. 151. Par. 28, L. 1910, c. 187, §1, p. 308 [C. S. p. 3141, §1]. Par. 30, L. 1917, c. 152, Art. XXXVII, §9, p. 457 [1924 Suppl. §°136-3709].

Cross References. Fire escapes for tenement and apartment houses, see chapter 3 of the title Tenement Houses and Public Housing (§55:3-1 et seq.).

Grade crossing elimination, see Title 48, Public Utilities.

40:48-2. Other necessary and proper ordinances. Any municipality may make, amend, repeal and enforce such other ordinances, regulations, rules and by-laws not contrary to the laws of this state or of the United States, as it may deem necessary and proper for the good government, order and protection of persons and property, and for the preservation of the public health, safety and welfare of the municipality and its inhabitants, and as may be necessary to carry into effect the powers and duties conferred and imposed by this subtitle, or by any law.

Source. L. 1917, c. 152, Art. XIV, §2, p. 357 [1924 Suppl. §°136-1403].

Article 2. RENDITION OF PUBLIC SERVICE AND CONTRACTS THEREFOR.

40:48-3. Power to do work where owner refuses; procedure. When, by this subtitle, the governing body of any municipality is given power to order the owner of any real estate therein, to make any improvement or to do any work thereon, or upon any street upon which his real estate abuts, and he refuses or neglects to make such improvement or do such work after being so ordered, the municipality after notice to him of its intention so to do, may cause such improvement to be made or work to be done, and may recover the cost thereof from him by action at law. Such action shall be in addition to any other remedy given by this subtitle and shall not make void any lien hereby given upon such real estate, nor prevent the imposition of any penalty imposed for violation of any ordinance of the municipality.

Source. L. 1917, c. 152, Art. XXXVII, §10, p. 457 [1924 Suppl. §°136-3710].

40:48-4. Plants or facilities for public use or benefit. Any municipality may provide, maintain and operate public baths, employment agencies, comfort stations, watering troughs, warehouses, slaughterhouses, and any other plant or facility for rendering any service or furnishing any commodity to the municipality or its inhabitants.

Source. L. 1917, c. 152, Art. XXXVII, §15, p. 458 [1924 Suppl. §°136-3715].

40:48-5. Private contracts generally. When, under any provision of this subtitle, any municipality is authorized to render any service to the public, it may, in lieu of providing and maintaining the equipment necessary for rendering such service at its own expense, contract with any person to render such service on behalf of the

9/82
Corrected 10/82

SURVEY OF TDR/TDC ACTION IN N.J.

Municipality by Counties	Seriously considering TDR	Adopted or about to be adopted in master plan	Some form of developme transfer adopted in zo ordinance (*indicate P lands municipalities)
Atlantic	X		
Hamilton			*
Egg Harbor			*
Galloway			*
Bergen			
Burlington			
Medford Twp.	X		*
Chesterfield			X
Shamong	X		*
Evesham			*
Pemberton			*
Southampton			*
Tabernacle			*
Lumberton	X		
Camden			
Berlin Boro			*
Chesilhurst			*
Waterford			*
Winslow			*
Cape May			
Cumberland			
Shiloh Boro			X
Essex			
Gloucester			
Monroe			*
Hudson			
Hunterdon			
E. Amwell	X		X
Holland	X		
Readington	X		
Alexandria	X		
Tewksbury	X		

Municipalities by Counties	Seriously considering TDR	Adopted or about to be adopted in master plan	Some form of development transfer adopted in zoning ordinance (*indicate Pinelands municipalities)
Mercer			
E. Windsor			X
W. Windsor	X		
Washington	X	X	
Middlesex			
Plainsboro	X		
Cranbury	X	X	
So. Brunswick	X		
E. Brunswick	X	X	
Monmouth			
Freehold Twp.			X
Millstone	X		
Morris			
Morristown			X
Washington Twp.			X
Mt. Olive			X
Ocean			
Ocean			*
Manchester			*
Barnegat			*
Beachwood			*
Berkeley			*
Jackson			*
So. Toms River			*
Stafford			*
Passaic			
West Milford	X		
Salem			
Somerset			
Hillsborough			X
Franklin	X		
Sussex			
Andover	X		
Union			
Warren			
Pinelands Commission & Pinelands municipalities			X

Municipality by Counties	Seriously considering TDR	Adopted or about to be adopted in master plan	Some form of development transfer adopted in zoning ordinance (*indicate Pinelands municipalities)
			22 municipalities required to include a PDC provision in their ordinances in orde to comply with Pinelands Plan; 3 of these are consid ing their own TDR program.