

## MEMORANDUM

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**To:** Craig Weber & Priya Mehendale, Los Angeles Department of City Planning

**From:** HR&A Advisors, Inc.

**Date:** August 3, 2021

**Re:** Summary of Key Considerations for Implementing a Transfer of Development Rights Program in the Hollywood Community Plan Implementation Overlay District (CPIO)

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HR&A Advisors, Inc. (HR&A) has prepared the following memorandum to assist the Los Angeles Department of City Planning (LADCP) in better understanding Transfer of Development Rights (TDR) programs in general, and more specifically, issues applicable to the TDR program that is proposed as part of the Hollywood CPIO. In the Hollywood CPIO, the TDR program, which is intended to facilitate the preservation of historic resources by allowing additional development rights to be transferred to more appropriate sites, would allow developers to purchase unused floor area from designated and eligible historic properties within the CPIO's Regional Center subarea and transfer it to another development site within the Regional Center subarea. This memorandum provides a general overview of relevant TDR programs and includes key considerations for LADCP staff and decision makers to consider. This memorandum draws on HR&A's extensive familiarity with the TDR professional literature and experience designing and critiquing such programs proposed across the U.S., and directly relevant experience evaluating the incorporation of the existing Transfer of Floor Area Rights (TFAR) program in Downtown Los Angeles into the new Community Benefits Program for the Community Plan update for that area of the City of Los Angeles (the "City").

### **TDR Overview and Downtown Los Angeles TFAR Program**

Transfer of Development Rights programs are voluntary land use incentive programs that allow landowners to sell unused rights from a "sending site" to a developer, or other interested party. The buyer can then use the rights to increase the density of development at another designated location (the "receiving" site). Typically, an easement is placed on the sending site to either prevent redevelopment, particularly for historic properties, or reducing the amount of available development rights available for redevelopment. The intent of TDR programs is to incentivize the provision of a variety of public benefits, including preservation of affordable housing (including single-room occupancy units) and historic resources, or to fund public realm improvements, infrastructure upgrades, and parks and open space.

Creating a TDR program requires: 1) determining the geographic boundaries for sending and receiving sites (which are often, but not always coterminous); 2) determining the size of the market for development rights and interaction with other zoning incentive programs; and 3) establishing procedures for transfers. Procedures necessary include creating the application or approval process for a TDR transfer, specifying whether TDR can be speculatively purchased (i.e., without a predetermined receiving site), and setting price thresholds or payments for use of TDR programs that are aligned with the cost to fund public benefits in addition to the benefits accrued to sending sites, and creating an inventory of available TDR. Administering

a TDR program can be complex and requires both ongoing monitoring to determine whether transfers are compliant, as well as ongoing calibration of geographies and prices (if set, as discussed further below), and making adjustments as needed to improve successful policy outcomes.

Most TDR programs are market driven and pricing is determined by buyers and sellers for individual transactions. This allows for flexibility as real estate market conditions change over time. However, some programs set pricing structures, particularly where TDR is made available to be transferred from public facilities. A notable example of this is the Downtown LA TFAR program, which was adopted in 1975 and later modified in 2007 to facilitate the transfer of floor area from the Los Angeles Convention Center to sites throughout Downtown. The program allows the transfer of floor area between sites within a designated area of Downtown that generally comprises the Financial District, the Historic Core, and South Park neighborhoods.

Applicants can utilize the TFAR program by making a “Public Benefit Payment” to purchase TFAR from the Los Angeles Convention Center, or can purchase development rights from a landowner of a another “sending” site. Purchases of less than 50,000 square feet do not require the purchase of floor area from a physical site and can be granted directly by the LADCP without any discretionary approvals, which are required (including City Council approval) for larger transfers. For purchases from the Convention Center or for purchases directly from the City for under 50,000 square feet, the amount of the TFAR Public Benefit Payment is determined by a codified formula based on the market (or appraised) land value, lot size, FAR, and square footage to be transferred. The applicant must also make a second payment, the “TFAR Transfer Payment,” if the applicant is purchasing floor area from a City-owned site. The TFAR Transfer payment is the greater of 10 percent of the Public Benefit Payment, or \$5 multiplied by the square footage to be transferred. The TFAR Transfer Payment must be an all-cash payment into a City-controlled fund. The Public Benefit Payment must be at least 50 percent cash, with the remaining 50 percent also as cash, or the provision of an equal dollar amount in off-site public benefits.

