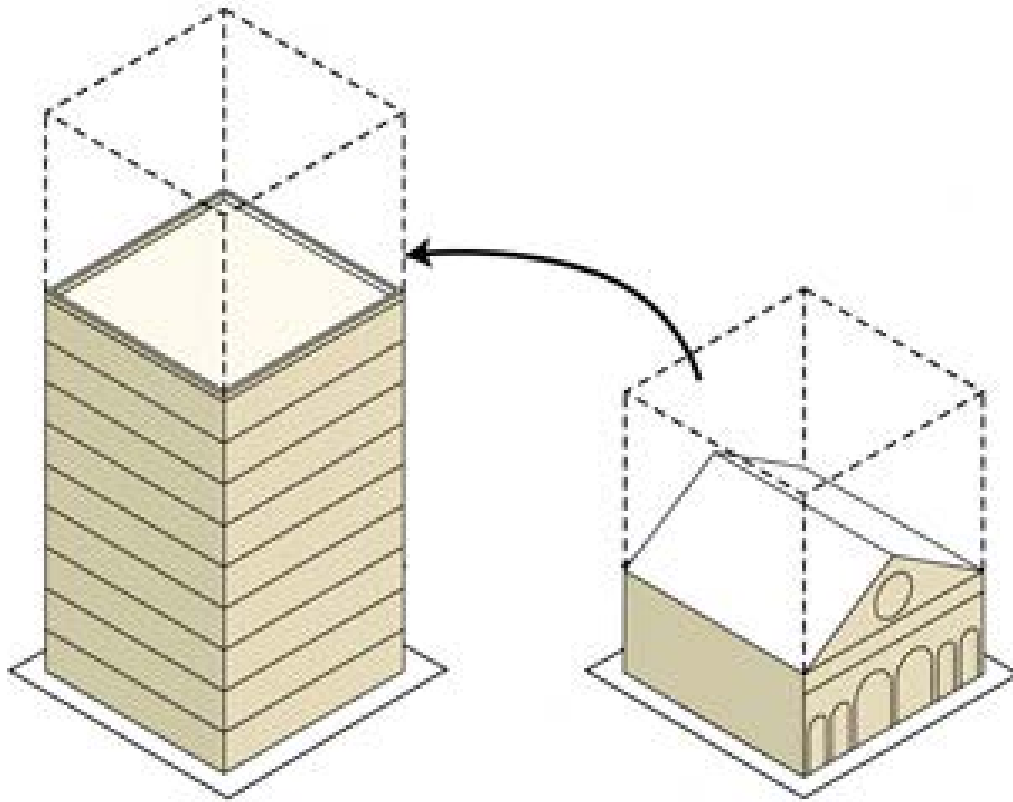


A Survey of Transferable Development Rights Mechanisms in New York City

Department of City Planning



February 26th, 2015

I. Introduction

This survey looks generally at Transferable Development Rights (TDRs) in New York City. The report takes “TDR” to refer to any mechanism that enables the transfer of floor area across preexisting zoning lot lines, whether to contiguous lots or across distances that might span several blocks. TDRs play a part in a diverse array of zoning tools. For the purposes of this survey, the four major mechanisms are: Zoning Lot Mergers (ZLMs),¹ Landmark Transfers under Section 74-79, Special District transfer mechanisms, and the transfer provisions included in Large-Scale Development Plans (LSDPs).

ZLMs, in varied form, have existed since the original Zoning Resolution in 1916. They can be described as an artifact of the changing definition of “zoning lot” and they were not created to serve any particular policy purpose.² Other TDR mechanisms emerged only after the 1961 revision, with basically all current mechanisms dating to the general proliferation of zoning tools in the late 1960s and early 1970s during the Lindsay Administration. The main objective of Landmark Transfers, created in 1968, was to mitigate legal risk arising from challenges to landmark designations, which restricted the ability of owners to redevelop. The mechanism enabled some owners to sell unused development rights while ensuring adequate maintenance of designated landmarks.³ The city has pursued other planning and policy objectives through Special District mechanisms that support preservation (the Theater Subdistrict, South Street Seaport Subdistrict, Special Coney Island District),⁴ achieve urban design and open space objectives (Special West Chelsea District, Special Hudson Yards District),⁵ or further particularly complex large-scale developments (Special UN District, Special Manhattanville Mixed Use District).⁶ Large-Scale Development Plans include transfer provisions that facilitate flexibility and “better site planning” for the large developments on large lots under unified ownership that LSDPs were created to enable.

¹ Note that Zoning Lot Mergers (ZLMs) are not technically transfers of development rights but rather the shifting of development rights within a unified zoning lot. Development rights always remain within a given block. ZLMs are included in this report because the market for ZLMs has come to resemble the market for TDRs, with developers assembling “air rights” through ZLMs in order to construct larger buildings than would otherwise be permitted on the lots they own or lease.

² See Section 12-10.

³ See Section 74-79.

⁴ See Section 81-70, Section 91-60, and Section 131-00.

⁵ See Section 98-00 and Section 93-00.

⁶ See Section 85-00 and Section 104-00.

This may seem like a wide and varied group of mechanisms – and it is – but historically TDRs have been employed as an extraordinary measure to be used only under exceptional circumstances when more basic zoning tools will not suffice. It has been the general rule that development rights stay within a given block, with limited exceptions for preservation of low-density public benefits like historic resources or open space.

This report represents the beginning of review and possible reform of TDR mechanisms by the New York City Department of City Planning (DCP). In recent years, calls have grown to expand or create TDR programs to facilitate development or to harness development for various public and private ends. At the same time, calls have also grown to restrict them. In response to this increased attention to TDRs, DCP intends to review New York City’s various TDR programs and consider their future role in the city’s repertoire of zoning and planning tools.

First, there is a sense among development professionals, academic observers, and segments of the public that TDRs represent an all-purpose zoning tool that should be expanded to unlock unused floor area, increase development and densities, and generate revenue for a range of public purposes – from parks to public housing. Across the country, TDRs are primarily used for landmark and open space preservation. In New York City they have limited broader applicability, and the pressure is steadily growing to expand them further. To name a recent few examples: A group of prominent New York City land use professionals proposes to create a TDR bank that would purchase and pool development rights from landmarks and transfer them to locations across the city. An academic institute recently released a series of reports that suggest loosening procedural requirements for various TDR mechanisms to free up and expand the market. Individual developers increasingly ask the city to create development rights and enable their transfer to realize particular projects. City institutions have also joined the call, proposing to sell air rights to generate revenue to meet capital projects backlogs. The Mayor’s Housing Plan proposes to use TDRs to expand housing production and generate revenue for affordable housing.⁷

Second, there is concern from some quarters about the perceived negative planning consequences of moving floor area across zoning lot lines in the absence of adequate controls and oversight. The rules and regulations, the thinking goes, assign a certain amount of development rights to each zoning lot in accordance with a well-considered plan; tools that enable those development rights to shift can result in ill-advised bulk and density increases and

⁷ The City of New York, “Housing New York: A Five-Borough, Ten-Year Plan” (2014), p.73.

are inherently suspect. A prominent civic organization recently released a report questioning the use of ZLMs to build “supertall” luxury condos south of Central Park. ZLMs typically proceed as-of-right, but the organization proposes instituting a Special Permit mechanism in certain instances. This is in the context of perennial wariness about new development and regulatory changes that would facilitate increases in bulk and density or reduce the degree of public oversight of development approvals.

Both sides of this debate raise legitimate concerns that deserve close consideration. As this survey shows, TDRs can be a powerful zoning tool, and they’ve helped to achieve a number of worthy planning and land use objectives across the city. As these programs have grown over the last century, the city’s policies with regard to TDR have never been fully and clearly articulated. This report serves as the beginning of a public process by DCP to evaluate existing TDR programs, to clarify City policy on the use of TDRs, and to expand, restrain, or reform existing TDR programs, as appropriate, to achieve valid planning and land use objectives.

Part Two of this report will provide an overview of each existing TDR provision available in the city: Zoning Lot Mergers, Landmark Transfers, Special District mechanisms, and Large-Scale Development Plans. Part Three will sum up New York City’s experience with TDRs and outline the circumstances and purposes underlying the use of TDRs. Part Four will provide a brief overview of TDR programs in other cities. Part Five will conclude.

II. Transferable Development Rights Mechanisms

Zoning Lot Mergers

Zoning lot mergers (ZLMs) are thought of as the simplest and easiest form of development rights transfer, largely because they can be executed as of right without additional approvals from the city. Rather than transferring floor area across lot lines or from one block to another, as with Landmark and Special District TDRs, ZLMs combine contiguous tax lots within a block, eliminating lot lines for zoning purposes and allowing the free movement of floor area within the merged zoning lot. (As such, ZLMs are not technically TDRs; they are included here because the market for and outcomes of ZLMs often closely resemble those of TDR mechanisms.) The merged lots need not be under single fee ownership or even a long-term lease; all that's required is a recorded Zoning Lot Development Agreement (ZLDA, or "Zelda") executed by all interested parties and recorded at the Department of Finance.

Because of the low procedural hurdles, ZLMs happen far more frequently and for smaller amounts of floor area than other TDR mechanisms. A Furman Center study found that from 2003 to 2011 over 90 percent of floor area transfers in New York City were ZLMs.⁸ The number of ZLMs tracked development activity over the last 15 years, rising from 18 in 2003 to more than 70 in 2007 and crashing to fewer than 15 per year in 2009, 2010, and 2011. About two-thirds of ZLMs happened in the Financial District, Lower East Side/Chinatown, Clinton/Chelsea, and Midtown. The majority of ZLMs are for less than 15,000 square feet (sf). Five percent were for transfers above 100,000 sf. The median size is 13,000 sf, as opposed to 21,000 sf for landmark and special district transfers.⁹

Unlike Landmark and Special District TDRs, ZLMs do not exist to achieve any particular policy objectives. They are rather an artifact of the changing definition of "zoning lot" and its implications for the application of bulk controls to particular projects.¹⁰ When ZLMs work as they should – which hasn't always been the case – allowable density within a zoning block doesn't increase, it merely gets shifted from one lot to another through contiguous lots. It operates as a limited form of density zoning. Because ZLMs don't otherwise allow for

⁸ Furman Center for Real Estate and Urban Policy, "Buying Sky: The Market for Transferable Development Rights in New York City" (2013). ZLMs constituted 385 of 421 transactions. There were 34 special district transfers and 2 landmark transfers.

⁹ Ibid., pp. 5-18.

¹⁰ See Section 12-10 for definition for "Zoning Lot".

exceptions to bulk or other regulations, and because they don't allow any buildings or developments that couldn't happen as of right anyway, the city has not found it necessary to restrict or regulate ZLMs beyond the recording requirement and regulations to curb what might be considered extreme uses of the measure.

Regulation beyond that may prove problematic. Tax lot lines reflect historic ownership patterns but typically do not relate to any land use purposes. Restrictions on the ability to merge them into unified zoning lots would give land use effect to tax lot lines, often without an obvious underlying land use rationale. That may present legal and administrative difficulties.

