

COUNTY OF SUFFOLK



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**May 5, 2014**

**SUFFOLK COUNTY DEPARTMENT OF HEALTH SERVICES GENERAL GUIDANCE  
MEMORANDUM #27  
GUIDELINES FOR TRANSFER OF DEVELOPMENT RIGHTS AND PINE BARRENS  
CREDITS FOR SANITARY DENSITY CREDIT**

**AUTHORITY**

The Suffolk County Sanitary Code sets forth requirements for approval of water supply and sewage disposal systems, and Article 6, Sections 760-605.C, 760-605.d, 760-607.E and 760-607.F permit the use of transfer of development rights (TDR) in order to exceed the allowable sanitary density for an unsewered parcel or project in conformance with standards established by the Department of Health Services (SCDHS).

**PURPOSE**

Applications submitted to this office for development on unsewered parcels must meet the sanitary density requirements set forth for a specific Groundwater Management Zone (GMZ) in Article 6 of the Suffolk County Sanitary Code. However, in many cases, applicants wish to transfer allowable sanitary density from one parcel to another in order to permit additional development on a specific parcel. The Transfer of Development Rights Standards addresses methods in which this may be accomplished. The TDR standards are intended to protect groundwater, drinking water and surface waters while providing developers flexibility.

This memorandum provides more detailed information regarding the potential methods, as well as requirements and limitations, and information regarding considerations when variances are requested. In all instances where a TDR is proposed, receiving parcels must either meet local zoning codes or have a zoning variance/approval, and must be served by public water.

**GUIDANCE**

The following is a general description of currently approved TDR plans for as-of-right sanitary density transfers, and information regarding factors that the Department will likely take into consideration should a variance be requested for a TDR which is not in conformance with an approved plan. It is strongly recommended that applicants contemplating a proposal involving a TDR, especially a TDR requiring a

density transfer variance, make appointments with staff in the SCDHS Office of Wastewater Management (WWM) to receive an unofficial analysis of their situation. Note that no official rulings or approvals are given without appropriate applications being filed.

For formal approvals, please note that in addition to the plans and application forms normally required for an approval to construct, if a variance is required the Department will require the submission of a variance application and fee, as well as a completed Transfer of Development Rights Data Sheet (Form WWM-121).

Please note that these guidelines are provided for informational purposes only, and relate solely to the Department's requirements for the use of TDRs for sanitary density purposes. These guidelines are not intended to address or in any way negate the need for other possible requirements, including those from other agencies; for example, a local zoning variance or a SEQRA review may be required for a project.

There are several methods of accomplishing a sanitary density transfer, as described below.

## **1. AS-OF-RIGHT**

The methods of accomplishing a sanitary density transfer described below can be accomplished without the need for a variance from the Department.

### **A. Central Pine Barrens Comprehensive Land Use Plan**

Pine Barrens Credits (PBCs) may be utilized as-of-right for sanitary density credit for receiving parcels located in GMZ III, up to twice the permitted sanitary density under Article 6 of the Sanitary Code based upon the area of the receiving parcel. In cases where an applicant proposes to utilize PBCs from a town other than the town where the receiving parcel is located, approvals will be required from both the sending and receiving towns. It is also important to note that PBCs cannot be utilized for receiving parcels within the Pine Barrens Core Area.

### **B. Other TDR Plans Approved for Sanitary Density Transfers by SCDHS**

As of the date of this document, the SCDHS has approved the following TDR plans:

- 1) Suffolk County Save Open Space (SOS, enacted in 2004) – Credits in this program are based upon the more restrictive of town zoning or SCDHS density, and are maintained by the County Planning Department. Transfers are permitted within the same GMZ and Township up to twice the permitted sanitary density under Article 6 of the Sanitary Code based upon the area of the receiving parcel, and in accordance with local zoning. SOS credits may only be utilized for workforce housing that meets the requirements of the Suffolk County Affordable Housing Opportunities Program as set forth in Article XXXVI of the County Code, which may include a maximum purchase price of \$250,000 in the case of home ownership units.
- 2) Southold Township (adopted in 2007) – Credits in this program are based upon SCDHS allowable sanitary density, and are maintained by the Town of Southold Community Preservation Fund. Transfers are permitted up to twice the permitted sanitary density under Article 6 of the Sanitary Code based upon the area of the receiving parcel. These credits can only be utilized for affordable housing.