The proceeds of these cash payments through the TFAR program are deposited into the Public Benefits Payment Trust Fund, which is administered by the Public Benefit Trust Fund Committee comprised of representatives from the Downtown City Council member’s office; the Department of City Planning; Mayor’s Office; City Administrative Officer; Chief Legislative Analyst, and the local Neighborhood Council. This committee allocates funds to projects that are determined to provide a “public benefit,” including but not exclusive to affordable housing, public open space (e.g., revitalization of Pershing Square), historic preservation, and streetscape and transportation improvements (e.g., the Broadway Streetcar). In our evaluation of the TFAR program, we found that the formula used for calculating the TFAR Public Benefit Program tends to underprice the value of development rights, particularly in contrast to other incentive zoning systems nationally that require the provision of affordable housing or other community benefits. The average size of TFAR transactions appears to have been heavily skewed by a preference to purchase under 50,000 square feet of additional floor area to avoid a discretionary decision-making process; this may have limited the overall size of the buildings and limited the amount of community benefits produced. Any HCP TDR program should be designed to avoid these challenges, which are further described in a July 15, 2019 memorandum prepared by HR&A.

However, several cities across the U.S. have successfully implemented TDR programs that support the creation of housing and infrastructure, the revitalization of downtowns, and/or design flexibility by allowing increased density at specific locations. HR&A previously analyzed a set of successful TDR programs for the

Downtown Community Plan work, including New York City, San Francisco, Seattle and Portland, which are described in an October 2019 report prepared by HR&A.

## **Relevant Examples**

As we understand it, an HCP TDR program may be used to support the preservation of Hollywood's historic theaters, and other historic buildings. Two examples in New York City and San Francisco underscore the considerations noted above and provide particular lessons for a TDR program within the HCP.

### New York City Theater District TDR Program

New York City's Theater District TDR program is a particularly successful example with relevance to that objective. New York City has a variety of TDR mechanisms, with unique programs designed for specific districts in the City, and different benefits targeted to different land uses. The Theater Subdistrict program has evolved over time but was initially established in 1982 to preserve the Broadway theater industry in the face of redevelopment pressure from adjacent neighborhoods. Through this program, theaters can transfer their available development rights anywhere within the approximately 50-acre subdistrict in exchange for preserving a legitimate theater use. Contributions from TDR receiving sites, on a per square foot basis, must also be made to a Theater Subdistrict Fund, managed by the city, which is reserved for other projects and programs that promote new theater work and develop new audiences.

The program's success can be attributed primarily to three key factors. First, a contribution to the Theater Subdistrict Fund is required in addition to payment for theater rehabilitation on the sending site. This provides grants for theater-related uses, including renovations and programming. Second, the city clearly articulated the public benefits (theater preservation and Broadway activities) associated with the program to the public, and did not dilute the objectives of the program by including other types of public benefits; this has made the increased density more politically viable. Finally, the city also inventories available TDR in the subdistrict. This has increased awareness regarding available TDR within the development community and has encouraged program utilization, in particular contrast to other TDR programs where municipalities do not play a role in inventorying available floor area rights.

### San Francisco Landmark TDR Program

San Francisco's TDR program was created as part of the City's 1985 Downtown Plan in response to unprecedented growth and potential loss of historic buildings. The program is limited to downtown historic preservation, and receiving areas are limited by zoning designation rather than transfer radius. Historic properties in San Francisco's C-3 zoning district can transfer their floor area, and the amount of TDR that can be transferred is the difference between the floor area allowed by zoning and the actual floor area of the existing building. The program has been one of the more successful landmark preservation TDR programs in the nation, although some of the success factors are not relevant to the HCP, and it has some limitations as noted below.