1916. Versions of the ZLM have been around since the original zoning resolution in 1916. The 1916 code regulated bulk through a system of height and setback controls, but placed no height limits or further setback requirements on portions of a building that covered no more than 25 percent of its zoning lot. The Department of Buildings interpreted “lot” to include not just parcels held in common fee ownership, but also lots that had been combined by a sale, lease, or other conveyance of the right to the air space above 25 percent of the combined lot. (Note that what was conveyed was not a set amount of development rights, but rather the all-or-nothing right to develop the 25 percent of the combined lot not subject to height and setback regulations.) This interpretation gave savvy developers a way to avoid height and setback controls. FAR limitations were not put in place until 1961, which meant that the height of buildings satisfying this “25% Rule” was limited only by economics and building technology.¹¹

Famous buildings developed using 1916-style ZLMs include the Empire State Building in 1931 and 666 Fifth Avenue in 1957.

1961. The 1961 code introduced the concept of FAR, which enables every lot to calculate a set amount of development rights in terms of zoning square feet (zsf). The advent of FAR, and the reforming-away of the 25% Rule, changed the way ZLMs worked: Development rights came to be bought and sold in square feet. Developers were still able to merge contiguous lots in the same blocks, but under new requirements assemblers had to buy the additional lots in fee or enter into a long-term lease – at least 50 years with an option for a 25-year extension – in order to access the additional development rights. The idea was that buildings last fifty to 75 years, and that the long-term lease would cover the life of the building.

¹¹ Francisco Augspach, “Development Rights Purchases by Zoning Lot Merger in New York City” New York Real Property Law Journal Vol. 37 No. 3 (2009).

What if the building lasted longer? What if the lessee stopped paying rent? What if the benefited development was foreclosed upon? Basing development rights transfers on lease provisions proved problematic. An additional and perhaps larger problem with 1961-style ZLMs was that they were recorded, if at all, only on the receiving property. These deals wouldn't show up on the title searches for granting properties, making it difficult to ascertain just how much development rights came with parcels of land in certain parts of the city.

In the face of these difficulties, the Department of Buildings in many cases stopped enforcing prior development rights transfers against granting buildings. This meant that ZLMs were enabling additional density, not just transferring it, undermining the original rationale for allowing them.¹²

1977. Reforms in 1977 resolved many of the issues with 1961-style ZLMs: The reforms created the Zoning Lot Declaration Agreement (ZLDA, pronounced “Zelda”) and instituted a recording requirement that applied retroactively; the reforms also eliminated the lease requirement, leaving the terms of the development rights transaction up to the interested parties. The ZLDA enabled the city, the transacting parties, and any other potentially interested party to understand the terms of the transaction, increasing certainty, decreasing conflict, and resolving potential hitches with the development rights market and property market more generally.

The Trump World Tower (2001) is an example of a building developed under 1961/1977-style ZLMs. The tower purchased development rights from a wide swath of contiguous and non-contiguous lots. (Non-contiguous lots can be rendered contiguous for ZLM purposes, enabling transfers, when the ZLM also includes intervening lots that serve as a continuous bridge from the non-contiguous lot to the receiving lot.) The tower only covered 13 percent of the massive merged zoning lot and led to new scrutiny of ZLMs. The CPC instituted reforms in 2001 that require towers in most zoning districts to cover at least 33 percent of the merged zoning lot.¹³

Today. The regulations governing ZLMs have been more or less consistent since 2001, and they continue to support and enable a range of development, from small transfers for workaday

¹² Norman Marcus, “Air Rights in New York City: Air Rights, Zoning Lot Merger and the Well-Considered Plan” 50 Brooklyn Law Review 837 (1984).

¹³ See Section 23-633(c)(3): “the minimum coverage of such tower above a height of 85 feet above the base plane is at least 33 percent of the lot area of the zoning lot; however, such minimum coverage requirement shall not apply to the highest 40 feet of such tower.”

projects to larger transfers for some of the city's highest profile and most controversial new buildings.

The high-end housing market has experienced an extraordinary resurgence since the depths of the Great Recession, driven by extremely wealthy people vying for trophy properties and foreign and domestic capital chasing the relatively safe and high returns from residential real estate in the city. Condo (and land) prices in this portion of the real estate market have reached new highs. At the same time, the dearth of vacant land in the city's densest areas and advances in building technology have led to higher and higher development on smaller and smaller lots.

ZLMs have helped to facilitate a condo boom just south of Central Park, for example, where the area's zoning (which, given its Midtown location, does not include height limits) and unique location amenities – especially the views – make “supertall” residential construction viable. For small lots, development rights obtained through ZLMs translate into height, especially along wide streets in non-contextual districts with few or no height controls. The transfers have facilitated the preservation of numerous smaller-scale buildings in the area, but the height of the new construction has raised various public concerns. Others worry that the current system of recordation provides notice only during a title search; there is no practicable way to track and assess ZLMs citywide.

In 2014, the Municipal Arts Society (MAS) published “The Accidental Skyline”, a report critical of the use of ZLMs to create the spate of new residential condominium buildings south of Central Park. These buildings include 432 Park Avenue (1396 feet tall), 111 West 57th Street (1350 feet tall), 157 West 57th Street (1005 feet tall), 217 West 57th Street (at least 1400 feet tall), and 220 Central Park South (1031 feet tall). One57, as 157 West 57th Street is known, required 12 separate ZLM transactions to achieve its total height. MAS recommends a CPC Special Permit process for transfers in certain parts of the city. A Special Permit would increase oversight by the city and the public and give opponents to particular developments more opportunity to block them. Judging from other TDR mechanisms, like Landmark Transfers, the additional procedure will prevent developers from seeking all but the largest transfers in the most lucrative areas. Other transfers, and the projects they support, would simply not be proposed or realized.

Moving forward, this tradeoff between degree of oversight and the number of transfers is of central importance as the city considers its TDR policy.

Landmark Transfers under Section 74-79¹⁴

Nationally, various TDR schemes were forwarded in the late 1960s and early 1970s as part of an effort to preserve historic landmarks in the face of a long postwar building boom that increasingly threatened their viability, especially in the high-density downtown areas of America's largest cities like New York and Chicago. In New York, Section 74-79 landmark transfers were developed as part of historic preservation legislation passed by the city Council in the 1960s following the uproar over the 1964 demolition of the old Pennsylvania Station. The Landmarks Preservation Commission (LPC) was created in 1965, with the first landmarks created later that year. Landmark transfers were created to support preservation legislation in 1968.

Section 74-79 created a CPC Special Permit that enabled landmark owners to sell unused development rights to "adjacent" properties, which include "contiguous" properties plus those directly across the street or that share an intersection. The adjacency requirement was modified in 1969 to allow landmark owners to establish adjacency through a chain of lots "owned" (in the ZLM sense) by the transferor or transferee, in theory allowing transfers at greater distances.¹⁵ Except in high-intensity commercial districts, each transfer under 74-79 is limited to twenty percent above the maximum floor area on the receiving lot. Transfers must also be accompanied by a maintenance plan for the landmark.¹⁶

In passing the amendment in 1968, the CPC came to the following conclusions:

We anticipate that the proposed amendments will have multiple benefits. The owner of a designated landmark building can realize an economic gain by selling his unbuilt, but allowable, development rights; the buyer of these rights, in return, can acquire additional floor area he would otherwise not have; the neighborhood, meanwhile, can retain an essential amenity, a revitalized landmark, plus new development harmonious with the character of the area and of a quality unattainable under previous conditions; the city, most importantly, can benefit by new tax revenues from what was previously untaxable.¹⁷

¹⁴ This section relies heavily on Adam Tanaka, "Landmark TDRs: Policy Analysis" DCP Internal Report, August 2014.

¹⁵ See Section 74-791.

¹⁶ This is one of the findings required by Section 74-792.

¹⁷ CPC Report CP-20253, May 1, 1968.

Like ZLMs, the proposals would merely shift floor area, not create it, keeping allowable density in the area constant. The CPC was careful to clarify this aspect of the novel zoning tool:

While it would be possible in some instances for a landmark owner to sell a portion of his unused floor area to several adjacent owners, he could not sell the same portion more than once. Whenever a transaction under these amendments is completed, the development rights on the zoning lot upon which the landmark structure stands is forever reduced by the amount of rights sold.¹⁸

Penn Central and the Creation of Section 74-79 Landmark Transfers. Whereas ZLMs emerged in an organic, largely indeliberate fashion, landmark transfers were New York City's first TDR mechanism consciously designed to accomplish a specific purpose. In theory, the mechanism provided economic relief to owners of landmarked properties, thereby furthering the purpose of the landmark preservation law and provided the city a measure of legal protection from a takings challenge.

While there was significant support for historic preservation among city elites and within city government, the proximate impetus for devising and implementing Section 74-79 transfers was a legal challenge to the historic preservation law by Penn Central, then owners of Grand Central Terminal, which was landmarked in 1967. Penn Central sued New York City when the LPC denied Penn Central permission to use Grand Central's unused development rights to build a Marcel Breuer-designed office tower above the Terminal.

The landmark designation placed significant restrictions on landmarked properties beyond the usual zoning and land use regulations, and rendered the unused development rights of many under-built landmarks unusable. In Penn Central Transportation Co. v. New York City,¹⁹ Penn Central argued that this constituted a government "taking" of its property no less than if the government had condemned a plot of Penn Central's land. If the court found a taking, it would not necessarily have invalidated the law, but it would have forced New York to pay for the property it "took" – that is, the unused development rights. If the city had to pay every time it landmarked a building, the designation of landmarks would become prohibitively expensive.

¹⁸ Ibid.

¹⁹ 438 U.S.104 (1978).

Depending on the legal theory, enabling landmarks to sell unused development rights would either eliminate the basis for a takings claim by allowing the owner to keep its property (albeit in transferable form), or compensate the owner for the taking of its property with salable TDRs. Either way, the landmark would be preserved and the city would not have to pay for it. Passing Section 74-79 in 1968 and amending it in 1969 strengthened the city's hand in ongoing litigation that had implications for landmark preservation in the city and across the country.

The case wended its way to the US Supreme Court, where the city won in 1978. The Court upheld the historic preservation law because it found the existing Grand Central Terminal left the owners with enough economic value – the use of the Terminal itself – to prevent the finding of a regulatory taking. (In the years since, regulatory takings have come to require deprivation of “all but a bare residue” of the economic value of a given property.) Whether or not landmark TDRs were decisive to the case – it's unclear – they were noted as a supporting factor by the Supreme Court, at least partially blessing their use for similar purposes across the country.

List of Section 74-79 Landmark Transfers.

Landmark	Granting Site	Receiving Site	Size of Transfer	Date
311 East 58th Street	311 East 58th Street	300 East 59th Street	Unknown	11/29/72
Grand Central	Grand Central Terminal	120 Park Avenue	74,655 sf	2/13/79
Amster Yard	Amster Yard	805 Third Avenue	30,701 sf	6/17/80
India House	India House	7 Hanover Square	123,857 sf	2/17/81
John Street Methodist Church	44 John Street	33 Maiden Lane	70,927 sf	6/28/82
Old Slip Police Station	100 Old Slip	30 Old Slip	38,950 sf	10/25/84
55 Wall Street	55 Wall Street	60 Wall Street	363,010 sf	6/18/85
Rockefeller Center	Rockefeller Center	745 Seventh Ave. *	506,380 sf	5/2/90
Tiffany Building	401 Fifth Avenue	400-404 Fifth Avenue	173,692 sf	9/19/07
Seagram Building	375 Park Avenue	610 Lexington Avenue	200,965 sf	7/2/08
University Club	1 West 54th Street	53 West 53rd Street	136,000 sf	9/9/09
St. Thomas Church	1 West 53 rd Street	53 West 53 rd Street	275,000 sf	9/9/09
AVERAGE			181,285 sf	*Unbuilt with transfer listed
TOTAL			1,994,137 sf	

Landmark TDRs may have served their legal purpose, but they have been less successful as a widespread means of support for the large numbers of landmarked properties across the city. Since their inception in 1968, the provision has been used successfully only eleven times.