- 3) East Hampton Township (adopted in 2007) – Credits in this program are based upon a combination of SCDHS allowable sanitary density and town zoning, and are maintained by the Town of East Hampton Community Preservation Fund. Transfers are permitted up to twice the permitted sanitary density under Article 6 of the Sanitary Code based upon the area of the receiving parcel. These credits can only be utilized for affordable housing.
- 4) Huntington Township (adopted in 2008) – Public credits in this program are based upon SCDHS allowable sanitary density; for a privately owned sending parcel, the Town issues a letter of interpretation of credit yield based upon SCDHS allowable sanitary density. Transfers are permitted up to twice the permitted sanitary density under Article 6 of the Sanitary Code based upon the area of the receiving parcel. These credits can be used for both residential and commercial projects. It should be noted that no transfers within the Town of Huntington can be approved by the SCDHS other than through the Town program.
- 5) Smithtown Township (adopted in 2010) – Public credits in this program are based upon SCDHS allowable sanitary density; for a privately owned sending parcel, the Town determines the credit yield based upon SCDHS allowable sanitary density after consultation with the SCDHS. Transfers are permitted up to twice the permitted sanitary density under Article 6 of the Sanitary Code based upon the area of the receiving parcel. These credits can be used for both residential and commercial projects. It should be noted that no transfers within the Town of Smithtown can be approved by the SCDHS other than through the Town program.

## 2. **NON AS-OF-RIGHT**

There are no provisions in the Suffolk County Sanitary Code or in Department standards which automatically permit the use of a TDR for sanitary density purposes other than as described above. However, the Department's TDR standards do present developers with a degree of flexibility through the use of the variance process for other TDR proposals for individual projects.

The information provided below is intended to describe and summarize Department considerations utilized with variances involving TDRs, and is in no way intended to create a standard for TDR variances or to prevent the Department from considering other information. Every variance application is unique, and is considered and evaluated based upon the specific proposal and site conditions.

### A. **General Information**

Proposed transfer of sanitary density development rights outside of the plans and limitations outlined above require a site-specific review of the proposal for consideration as to whether a variance for such a proposal would be in harmony with the general purpose of Article 6 of the Sanitary Code in that the proposals are protective of groundwater, drinking water supplies, surface water and other natural resources, and public health, safety and welfare. There is no entitlement to, or guarantee of, the granting of any variance request.

Since the early 2000s, the Department has been using digital geospatial (GIS) coverages of areas contributing groundwater to sensitive surface waters and public water supply wells. These coverages allow the Department to better evaluate potential environmental health impacts and

mitigation measures. Every application is unique, and the use of these coverages can vary on a case-by-case basis. However, in general, and as described in SCDHS General Guidance Memorandum #28, "Guidelines for Siting Sewage Treatment Plants and Other Disposal Systems," nitrogen impacts are a special concern in areas within a 25-year travel time to surface waters and 50-year travel time to public supply wells. Pathogen impacts are a drinking water concern in areas with a 2-year travel time. The GIS coverage for areas contributing to surface waters is being made available to the public on the Suffolk County website. SCDHS should be consulted for areas potentially contributing to public supply wells; these GIS coverages will be made available, so long as federal and state agencies do not contraindicate release due to security concerns.

Factors that may be considered for suitability of a parcel as either a sending or receiving parcel include:

- Geographic proximity and GMZs of sending parcel(s) (or Pine Barrens area, in the case of Pine Barrens credits) and receiving parcel(s)
- Location relative to deep recharge, e.g., transfer from deep flow to shallow flow areas
- Locations of public and private wells relative to both sending and receiving areas
- Groundwater contributing areas to public water supply wells and surface waters
- Regional or sub-regional groundwater impacts/benefits
- Development potential of sending parcel, i.e., is the sending parcel size a substandard lot based upon Article 6 density requirements, town zoning, or by the presence of wetlands or surface waters, availability of infrastructure such as roads, electric service and public water
- Whether a municipal entity has indicated that they will accept title of the sending parcel with the restriction that the property be left as open space or nature preserve
- Whether the receiving parcel is proposed to exceed twice the allowable sanitary density based upon the parcel area
- Whether the receiving parcel has sufficient area for installation of a sewage disposal system designed for the requested sanitary flow in accordance with all Department standards for hydraulic sizing and separation distances

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Covenants accomplishing the transfer of sanitary density credit are generally required to be filed both the sending and receiving parcels. Specific deed modifications and/or restrictions may also be required.

Wherever possible, transfers within the same township are preferable. Inter-town transfers have occurred; however, written approval from both townships is required in such cases.