San Francisco's program allows any third-party developer, broker, investor, speculator, or financial institution to own speculative TDR (i.e., buy floor area rights from a historic building without an intended receiver site). This widens the pool of potential buyers and sellers, independent of whether they own land to which the TDR might be transferred. The program also allows sending and receiving sites to be anywhere within the city's downtown. The only restriction is that transfers must be within the same zoning designation, creating a larger,

more viable market for potential buyers and sellers. San Francisco's program has a straight-forward, three-step certification process and does not require discretionary approval. As such, developers have come to rely on TDR as an understandable and dependable technique.

However, a key success factor was the city's reduction of its baseline development threshold as part of the 1985 Downtown Plan (excluding historic buildings) thereby creating an incentive for developers to buy TDR. Furthermore, there is a lack of awareness regarding available TDR supply, as the city does not manage an inventory, which has deterred developers from taking advantage of potential transfers. Availability of historic and speculative TDR is not well-documented, and the need to identify TDR opportunities adds complexity to the transfer process.

## **Key Considerations**

Based on HR&A's experience and previous analysis of TDR programs, we recommend several key considerations for the implementation of any HCP TDR program. In general, if a program does not include a fixed pricing structure, a financial feasibility analysis would not be required or practical to determine the feasibility and future utilization of a program. Analysis of available floor area for sending sites and potential utilization by receiving sites, and careful attention to the structure and procedures of the program (as described below) are more likely to determine feasibility and utilization of a program.

### Careful Program Design and Clarity

Generally, a centralized database of available TDR is critical to promote the use of the program. Not only does it provide transparency and simplify verification of transactions, but it can also provide an opportunity for "receiving" site developers and "sending" site property owners to come together. To ensure consistent funding of public benefits, purchases should be limited to eligible sites consistent with the program objectives, and any additional payments should be directed to a specific reserve of funds that advance district-specific public benefits. Advertising the use of the TDR program to non-profit organizations and property owners can facilitate a program's public benefit objectives, as these entities may not be aware of the potential to monetize their building assets.

### Integration with Other City Programs

Generally, TDR programs work best when they are the only available incentive. This is because differences in cost to developers of using a TDR program or another incentive program (i.e., an affordable housing density bonus program) can vary over time and tend to cause one program to be more widely utilized, as is the case with the Downtown Los Angeles TFAR program. Establishing zoning regulations that require utilization of both TDR and other incentive programs to reach maximum FAR can reduce competition between programs.

### Geographic Reach & Calibration

Baseline development thresholds must be properly set to encourage TDR success, ensuring that developers are incentivized to utilize additional density through the program. Separately, a large geographic transfer can create more demand and TDR take-up. However, since the value of FAR is often tied to land value, a large transfer radius can also create an incentive to transfer FAR from less expensive property to more expensive property, which can shift infrastructure burden among neighborhoods and leave some areas underutilized. Many cities with successful TFR programs have calibrated them such that the floor area

available for transfer is proportional to available development sites; this is something that LADCP should consider, particularly because other FAR bonuses could dilute interest in a TDR program.

#### Speculative Purchasing

Allowing TDRs to be sold to a speculative buyer without having to wait for a proposed development can also create a larger pool of potential buyers. However, in some cities, transferable development rights are held by select buyers for an extended time period, causing TDR pricing to be misaligned with the market. When TDR does not require discretionary approval, developers can rely on TDR as a dependable and predictable mechanism. This encourages additional density and development by minimizing risk and shortening entitlement processes.

*Conclusion: TDR programs in general are complex to design and implement. In particular, implementing a TDR program requires careful attention to the geography within and procedures under which transfers can occur. Particularly for residential projects, competition between a TDR program and affordable housing incentives may limit the use of both programs.*