The reasons for their limited use are various. Foremost is likely the Special Permit requirement, which entails expensive and uncertain public review. One prominent air rights consolidator estimates that taking an application through ULURP can cost up to \$750,000.²⁰ Note the 17-year gap between the Rockefeller transfer – which was approved but never executed – and the Tiffany Building transfer. ULURP was modified in 1989 to include more extensive public review and approval by City Council, increasing the costs of applying for a Section 74-79 Special Permit and rendering transfers infeasible for almost twenty years. Even today, only large transfers in dense, high-value neighborhoods can justify the expense – especially given the cap that limits transfers to twenty percent of receiving site FAR. All eleven transfers have been in Midtown or Downtown Manhattan.

Second, the limited transfer area permitted by Section 74-79 means that many landmarks are without viable receiving sites. The receiving-site criteria are looser than for ZLMs, but not as wide as most successful Special District transfer mechanisms like those in the Theater Subdistrict, the High Line, or South Street Seaport. Wider transfer areas increase the likelihood of development sites that can make use of the TDRs.

Finally, many landmarks are simply not eligible. Landmarks in R1 through R5 districts are ineligible. Landmarks built up to or over the allowable FAR are ineligible. (They have no unused development rights to transfer.) Parks, cemeteries, bridges, and monument are also ineligible.

²⁰ Hiten Samtami, “Developers, wary of cost and delay, spurn city’s landmark transfers program for air rights,” *The Real Deal*, January 29, 2013, available online at: <http://therealdeal.com/blog/2013/01/29/developers-spurn-citys-landmark-transfers-air-rights-program/>. On the seldom-used landmark TDR program:

The main reason is that developers shy away from bearing the expense and hassle of a lengthy Uniform Land Use Review Procedure (ULURP) that could cost between \$500,000 and \$750,000, according to Robert Shapiro, an assemblage expert who specializes in air rights. A landmark transfer rule also limits the increase in floor area to 20 percent—except in high-density areas—thus further discouraging developers. “Most developers, if it requires a ULURP, avoid it like the plague,” Shapiro said. “They want to do as-of-right.” Vicki Been, the director of the Furman Center and lead author of the research paper, said that the program needed overhauling. “If that process were eased up or were as-of-right, that would make it more useful,” she said.

Given the above, as a program to support owners of landmarked buildings, Section 74-79 transfers may not be optimally designed. When TDRs were implemented, there were fewer than 300 landmarks in the city; now there are over 1,300. An internal DCP study found that only 466 of these individually designated landmarks are both eligible to transfer and have conceivable transfer opportunities. (This number does not take into account the interaction between market factors and procedural requirements that render most potential transfers infeasible – especially those outside the highest density parts of the city.) Of these 466 landmarks, many are barely under-built, rendering them functionally ineligible. Receiving sites

Legend

-  Community District Boundary
-  Unsuccessful Landmark Transfer
-  Successful Landmark Transfer



around many landmarks are too small to absorb any appreciable amount of TDRs. More than half of these 466 have an opportunity to use ZLMs instead. ZLMs are as of right, and so owners would arguably choose that over Section 74-79 Special Permit every time. Finally, many of the most under-built landmarks are City-owned – libraries, schools, museums, transportation facilities, and the like.

As the first consciously designed transfer provision, Section 74-79 transfers, despite their limited use, serve as something of a template for other transfer provisions, especially those included in Special Districts. Where deemed appropriate, Special District mechanisms have loosened procedural requirements, widened the transfer radius or designated particular receiving lots, lifted or imposed transfer limits, and so forth, in order to adapt the basic provisions set forth in Section 74-79 to the particular needs of the Special District. These provisions are outlined below.

Special District Transfers

In terms of purpose, procedural requirements, transfer radius – almost any category one can think of – Special District transfers encompass a truly wide variety of TDR mechanisms. Their first use, in 1970, as part of the development of areas adjacent to the United Nations, was similar to the Large-Scale Development transfer mechanisms created by the 1961 Zoning Resolution. It was not particularly novel. Their second use, in 1972, as part of an effort to save the historic South Street Seaport from a string of foreclosures, was a highly technical mechanism complete with designated granting and receiving sites and the city's first and only functioning TDR Bank. Aside from an attempt to implement a similar mechanism in Sheepshead Bay the following year, the city would not attempt another Special District mechanism for twenty years, in the Grand Central Subdistrict in 1992, and then the Theater Subdistrict in 1998. In the 2000s, Special District mechanisms enjoyed favor as a tool to achieve large-scale urban design and open space goals, supporting the creation of the Highline, Hudson Yards, and the Manhattanville expansion of Columbia University.

Procedural requirements run the gamut. Some Special Districts require mere Notification (Highline) or Certification (Theater Subdistrict), making them effectively as-of-right; others require Authorization (Hudson Yards Phase II), and Special Permits (Grand Central), which involve specific findings and CPC approval or full ULURP, respectively. Some Special Districts designate granting sites based purely on location – the site of a future park, say, as in Hudson Yards or Manhattanville – whereas others designate based on the nature or use of particular buildings – as in South Street Seaport or the Theater Subdistrict. Some Special Districts designate receiving sites in addition to granting sites (South Street Seaport); others specify a wide district over which transfers may occur (Theater Subdistrict, Grand Central Subdistrict). Most place upper limits on the size of the transfer (Highline) and some vary the procedure required based on the size of the transfer (Theater Subdistrict, Manhattanville). In most districts the price of TDRs is set by the market; in others, where TDRs are held by governmental or quasi-governmental entities, the price is set by appraisal (Hudson Yards).

The list of policy parameters goes on. In some cases, the variation is the result of the careful tailoring of the transfer mechanism to the policy objectives at hand. Transfers can be made easy or hard, with objectives as specific as the realization of a fully designed public space or as general as the generation of revenue. In other cases, no doubt, political imperatives have intruded on policy design. Some transfer provisions get modified over time to account for changing circumstances, to correct for previous mistakes, and the like. The tremendous

variation among the Special District mechanisms makes them a useful object lesson, a rough experiment, a good source of practical knowledge as the city considers and clarifies the role of TDRs in the future of New York City land use planning.

Theater Subdistrict – 1982 and 1998²¹

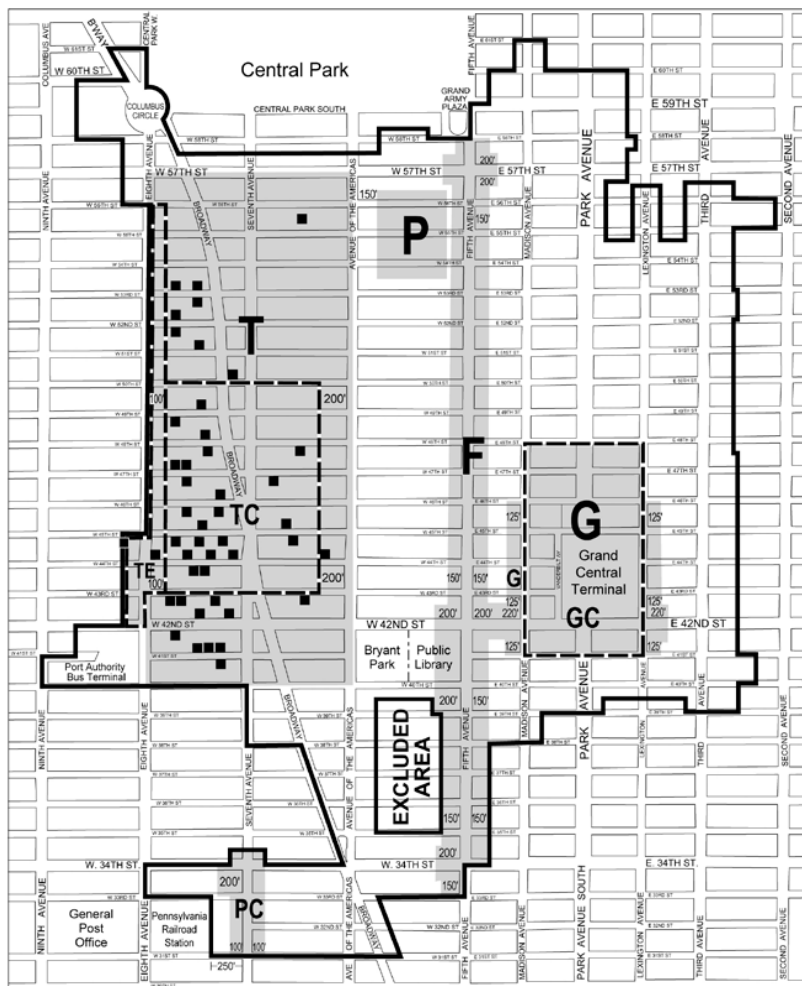
It took a few attempts to get it right, but the current Theater Subdistrict TDR mechanism is widely viewed as a success by the terms of the program's preservation objectives, with a over 470,000 sf transferred since its current iteration was implemented in 1998. The purpose of the program was to preserve the Broadway theater industry in the face of office and residential development encroaching from adjacent neighborhoods.

Previous Efforts – 1967 and 1982. Efforts to preserve Broadway theaters from Midtown office expansion date to 1967, when the city created a Special Theater District – the city's first Special Purpose District in the Zoning Resolution. The District included a Theater Development Bonus that produced five new theaters as part of new development in the District but did little to prevent the demolition of older theaters. After a decade of that bonus's disuse, and following the demolition of multiple theaters, the city created a special permit in 1982 as part of a broader Special Midtown District that enabled "listed" theaters in the new Theater Subdistrict to sell unused development rights under a somewhat liberalized transfer mechanism. The amendment also included a Theater Rehabilitation Bonus. Despite agitation from Theater owners, the CPC at the time explicitly declined to broaden receiving areas:

The Commission believes that floating development rights, which has also been suggested for landmarks owned or held by not-for-profit groups, raises some difficult legal and planning issues with citywide implications. These suggestions conflict with the underlying justification for any development rights transfer, which is that the added development it permits on a receiving site is compensated by the guaranteed diminution of development potential of the granting site nearby.²²

²¹ See generally: Michael Kruse, "Constructing the Special Theater Subdistrict: Culture, Politics, and Economics in the Creation of Transferable Development Rights," *The Urban Lawyers* 40 (2008).

²² CPC Report N 820253 ZRM, March 16, 1982.