#### **B. Variance Considerations for the Amount of Credit Granted for Proposed Sending Parcels**

- Pine Barrens Core Area parcels proposed for use as sending parcels with a letter of determination or Certificate from the Pine Barrens Clearinghouse are accepted by the Department at their credit value without the need for additional evaluation.
- For non-Pine Barrens Core Area sending parcels which are less than the required minimum lot area for Article 6 density for a single-family dwelling, consideration can be given as to whether the parcel may qualify for the Article 6 Section 609 B(4) single lot exemption.
  - If the sending parcel(s) are residentially zoned and appear as separately assessed on the 1981 Suffolk County tax map and comply with current town zoning, or have current

town building permits, they are considered as “buildable” lots and can generally be allowed 300 gpd of sanitary density flow for transfer.

- If the sending parcel(s) are residentially zoned but do not comply with town zoning, the lots are not considered buildable unless the applicant secures a zoning variance or submits satisfactory documentation from the town. In the absence of proof that proposed sending parcels are “buildable” lots, the Department may consider granting a full or partial TDR credit for residential lots based upon factors such as parcel area, road frontage, presence of wetlands, groundwater conditions, surrounding development, and proximity to infrastructure such as roads, water mains and other utilities; such determinations are made on a case-by-case basis.
- Undersized lots which are zoned other than residential are generally considered for sending credits based upon allowable sanitary density calculated on lot area, unless other mitigating factors are present, such as the presence of an existing building or the ability to construct a business on the stand-alone parcel.
- For non-Pine Barrens Core Area sending parcels which are greater than the required minimum lot area for Article 6 density for a single-family dwelling, credits are generally evaluated as follows:
  - If the sending parcel(s) are residentially zoned, allowable sanitary density for the sending parcel can be determined by submission of a yield map conforming to the more restrictive of either Article 6 density requirements or town zoning requirements.
  - Alternatively, the total acreage of a residentially zoned sending parcel may be multiplied by 0.75 to determine buildable area, excluding wetlands and underwater areas. The number of lots for density credit would be calculated by dividing the buildable area by the more restrictive of Article 6 minimum lot size for the GMZ or the current town zoning requirement. Refer to the “Standards for Approval of Plans for Sewage Disposal Systems for Other Than Single-Family Residences” for requirements.
  - If the sending parcel(s) are commercially zoned, allowable sanitary density flow is generally calculated based upon either 300 gpd/acre or 600 gpd/acre (excluding wetlands and underwater areas), depending upon the GMZ.
- Parcels located within sewer areas or served by sewage treatment systems are not acceptable as sending parcels.
- Parcels which have been sterilized for parkland are not acceptable as sending parcels.
- Parcels created by dividing a tax parcel after January 1, 1981 without SCDHS approval are not acceptable for use as sending parcels for sanitary density purposes.

### **C. Disposition of Proposed Sending Parcels**

- Pine Barrens Core Area parcels proposed for use as sending parcels for sanitary density are to be redeemed through the Department and the Pine Barrens Commission.

- An appropriate method of sterilization of a non-Pine Barrens Core Area sending parcel is required to be proposed and documented before the sending parcel will be considered for acceptability.
  - Parcels being completely sterilized must remain as open space or nature preserve. The parcel(s) must be permanently sterilized; they cannot be developed, used as farmland, golf course, cemetery, or have other nitrogen inputs associated with their use, or have any future sanitary flow. These TDR sending parcels may also be combined with an adjacent tax lot with covenants against further development. Deed modifications may be required.
  - In the case of a proposed reduction in allowable sanitary density on a sending parcel, the Department will consider whether the proposed remaining density will be adequate for future development of the sending parcel; in such a case, covenants would be required transferring sanitary density flow to the receiving parcel as well as limiting the allowable flow on the sending parcel.
- The Department will not permit a parcel to be completely sterilized or reduced in permissible sanitary flow so as to prohibit any development without the parcel being dedicated to a municipality or land preservation group such as the Nature Conservancy, or merged with an adjacent parcel with appropriate covenants and deed restrictions.

#### **D. Other Considerations**

- In areas where private wells are in use, water main extensions and/or requirements for offers of public connection for potentially affected neighbors utilizing private wells may be required.
- Variances for the use of TDRs for receiving parcels where an on-site sewage disposal system cannot be installed in accordance with Department design standards are not generally granted.
- The Department attempts to approve variances consistent with the regulations of all levels of government. Consideration and/or variance determinations may be delayed pending receipt of consent of another jurisdiction.

#### **EFFECTIVE**

This document is for guidance purposes only and should apply in most cases, but it is not a standard and is not meant to substitute for the discretion and common sense of the reviewing engineer or staff member involved in a variance determination. Each application is unique, and particularly in the cases of variances, will be considered on the merits of the specific proposal.

Issued by: *Signature on file*  
 Walter J. Hilbert, P.E., Chief  
 Office of Wastewater Management