MIDTOWN DISTRICT PLAN
MAP 1 - Special Midtown District and Subdistricts

- | | |
|------------------------------------|--|
| F Fifth Avenue Subdistrict | GC Grand Central Subdistrict Core |
| G Grand Central Subdistrict | TC Theater Subdistrict Core |
| PC Penn Center Subdistrict | TE Theater Subdistrict Eighth Avenue Corridor |
| P Preservation Subdistrict | ■ Listed Theaters |
| T Theater Subdistrict | — Special Midtown District |



The 1982 rules proved inadequate. Between 1984 and 1988, the Theater Advisory Council (TAC), created by the 1982 rules, successfully pushed to landmark 30 theaters.²³ As the number of listed theaters grew, their concentration and the tight rules on receiving areas made transfers increasingly difficult. In 1988, the TAC proposed widening receiving areas. The city declined, instead introducing a new 1 FAR Theater Retention Bonus that would enable developers within the Theater District (but outside the core) to build a larger building in exchange for a preservation payment to a legitimate theater within the core.

Over the next ten years, no developers took up the Theater Retention Bonus – 1 FAR probably wasn’t enough of an inducement. Only four development rights transfers happened over the 16-year period from 1982 to 1998, and listed theaters had over 2

million sf that had little or no opportunities for transfer. Faced again with agitated theater owners and increasing pressures on a revitalizing Times Square, the city reformed the TDR mechanism in 1998 to make transfers more viable.

²³ Landmarking is in addition to “listing” a theater, and affords additional protections and benefits.

The 1998 Reforms. Among other provisions, the 1998 Text Amendment:

1. Greatly widened TDR receiving areas by allowing listed theaters to transfer floor area anywhere within the Theater Subdistrict;
2. Expanded the Subdistrict to include the 8th Avenue Corridor up to 56th Street;
3. Reduced the procedural requirement from a Special Permit to:
 - a. Certification under Section 81-744(a) to transfer rights up to 20% above permitted FAR on receiving sites;
 - b. Authorization under Section 81-744(b) to transfer rights up to 44% above permitted FAR on receiving sites within the 8th Avenue Corridor.²⁴
4. Created a Theater Subdistrict Fund to promote theater use and preservation, with contributions from TDR receiving sites at a rate of \$10 (since raised to \$17.60) per sf of development rights transferred.

Theaters benefiting from these various bonuses and transfer mechanisms had to covenant to continue to operate as a “legitimate theater” for the life of the receiving development. The price of the TDRs is set by the market. According to public reports, the most recent transfers have been in the \$225 psf range.

In widening the TDR receiving areas, the Commission found:

With the recent revitalization of the Times Square area, and the introduction of new and marketable types of entertainment related uses, the theaters are more vulnerable to development or conversion pressures. A more liberal transfer mechanism within a wider area would not only provide greater flexibility and opportunity for the transfer of development rights, it would also promote theater preservation by linking the transfers to these obligations towards preserving theater use.²⁵

The change in policy didn’t lead to an immediate flurry of transfers, in part because procedural legal challenges tied up the program until 2001. Since that time, the Theater Subdistrict has become one of the most active TDR programs in the city – with approximately 15 transfers for a total of about 500,000 sf. An additional ten theaters have transferred development rights through zoning lot mergers.

²⁴ The amendment also created a Special Permit that would have allowed the transfer of an additional 20% above the 81-744(b) maximum, but that was struck down on EIS grounds in *Fisher v. Giuliani*.

²⁵ CPC Report N 980271 ZRM, June 3, 1998.

Transfers in Theater Subdistrict

Granting Site	Receiving Site	Size of Transfer	Date
Martin Beck aka Hirschfield Theater	750 8th Avenue	29,104 sf	5/22/06
	231 West 54th Street	7,438 sf	6/19/06
	750 8th Avenue	28,901 sf	9/27/06
	131-139 West 45th Street	8,483 sf	4/23/07
St. James Theater	231 West 54th Street	77,840 sf	6/19/06
	131-139 West 45th Street	9,489 sf	4/23/07
Broadhurst Theater	131-139 West 45th Street	54,820 sf	4/23/07
Booth Theater	250 West 55th Street	18,537 sf	1/28/08
	250 West 55th Street	42,081 sf	1/28/08
Shubert Theater	250 West 55th Street	29,667 sf	1/28/08
Majestic Theater	250 West 55th Street	67,351 sf	1/28/08
	306 West 44th Street	48,180 sf	9/24/08
Broadhurst and Booth Theater	120 West 41st Street, 239 West 41st Street	9,480 sf	2/17/09
Broadhurst Theater	120 West 57th Street	18,075 sf	9/6/11
Booth Theater	237 West 54th Street	24,100 sf	2/15/12
TOTAL		473,546 sf	

Withdrawn Applications

Granting Site	Receiving Site	Size of Transfer	Date
Broadhurst Theater	740 8th Avenue	78,060 sf	WITHDRAWN
	740 8th Avenue	42,259 sf	WITHDRAWN

Why Here? Various planning goals and political forces came together to create a workable TDR scheme in Times Square. Among the most prominent are:

- First, the preservation of the Broadway theater industry is crucial to the regional economy in a way that typical landmark preservation is not. Today Times Square is one of the world's most visited tourist attractions and the theaters are a big part of that.
- Second, the theater owners represent a more unified and more powerful bloc than landmark owners generally. The theater owners are united by geography, industry, and interest, making it easier for them to mobilize on policy questions.
- Third, some commentators have suggested that the city viewed TDR as a way to accommodate increased density in an area of the city that was appropriate for more intense development. By tying increased commercial density to a popular and powerful effort to save the theaters, the city was able to make that planning purpose more politically viable than it otherwise may have been. Since transfers only require certification or authorization, it's difficult for opponents to challenge individual transfers as opposed to the whole scheme, a much higher bar for opponents.²⁶

As for the planning rationale behind widening the receiving areas, the Commission said:

[T]he underlying land use nexus associated with the wider transfer is not an individual theater that may seek to transfer its air rights, but rather the concentration of theaters within the Theater Subdistrict and the 30-year recognition of the benefits the theaters and the theater industry have had in the Theater Subdistrict.²⁷

Grand Central Subdistrict – 1992

The Grand Central Subdistrict of the Special Midtown District was created in 1992 “to reinforce the existing built form of the area and facilitate pedestrian movement, and create new provisions for the transfer of development rights from designated landmarks in order to aid in both the preservation of the Terminal building and any other landmarks as well as the area's character.”²⁸ The Subdistrict TDRs represented the first new Special District TDR mechanism since the early-70s experiments in South Street Seaport and Sheepshead Bay.

²⁶ The scheme was challenged, in Fisher v. Giuliani, leading to the invalidation of the special permit TDR mechanism on EIS grounds, but not the certification or authorization mechanism.

²⁷ CPC Report N 980271 ZRM, June 3, 1998.

²⁸ CPC Report N 920260 ZRM, June 24, 1992.

One of the major planning considerations for the Subdistrict was the massive amount of TDRs generated by the GCT site. At the time of the Subdistrict's creation, GCT had over 1.7 million sf of TDRs. Other landmarks in the Subdistrict were either overbuilt – Chrysler Building, Chanin Building, Socony-Mobil – or had far fewer TDRs. (Bowery Savings Bank, currently the only other landmark in the Grand Central Subdistrict with TDRs, has roughly 100,000 sf, but it was not a landmark in 1992.)

The Subdistrict includes two TDR provisions for landmarks:

- First is a transfer of floor area up to one FAR of the baseline maximum of the receiving site. It is available to any development within the Subdistrict by certification. See Section 81-634.
- Second is a transfer of floor area that results in a maximum 21.6 FAR development on the receiving site. It is available to developments in the Grand Central Subdistrict “core” – between Madison and Lexington and 41st and 48th streets – by Special Permit. Special Permit transfers additionally require an ongoing maintenance plan and improvements to area transit or pedestrian circulation. See Section 81-635.

Prior to 1992, landmarks in the area that became the Subdistrict were subject to landmark transfer provisions under Section 74-79. Since 1968, when 74-79 transfers were created, only one transfer from Grand Central had been executed – approximately 75,000 sf to the Philip Morris Building in 1979. Another transfer – a proposed 800,000 sf transfer to 383 Madison – was denied in 1989 and provided further impetus for the creation of the Subdistrict.

The rationale stated by the CPC for altering the TDR provisions for the Subdistrict seem to have less to do with a desire to liberalize the rules so that Penn Central, the owner of Grand Central at the time, could sell their rights, and more to do with concerns about the planning consequences of a massive TDR transfer in the area immediately adjacent to Grand Central. The new rules retain the Special Permit mechanism in Section 74-79, limit the overall transfer to a maximum FAR, layer on additional requirements for transit and pedestrian improvements, and widen receiving areas in order to spread GCT's approximately 1.7 million sf of TDRs around. The CPC noted:

In taking a broader view of future transfers of development rights from Grand Central Terminal, the Department has considered the following factors:

- Due to the Terminal's relatively low profile and large lot size, a substantial amount of development rights is available for transfer.

- Current zoning regulations permit development rights to be distributed over an area defined primarily by ownership patterns rather than other planning criteria.
- In a 15 FAR zone, the Section 74-79 special permit mechanism does not place a specific limit on the amount of development rights which may be transferred to any one parcel. The amount of transfer permitted is at the discretion of the City Planning Commission and City Council in accordance with the required findings of Section 79-792.
- Opportunities to expand Grand Central Terminal's valuable pedestrian circulation network have not been maximized.

Collectively, these circumstances make it clear that the current regulations could lead to an ad hoc series of applications for the transfer of development rights from the Terminal under Section 74-79. The proposed Grand Central Subdistrict, however, would provide a comprehensive planning framework to govern the transfer of development rights from designated landmarks by:

- creating a mechanism for distributing development rights responsive to local conditions,
- reinforcing the established built form of the Grand Central area through urban design controls, and
- enhancing and, where possible, expanding the pedestrian circulation network which extends from Grand Central Terminal and is integral to the area's function and character.²⁹

Since the creation of the Subdistrict in 1998, there have been a total of five transfers, two of which were for the same renovation project at 340-342 Madison. An additional transfer – approximately 100,000 sf from Bowery Savings Bank – is currently being reviewed as part of the Special Permit process for One Vanderbilt.

²⁹ CPC Report N 920260 ZRM, June 24, 1992.

Transfers from Grand Central

Granting Site	Receiving Site	Size of Transfer	Date	Notes
Grand Central Terminal	120 Park Avenue / Philip Morris	74,655.0 sf	1979	Transfer under 74-79
	383 Madison / Bear Sterns	285,865.8 sf	1998	Transfer under 81-635
	300 Madison Avenue	64,690.0 sf	2001	Transfer under 81-634
	360 Madison Avenue	19,581.9 sf	2002	Transfer under 81-634
	340-342 Madison Avenue 1	38,225.0 sf	2004	Transfer under 81-634
	340-342 Madison Avenue 2	5,019.0 sf	2004	Transfer under 81-634
TOTAL Transfers from GCT		488,036.7 sf		
Remaining GCT floor area		1,224,109.3 sf		

Transfers from Bowery Savings Bank

Granting Site	Receiving Site	Size of Transfer	Year	Notes
Bowery Savings Bank	One Vanderbilt	104,968.5 sf	2015	81-635, under review

The City has recently proposed a modification of this TDR mechanism for sites within the Vanderbilt Corridor – the five generally square blocks between East 42nd and East 47th streets. In order to facilitate landmark transfers in this area, the maximum floor area permitted on a receiving site would be increased to 30.0 FAR through the transfer Special Permit. In addition, the requirement for a significant improvement to the area’s pedestrian circulation network would be removed. This proposal is currently undergoing public review.

Why Here? Grand Central Terminal is the landmark that spurred the creation of Section 74-79 Landmark Transfers in 1968. The Terminal was landmarked in 1967 in response to plans to build a Breuer-designed tower above the terminal. TDRs were made available to landmark owners in 1968 as part of the city’s efforts to survive a takings challenge to restrictions placed on the development of underbuilt landmarks by the new law. Subsequent litigation by the Terminal’s owner went all the way to the Supreme Court, where TDRs were looked upon favorably by the court’s opinion in Penn Central v. New York City (1978).

The CPC report makes it clear that the city was balancing two concerns: The desire to facilitate transfers from GCT, and the desire to avoid negative planning consequences that might result if all of GCT’s unused floor area was transferred to adjacent sites. (The program also supported

increased density in one of New York City's most important business districts.) Widening the receiving area was driven more by these planning considerations – the need to diffuse a vast amount of TDRs – than it was by a goal of liberalizing the market for the benefit of TDR holders.

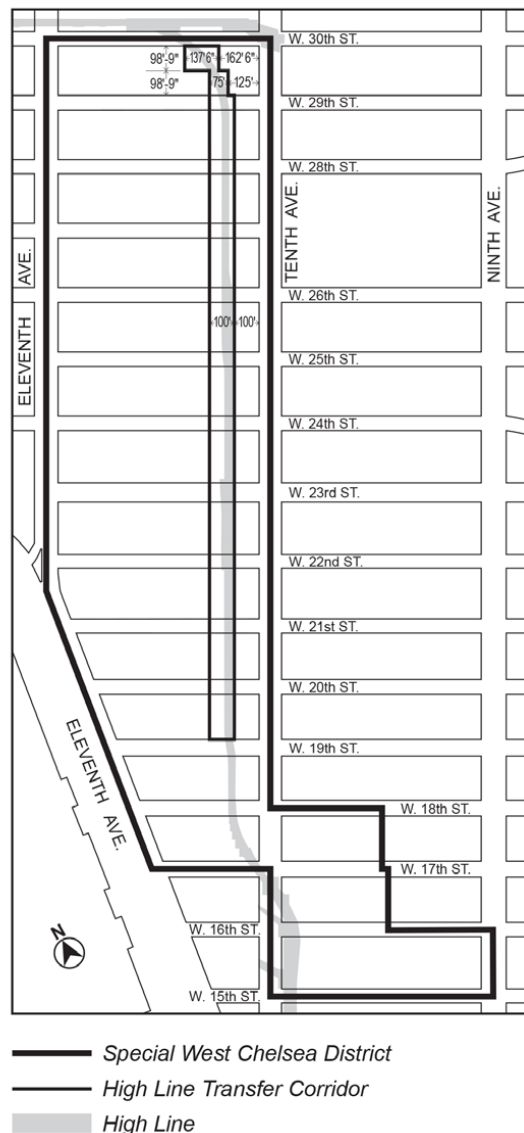
Special West Chelsea District – 2005

The High Line Transfer Corridor was created as part of the Special West Chelsea District in 2005. See Section 98-33. The purposes of the TDR mechanism are multiple: First, the TDRs unlock development rights that would otherwise be rendered unusable because of the High Line, thereby compensating owners and preserving overall planned density in the area; Second, and more important from the city's perspective, the TDRs transfer density away from the High Line

to outlying areas to create an open corridor to support and enhance the park.

The text amendment divided the Special West Chelsea District in nine subareas – A through I, each with special bulk regulations and other differences – and mapped a 100-foot-wide High Line Transfer Corridor along the High Line between 19th to 30th streets. Granting sites in the Corridor can transfer to most subareas, with the primary exception of the subareas between 16th and 18th streets where the High Line jogs west and special rules (to support and encourage world-class architecture) apply.

The transfers may increase the FAR in receiving sites by up to 1 FAR in some subareas and 2.5 FAR in others. See Section 98-22. The price for TDRs is set by the market, and according to news reports the prices have ranged between \$200 and \$400 psf. The Special West Chelsea District, like the Special Hudson Yards District described below, employs bonus-TDR tranching. That is, a developer has to buy a minimum number of TDRs and then layer other bonuses on top in order to achieve maximum FAR on certain sites. Other available bonuses



include an Inclusionary Housing Bonus and a High Line Improvement Bonus, a monetary contribution for the restoration and development of High Line open space.

Transfers in the Special West Chelsea District

Granting Site	Receiving Site	Size of Transfer	Date
509 W. 20th St	516-522 W. 19th St	13,720 sf	7/20/06
511-517 W. 23rd St	100 11th Ave	34,520 sf	2/2/06
509 W. 24th St	245 10th Ave	15,765 sf	2/23/07
511 W. 24th St 509 W. 24th St	303-309 10th Ave	12,500 sf	11/7/07
512 W. 23rd St	316 11th Ave	59,991 sf	11/7/07
507 W. 26th St	316 11th Ave	11,973 sf	6/19/07
508 W. 25th St 510 - 512 W. 25th St	524 W. 19th St	4,600 sf	7/3/07
511 W. 24th St, 508 W. 25th St, 510-512 W. 25th St	290 11th Ave	37,110 sf	7/3/07
509 W. 20th St	290 11th Ave	23,080 sf	12/24/08
511 W. 23rd St	290 11th Ave	15,000 sf	12/24/08
508 W. 29th St	537-545 W. 27th St	5,479 sf	12/24/08
512 W. 20th St	537-545 W. 27th St	2,566 sf	5/4/12
508 W. 25th St	509 W. 28th St	4,857 sf	5/4/12
507 W. 25th St	290 11th Ave	19,750 sf	11/6/09
511 W. 23rd St	290 11th Ave	6,155 sf	12/24/08
507 W. 25th St	290 11th Ave	9,875 sf	12/24/08
509-513 W. 29th St	539 W. 29th, 518 W. 30th St, 526 W. 30th St, 530 W. 30th	15,031 sf	10/21/11
509-513 W. 29th St	505-507 W. 29th, 331 10th, 333 10th, 337 10th, 502-504 W. 30th St	70,656 sf	10/21/11
510-516 West 30th St	529-539 West 29th St	2,455 sf	6/29/12
508 West 20th St	524-526 West 29th St	7,902 sf	6/29/12
508 West 20th St	154 11 Avenue	11,250 sf	2/14/13
507 West 25th St	551 West 21st St, 154 11 Avenue	19,750 sf	2/6/13
501-511 West 19th St	507 West 19th St	3,680 sf	2/6/13
511 West 27th St	515 West 29th St	3,093 sf	7/2/13
509 West 27th St	515 West 29th St	13,720 sf	4/4/14
TOTAL	403,983 sf		

The TDRs in the Special West Chelsea District may be transferred by Notification – a more relaxed requirement than Certification, and the least onerous procedural requirements for TDRs anywhere in the city. The Special District is tightly planned, and transfers are limited in size and channeled to avenues where greater density is appropriate, making discretionary review of each transfer unnecessary.

A combination of low procedural barriers and a very hot real estate market (driven, in part, by excitement over the High Line) has made the Special West Chelsea District TDRs the most active program in the city. Since 2006, granting sites have transferred over 400,000 sf in a total of about 26 transfers. Another 10 transfers are in process. Developers have complained that there aren't enough TDRs to meet demand.

Why Here? Since the 1990s, owners of property under the High Line had been agitating for demolition so that they could redevelop their properties. (Mayor Giuliani supported demolition but was prevented from proceeding by a lawsuit.) Devising a TDR program was one way to get these owners to drop their opposition to the project. Also relevant was the boost to property values that the High Line promised as plans took shape in the early Bloomberg administration.

More salient was the need, in the view of the city, to preserve the light, air, and views around the High Line. That's likely the true impetus for making the Special West Chelsea District one of the few areas in the city that allows for (requires, even) transfers at a distance. Here, typical adjacency requirement would not have served those goals, and so floor area was channeled to avenues where greater density was appropriate.

The TDR program in Special West Chelsea District incorporates elements of landmark and open space preservation in a mechanism that seems uniquely aimed at creating something new – a one-of-a-kind urban amenity.

South Street Seaport Subdistrict – 1972

The South Street Seaport has been a zone of overlapping Urban Renewal Plans, historic districts, and Special Districts since the late 1960s. TDRs were permitted by a 1970 amendment to the 1968 Brooklyn Bridge Southeast Urban Renewal Plan, and fully enacted as part of the creation of Special South Street Seaport District by the CPC in 1972. See Section 91-60. Aside from the Special UN District, which was basically a Large-Scale Development mechanism, it was the first Special District TDR mechanism created in New York City. The zoning text designates

both granting sites and receiving sites and requires only Certification to execute the transfer. Transfers are limited to floor area equal to 10 FAR on the receiving site, or a total maximum FAR of 21.6 on lots of less than 30,000 sf. The granting sites – several low-lying historic buildings – generated about 1.4 million sf of TDRs, of which about 340,000 sf remain. The Howard Hughes Corporation purchased all remaining TDRs from JP Morgan Chase, which operated the TDR Bank that held outstanding TDRs, in December of 2014. The various restrictions in the area and the lack of further redevelopment opportunities on designated receiving sites will make it difficult to exhaust the remaining TDRs absent modifications of the rule governing transfers.

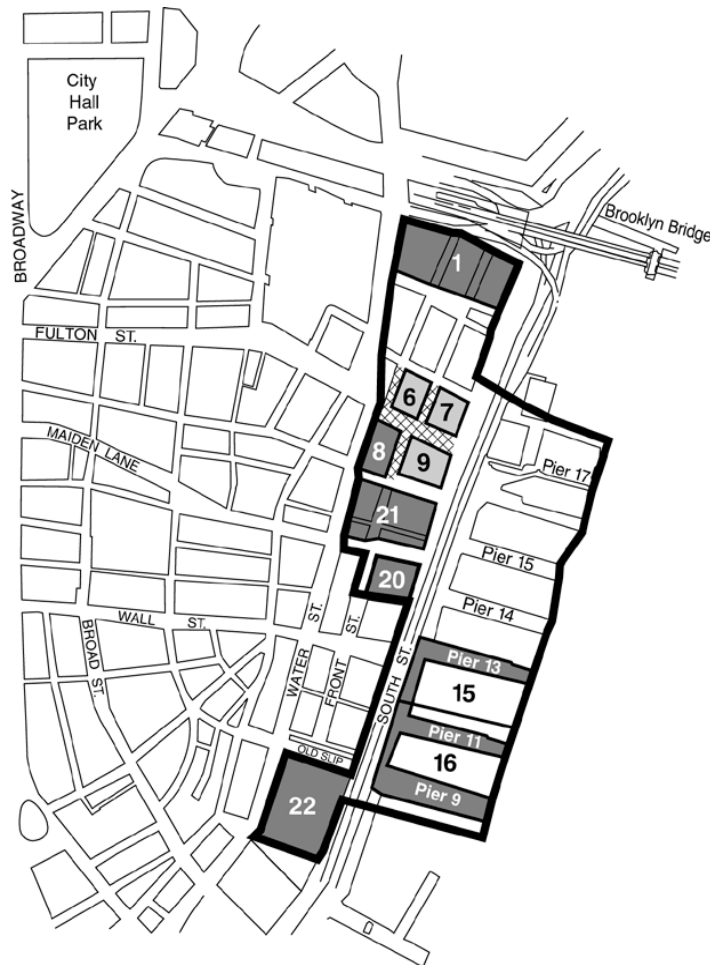
In the 1972 report creating the TDR scheme, the CPC noted:

The provisions of the Special District are intended, among other objectives, to preserve and encourage the restoration of the Schermerhorn Row Landmark Buildings, which have been so designated by the New York City Landmarks Preservation Commission, and to permit the transfer and disposition of air rights from designated zoning lots in the Seaport area to South Street commercial development.³⁰

Not counting Zoning Lot Mergers, TDRs were a very new tool when introduced at South Street Seaport – they'd been implemented for landmarks only a few years before. Here, the problem to be solved was a little different. The granting sites were historic buildings in the process of defaulting on their mortgages and the buildings were threatened with foreclosure, demolition, and redevelopment. Section 91-64 enables granting sites to convey TDRs to "a person [i.e., "an individual, corporation... partnership, trust, firm, organization, other association or combination thereof"] for subsequent disposition to a receiving lot," thereby enabling the city's only functioning TDR bank.³¹ Thus enabled, the city negotiated a deal whereby Chase Manhattan and Citibank, among others, accepted TDRs generated by the historic buildings in partial satisfaction of the buildings' overdue mortgage obligations. The banks held the TDRs until they could be used as designated receiving sites redeveloped. The granting sites needed immediate relief, development wasn't slated until later, and the TDR bank was created to solve the timing problem.

³⁰ CPC Report CP-21962, April 24, 1972.

³¹ Similar language is used in the Special Sheepshead Bay District, created around the same time, but no transfers have occurred there.



Another unusual aspect of the Seaport TDRs is that development rights are determined by subtracting from the maximum floor area under the baseline zoning the larger of: the lot area times five (i.e., 5 FAR), or the floor area of all existing buildings on the lot. (This results in a smaller pool of TDRs than would exist under the conventional methods of calculating, since some of the generating buildings are less than 5 FAR.) The scheme was also amended to allow for the transfer of rights from demapped streets, which would tend to increase the size of the TDR pool.

In 1998, the city created a Special Lower Manhattan District, and the Special South Street Seaport District became a Subdistrict. By that time, approximately 860,000 of the 1.4 million sf of TDRs had been transferred. In 2001, 55 Water Street was added to the list of receiving sites in 2001, but a plan by Goldman Sachs to expand the development and purchase almost all remaining Seaport TDRs – approximately 400,000 sf – fell through.³² A few smaller TDR transfers occurred in 2007 and 2008. According

to an appraisal by Cushman and Wakefield, approximately 340,000 sf of TDR remain.³³ The prices of South Street Seaport TDRs are set by the market, and the most recent transactions on record (in 2007 and 2008) have ranged from \$110 to \$150 psf.

³² CPC Report N 010296 ZRM, November 7, 2001.

³³ Cushman & Wakefield, Inc. "Appraisal of Real Property – South Street Seaport Transferable Development Rights", May 23, 2013.

Howard Hughes Corporation purchased the remaining TDRs from JPMorgan Chase, administrator of the TDR bank, in December of 2014. The corporation has proposed a large mixed-use building at Pier 17 as well as other development in the area, but the developments are not slated for designated receiving site and, if built, will not be able to use South Street Seaport TDRs unless the CPC amends the map to create additional receiving sites.

Transfers in the South Street Seaport

Receiving Site	Size of Transfer	Date	Notes
150-180 Maiden Lane	300,000 sf	1983	
175 Water Street	286,000 sf	1983	
199 Water Street	275,000 sf	1984	
151-161 Maiden Lane	76,157 sf	2007	\$110 psf
30 Fletcher Street	19,660 sf	2008	\$150 psf
80 South Street	47,770 sf	2008	\$150 psf
TOTAL	1,004,587 sf		
TOTAL Remaining	395,413 sf		

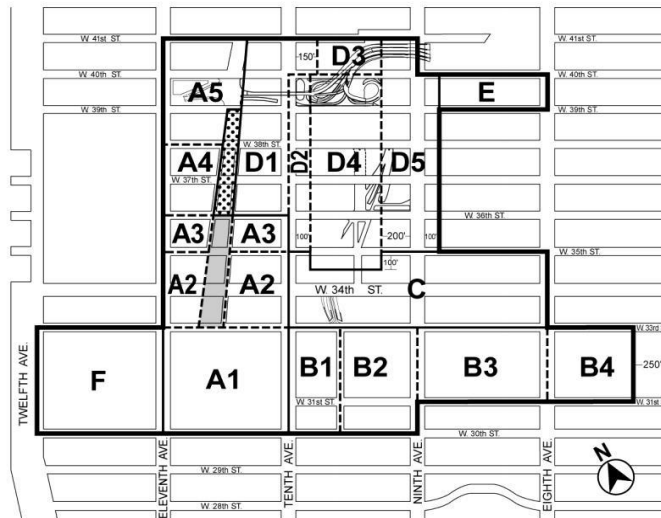
Note: A 2013 appraisal lists 333,329 sf remaining; the above list is probably not comprehensive. It is also possible that some TDRs have been sold by the bank but not used.

Why Here? The motivating factors here were the mortgage liens placed on many of the South Street Seaport's historic buildings. The city devised the TDR scheme, including the TDR bank, to prevent the potential foreclosure, demolition, and redevelopment of buildings the city considers particularly important to its maritime history. The TDRs and redevelopment of the area also helped to support the continued existence of the South Street Seaport Museum founded in 1967. By creating development rights and transferring them to banks, the city could satisfy the mortgage obligations without an outright budget outlay.

Special Hudson Yards District – 2005

The Special Hudson Yards District was created in 2005 and today consists of six subdistricts: A - Large-Scale Plan; B - Farley Corridor; C - 34th Street Corridor; D - Hell's Kitchen; E - South of Port Authority; and F - Western Rail Yard. See the map below. The District includes two TDR mechanisms. The first facilitates distribution of development rights from the MTA-owned Eastern Rail Yards (ERY), labeled A1 below and the site of future open space, to designated receiving areas elsewhere in Subdistrict A by CPC Certification. See Section 93-34. The second facilitates the transfer of development rights from the privately owned sites of the Phase II Hudson Boulevard and Park to receiving sites in Subdistrict A and subareas D1 and D2 by CPC Certification. The program will allow property owners to realize the value of property slated to

become public parkland. See Section 93-32. In the language of the CPC report, it “would allow for the transfer of property to the city through means other than acquisition.”³⁴



- Special Hudson Yards District
- Subdistricts
- Subareas within subdistricts
- Phase 1 Hudson Boulevard and Park
- Phase 2 Hudson Boulevard and Park

Large-Scale Plan Subdistrict A

Eastern Rail Yards Subarea A1
Four Corners Subarea A2
Subareas A3 through A5

Farley Corridor Subdistrict B

Western Blocks Subarea B1
Central Blocks Subarea B2
Farley Post Office Subarea B3
Pennsylvania Station Subarea B4

34th Street Corridor Subdistrict C

Hell's Kitchen Subdistrict D

Subareas D1 through D5

South of Port Authority Subdistrict E

Western Rail Yard Subdistrict F

The main objectives of the Hudson Yards TDR scheme are to facilitate commercial and residential development and to create an “open space network” to support the neighborhood as it develops. It also serves to compensate private owners of future open space.

From the 2004 CPC Report:

The Hudson Yards project proposes a significant new open space network that would extend through the heart of the new neighborhood, providing the area with much needed open space, and a new identity to meet the needs of the existing and future residents, workers, and visitors. The plan proposes 24-acres of open space that would offer opportunities for both passive and active recreation. At the heart of this new open space system would be a major new public space of six-acres on the

eastern portion of the Metropolitan Transportation Authority's (MTA) Caemmerer Yard (Eastern Rail Yard).³⁵

³⁴ CPC Report N 040500(A), November 22, 2004.

³⁵ CPC Report N 040500(A), November 22, 2004.

The TDRs will provide a mechanism to create public parkland and open space without the public expense of acquisition or condemnation. In Hudson Yards, the TDR mechanisms overlap with District Improvement Bonuses (DIBs) developers can obtain by contributing to a District Improvement Fund, providing affordable housing, or providing open space, among other options. See Section 93-21 and Section 93-22 for specifics.

About 4.6 million sf of TDRs were created as part of the ERY rezoning in 2005 (Section 93-34). It's unclear how many TDRs were created by the Phase II Hudson Boulevard and Park scheme (Section 93-32). Bulk regulations in the Special Hudson Yards District specify baseline, intermediate, and maximum FAR for receiving sites, and requires TDRs or a combination of TDRs and bonuses to achieve maximum FAR. (The Special West Chelsea District employs a similar "tranching" scheme.) While Section 93-34 TDRs are necessary to achieve maximum FAR in subareas A2 through A5, developers can use either Section 93-32 TDRs or DIBs to achieve intermediate FAR limits in those subareas. When Section 93-34 TDRs are gone, developers will not be able to achieve maximum FAR without a change to the regulatory framework. When Section 93-32 TDRs are gone, developers can still use DIBs, whose overall amount is unlimited.

Unlike TDRs in other areas, where price is determined by the market, ERY TDRs are owned by a public entity – the MTA – and are priced by ratio to the receiving site's appraised psf as-of-right development rights. The ratio is currently 65 percent and will be updated periodically based on studies commissioned by Hudson Yards Development Corporation. For one proposed project, Moinian's One Hudson Boulevard, this puts the value of Hudson Yards TDRs at about \$350 psf. Phase II TDRs are priced by the market.

DCP has received applications for transfers from both the Eastern Rail Yards (Section 93-34) and from the Phase II Midblock Park (Section 93-32). Some developers in the area have said that many more TDRs have been transacted but have not yet been submitted for certification and that almost all Hudson Yards TDRs have already been sold.

Transfers from Special Hudson Yards District (Pending)

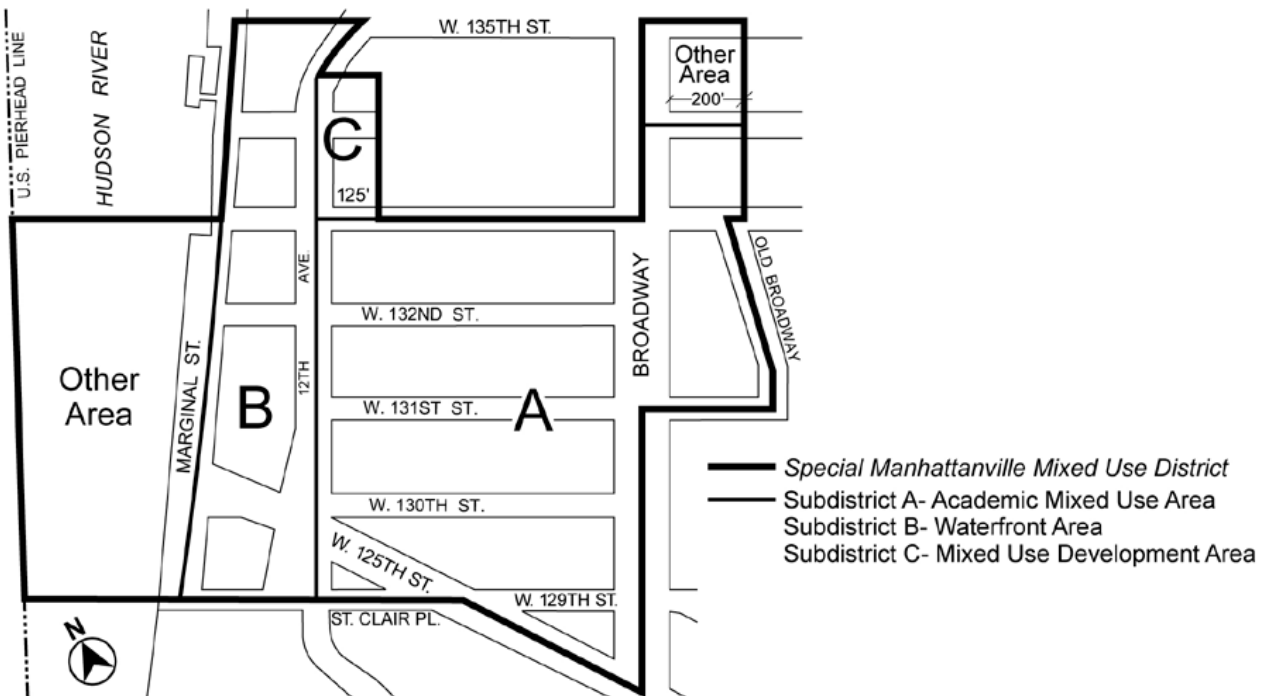
Receiving Site	Size of Transfer	Date	Notes
438 11th Avenue	326,472 sf	2014	93-32 transfer, under review
One Hudson Boulevard	240,156 sf	2014	93-34 transfer, under review
TOTAL	566,628 sf		

Why Here? The TDRs in the Special Hudson Yards District are an important tool for achieving specific planning and urban design goals in a comprehensively planned area. The Eastern Rail

Yards and Phase II Hudson Boulevard and Park plans have a significant amount of mapped open space, and the alternative to TDRs in these areas would have involved significant public outlay for land acquisition or condemnation proceedings.

Special Manhattanville Mixed-Use District – 2007

The Special Manhattanville Mixed-Use District (MMU) was created in 2007 upon CPC approval of an application by Columbia University to facilitate the development of a new academic campus and residential and commercial projects in a 35-acre area bounded by 125th, 135th, Broadway, and the Hudson River. See Section 104-00. The campus will comprise 17 acres and 6.8 million gsf developed in two phases over 25 years. The Campus, also known as Subdistrict A, will include three publicly accessible open spaces: Large Square, Small Square, and the Grove, which together will comprise 1.6 acres. See Section 104-422 for descriptions of the open spaces. Subdistricts B and C and two “Other Areas” will comprise the remaining 18 acres, which for the most part will not be owned or developed by Columbia.³⁶



³⁶ The 197(c) application was submitted by Columbia, and was considered concurrently with a 197(a) plan submitted by Manhattan CB 9, which was concerned about gentrification, displacement, threats to historic buildings, and environmental risks posed by Columbia's plan.

The MMU includes three transfer mechanisms:

1. A **Notice** to transfer floor area from blocks with mandated open space elsewhere within Subdistrict A (that is, the campus). As long as the proposed transfer conforms to existing plans, this mechanism allows Columbia to transfer and use development rights from lots that will become public open space. See Section 104-52.
2. An **Authorization** for other transfers within Subdistrict A. This mechanism will give Columbia design flexibility, similar to transfer mechanisms included in Large-Scale Development Plans. See Section 104-53.
3. A **Special Permit** for a transfer to buildings that require modification of the height and setback regulations established by the Special District. See Section 104-60.

The notice/certification mechanism will ensure that planned transfers conform to existing open space plans and bulk regulation. The Authorization and Special Permit mechanisms will give Columbia flexibility as it builds out the new campus over the next few decades. From the CPC report:

[T]o provide long-term flexibility for Columbia University to develop the area over time, upon authorization of the City Planning Commission, floor area could be transferred from other granting sites within Subdistrict A, provided that the transfer would maintain compliance with applicable floor area, use and height and setback requirements on the receiving site. To grant this authorization, the Commission would further have to find that the transfer will result in better site planning, and not unduly increase the bulk in any block to the detriment of properties outside of Subdistrict A. Transfer of floor area to a building which did not comply with the height and setback regulations, would require a special permit from the City Planning Commission.³⁷

From a bulk regulation/TDR perspective, the MMU is similar to a Large-Scale Development plan nested within a larger special district. As in a LSDP, Columbia will own both the granting sites and the receiving sites for all transfers within Subdistrict A. (There are no special provisions for transfers of development rights to or from areas of the MMU outside Subdistrict A.) With varying degrees of CPC involvement, and in accordance with existing plans and findings similar to those for floor-area transfers within LSDPs, Columbia is able to move bulk around the

³⁷ CPC Report N 070496 ZRM, November 26, 2007.

proposed campus. There is no pricing mechanism since development rights will generally not change ownership.

The development will proceed in two phases. No TDRs are required during Phase One, which will include 5 buildings in Subdistrict A east of 12th Avenue between 125th and 131st streets. Phase One is currently under construction and is set to be completed in the near future.

Phase Two will include twelve buildings in the remaining areas of Subdistrict A and will include the planned open space from which the TDRs can be transferred. Columbia will have to employ TDRs to implement Phase Two and fully exploit the development potential of Subdistrict A. Since Phase Two is not yet underway, no transfers have happened yet.

Why Here? The transfers permitted here are similar to those allowed in accordance with Large-Scale Development Plans under Section 74-743, Section 78-311 and 312, and Section 79-21, so they are not a particularly novel mechanism. It seems that Columbia will always be the owner of granting sites, receiving sites, and any intervening sites, similar to most LSDPs. Like the Theater Subdistrict, they employ different degrees of review for different scales and types of transfers.

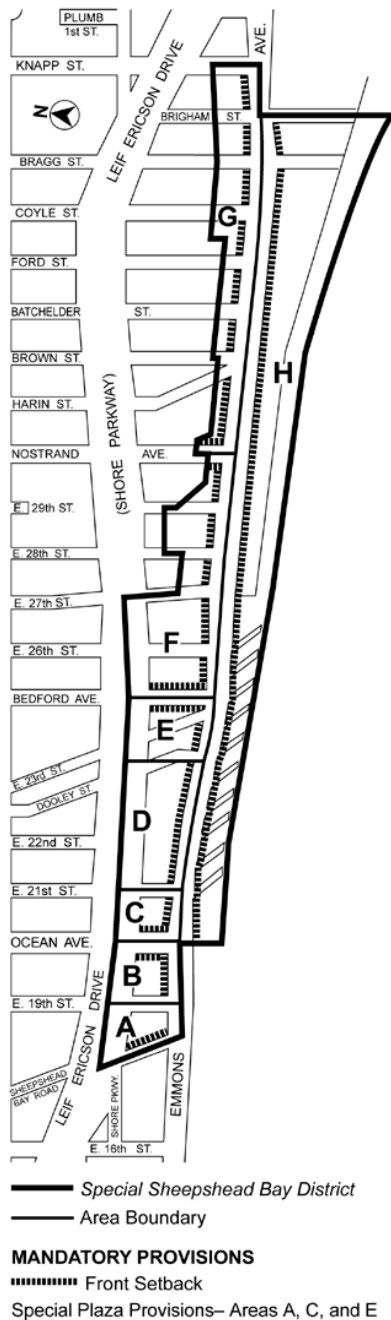
In this case, the land assembly for the LSDP-like Subdistrict A will be facilitated by eminent domain and other measures exercised by Empire State Development Corporation, a state entity, whose involvement helped streamline the approvals process. The new campus will be part of a larger MMU Subdistrict not under the control of Columbia that was included for purposes of better site-planning.

Special Sheepshead Bay District – 1973

The City Planning Commission created the approximately 20-block Special Sheepshead Bay District (SSBD) and TDR mechanism in 1973, making it the third Special District TDR scheme in the city. The city enacted the transfer mechanism as a general preservation mechanism centered around Lundy's Restaurant, a local institution that the city aimed to help by allowing the owners to monetize unused development rights. Unlike the largely successful South Street Seaport mechanism, implemented the year before, this scheme has not resulted in a single transfer. The Special District is small – about 20 blocks – and low density, with baseline FARs ranging from 1 to 2, and all transfers have to be within the district. Transferring lots must be

large – 20,000 sf or more. These factors, and the relatively slow Sheepshead Bay real estate market, may have rendered transfers uneconomical.

The Zoning Resolution lays out the purposes behind the SSBD in Section 94-00:



The "Special Sheepshead Bay District," established in this Resolution, is designed to promote and protect public health, safety, general welfare and amenity. These general goals include, among others the following specific purposes:

(a) to promote and strengthen the unique character of the "Special Sheepshead Bay District" area as a prime location for waterfront-related commercial and recreational development and to help attract a useful cluster of shops, restaurants and related activities, which will complement and enhance the area as presently existing;

(b) to encourage the provision of housing with appropriate amenities in areas suitable for residential development;

...

(d) to provide an incentive for redevelopment of the area in a manner consistent with the foregoing objectives which are integral.³⁸

In the Zoning Resolution, the purposes of the TDR mechanism remain obscure. The transfers require CPC authorization with a generic set of findings – neighborhood character, light and air, traffic, etc. See Section 94-094.

³⁸ CPC Report CP-22171, September 5, 1973.

The 1973 CPC report says only:

This section also provides for the transfer of floor area bonus from one area to another, thereby allowing density control with no loss of amenity potential. Controls have been established to assure that new developments respect planning guidelines and the neighborhood character. Public hearings must be held before any transfers of floor area may be authorized.³⁹

As for the design of the mechanism: The SSBD and Seaport mechanisms resemble each other more than either resembles any of other Special District mechanism created elsewhere in the city in later decades. (The city would not create another Special District mechanism until the Grand Central TDRs almost 20 years later in 1992.) Both mechanisms are highly technical, dividing the Special Districts into various subareas and granting sites. The SSBD is divided into subareas A through H, with different rules pertaining to use, bulk, bonuses, and transfers in each. See Section 94-08 et seq. Most subareas can achieve bonuses for plazas, arcades, and parking, and then transfer FAR off-site through the TDR mechanism. Both mechanisms allow for the creation of TDR banks, the only such provisions in the city. See Section 94-093. While the Seaport's TDR bank enabled the preservation of historic buildings in immediate danger of default and demolition, it's unclear what problems the SSBD TDR banking provisions were meant to solve. Perhaps Lundy's was threatened with foreclosure and the thought was that the bank would accept TDRs in satisfaction of the obligation. Regardless, the original Lundy' closed in 1977.

The SSBD was amended in 2005 to shrink the district a bit around its northern border.

Why Here? There's no clear indication in the Zoning Resolution, the CPC reports, or news archives as to what the city was hoping to accomplish with the SSBD TDR scheme, but anecdotal evidence suggests that it was an attempt to save Lundy's Restaurant, a Sheepshead Bay institution, by allowing the owners to monetize unused development rights. The attempt was unsuccessful and Lundy's closed in 1977. It was reopened under new management in 1997, but closed again in 2007. It's unclear whether the CPC intended or expected there to be transfers. In one sense, the scheme, as in South Street Seaport, was meant to preserve historic uses along the Sheepshead Bay waterfront.

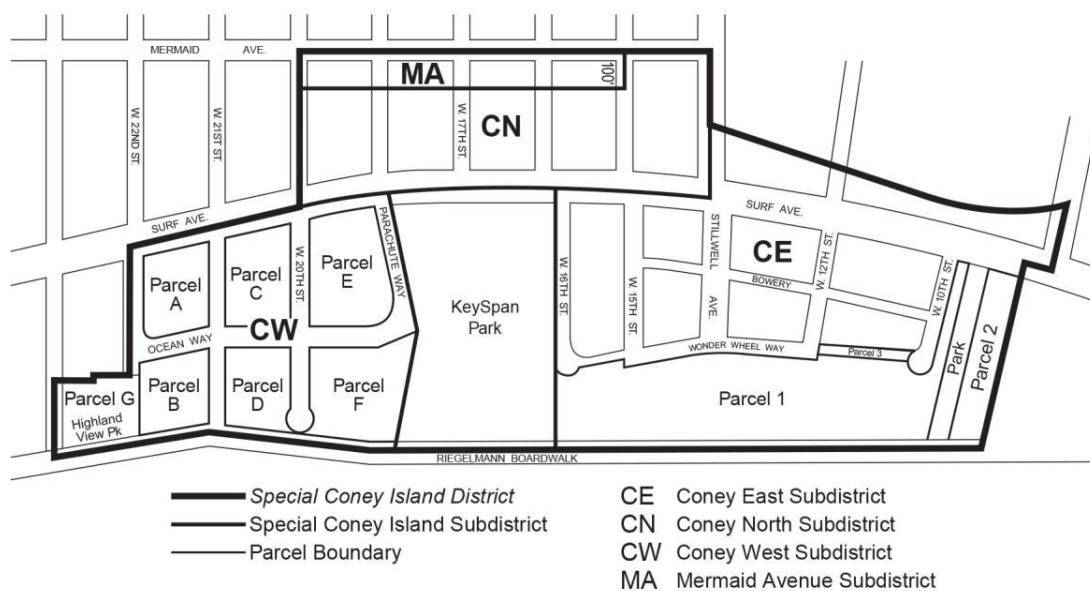
³⁹ Ibid.

Special Coney Island District – 2009

The Special Coney Island District, not to be confused with the Special Coney Island Mixed Use District, was created in 2009 and modified in 2013 to implement the 2005 Coney Island Plan to reestablish Coney Island as a year-round amusement destination, among other goals. The 2009 CPC report states that:

The Coney Island Plan is a comprehensive plan that will establish a framework for the revitalization of the Coney Island amusement area and the surrounding blocks. The plan builds upon the few remaining amusements to create a 27-acre amusement and entertainment district that will reestablish Coney Island as a year-round, open and accessible amusement destination. Outside of the amusement area, the plan provides new housing opportunities, including affordable housing, and neighborhood services. Key to the proposal is mapping and demapping parkland and establishing a new special purpose district, the Special Coney Island District (CI).⁴⁰

The district is divided into four subdistricts: Coney East Subdistrict (CE), Coney North Subdistrict (CN), Coney West Subdistrict (CW), and Mermaid Avenue Subdistrict (MA).



⁴⁰ CPC Report N 090273 (A) ZRK, June 17, 2009.

The Zoning Resolution contains a provision that enables the transfer of floor area freely within sets of parcels in CW. See Section 131-321:

Special floor area regulations for residential uses

...

(c) Coney West floor area distribution

In the Coney West Subdistrict, floor area attributable to zoning lots within the following sets of parcels, as shown on Map 1 in the Appendix to this Chapter, may be distributed anywhere within such sets of parcels:

Parcels A and B

Parcels C and D

Parcels E and F.

In addition, floor area attributable to block 7071, lot 130, within Parcel B may be distributed anywhere within Parcels C or D.⁴¹

The transfers are as of right and do not mention certification, authorization, special permits, or even recordation.

The CPC report has language that indicates that the provision was to facilitate the transfer of development rights from the landmarked Childs Restaurant located on Parcel B. In 2013, the CPC approved a project that includes the TDRs – a proposed 5,100-seat amphitheater – but the project has run into various obstacles including the aftermath of Hurricane Sandy and a lawsuit over the demolition of a community garden to make way for the project.

No transfers have occurred yet. As the city will likely acquire all of the parcels in question, the mechanism will operate like a ZLM or a LSDP, allowing the owner – in this case the city – to move floor area around a unified development site.

Why Here? The mechanism was created to facilitate the transfer of floor area from the landmarked Child's Restaurant.

⁴¹ Section 131-321.

Special United Nations District – 1970

The Special United Nations District, located between East 43rd and 45th streets and First and Second avenues, was created in 1970 to enable the implementation of the 1969 “Development Plan for the United Nations Development District” prepared by the United Nations Development Corporation (UNDC), a public benefit organization that oversaw development of the district. See Section 85-00. UNDC was empowered under state law to issue bonds, purchase land, and exercise eminent domain to consolidate ownership in the District and develop the areas surrounding the existing United Nations complex. About 600 residences and 100 businesses were displaced for the project. In structure and execution, this, the first Special District mechanism, most closely resembles Manhattanville, one of the most recent Special District mechanisms.

Among the general purposes of the Special District were:

(h) to promote coordinated redevelopment of the area contiguous to the United Nations in a manner consistent with the foregoing objectives which are an integral element of the comprehensive plan of the City of New York;

(i) to provide freedom of architectural design in accommodating facilities for the United Nations and supporting activities within multi-use structures which produce more attractive and economic development.⁴²

The TDR mechanism created by the Special District operates like a Large-Scale Development Plan, which provided developers of large, unified sites flexibility in site planning and floor area distribution. With certain limitations – like an overall 15 FAR limit – the Zoning Resolution enables the site owners to move bulk around:

The development may include land in more than one block and the total permitted floor area of all zoning lots within such development may be distributed without regard for zoning lot lines or any streets separating the zoning lots and the buildings comprising such development may be located without regard for the applicable height and setback regulations.

⁴² Section 85-00.

...

In no event shall any development on the south side of 44th Street within the Special United Nations Development District contain more than 200,000 square feet of floor area, and no more than 61,000 square feet of floor area may be transferred for any such development.⁴³

Each transfer must be recorded in the land records, and a certified copy of the recorded instrument has to be sent to the CPC. Otherwise no further approvals are necessary.

Why Here? As stated above, this TDR mechanism operates like a Large-Scale Development Plan to enable the developer of a large, unified site – here the UNDC – flexibility in site design and floor-area distribution. This predated the use of similar transfer mechanisms under the Large-Scale Development provisions (Section 78-311, Section 78-312, and Section 79-21), which weren't used until 1973.

Special Hudson River Park Transfer District – 2015

DCP may propose a new Special District to enable the transfer of development rights from Hudson River Park to the site of St. John's Terminal across the West Side Highway. The transfer would facilitate a large mixed-use project with a substantial inclusionary housing component. The New York State Legislature previously authorized floor area transfer from the Park.

Why Here? The main driver for this Special District is the dire need for funds to rehabilitate Pier 40 in Hudson River Park. The transfer would also enable a large number of affordable and senior housing units as part of the St. John's Terminal project.

⁴³ Section 85-04.

Large Scale Development Provisions

Large-scale development provisions date to the 1961 revision of the Zoning Resolution. Along with Urban Renewal Plans, which the provisions helped to facilitate, they represented an emphasis on large-scale projects then at the height of fashion.

In 1967, the earliest provisions were replaced by Section 78-00, Large-Scale Residential Development (LSRD), and Section 79-00, Large-Scale Community Facility Development (LSCFD), as part of a set of late-1960s adjustments, corrections, and workarounds to the 1961 revision. Like Special Districts and Landmark TDRs, they date to the increased emphasis on urban design (and the proliferation of zoning tools) in the late 1960s during the Lindsay Administration. Their purpose is to encourage “greater variety and more imaginative site planning” in housing developments on large sites.⁴⁴ The provisions were in explicit reaction to the perceived failures of R3-2 Residence Districts, which had resulted in “monotonous rows of single-family semidetached houses”⁴⁵ in Staten Island and other lower-density parts of the city.⁴⁶

The Large Scale General Development (LSGD)(Section 74-74) was created in 1989 to address a lack of flexibility that had made the earlier large-scale developments increasingly difficult to use. The CPC also amended Section 78-00 and 79-00 in 1989 to confine their use to residential and lower-intensity commercial districts, further limiting their use. Section 74-74 has been the predominant large-scale mechanism for all use types since then. In the last 25 years, all bulk transferred under large-scale provisions has been transferred under Section 74-743, the transfer provision for LSGDs.

⁴⁴ CPC Report CP 19792, May 3, 1967.

⁴⁵ Ibid.

⁴⁶ See, e.g., the General Purposes for Section 78-00:

For large-scale residential developments involving several zoning lots but planned as a unit, the district regulations may impose unnecessary rigidities and thereby prevent achievement of the best possible site plan within the overall density and bulk controls. For such developments, the regulations of this Chapter are designed to allow greater flexibility for the purpose of securing better site planning for development of vacant land and to provide incentives toward that end while safeguarding the present or future use and development of surrounding areas and, specifically, to achieve more efficient use of increasingly scarce land within the framework of the overall bulk controls, to enable open space in large-scale residential developments to be arranged in such a way as best to serve active and passive recreation needs of the residents, to protect and preserve scenic assets and natural features such as trees, streams and topographic features, to foster a more stable community by providing for a population of balanced family sizes, to encourage harmonious designs incorporating a variety of building types and variations in the siting of buildings, and thus to promote and protect public health, safety and general welfare.

The large-scale mechanisms enable owners of unified sites to plan and develop large sites as a unit. Minimum site size is 1.5 acres for LSGDs and LSRDs, and 3 acres for LSCFDs. The mechanisms allow for modifications to underlying zoning regulations – not only distribution of floor area and dwelling units, but also height, setback, and other bulk regulations – as part of an authorization or special permit process with the CPC. Prospective rules for as-of-right development become less crucial when the CPC has the ability to evaluate and lock in a complete site plan.

The required findings are similar across provisions. The first and most important finding emerges from the underlying rationale for the program: The large-scale plan, and the distribution of floor area and loosening of bulk regulations, must result in a “better site plan” than one based on the underlying zoning, and must benefit the occupants of the site, the neighborhood, and the city as a whole. Other findings relate to height and bulk impacts on surrounding areas, light and air, traffic, open space, and other typical concerns.

Section 78-311 and Section 78-312 – Large Scale Residential Developments

The Zoning Resolution for Large-Scale Residential Developments – Section 78-00 – includes two provisions that allow for the distribution of floor area, dwelling units, and lot coverage without regard to zoning lot lines: Section 78-311, an authorization, and Section 79-312, a special permit. The authorization was deemed appropriate for types of modifications that would have no more impact on the surrounding areas than what developers could do if the unified site were a single zoning lot.⁴⁷ The authorizations would allow for cluster developments with common open space, but would not permit for the bulk and density bonuses available under the special permit.

⁴⁷ “However, the proposed amendment also establishes an alternative procedure open to the developer, whereby the City Planning Commission by administrative approval could grant modifications limited to certain specified types for the purpose of achieving an improved site plan. No public hearings or Board of Estimate action would be required where modifications are limited to such types, since their impact on the surrounding area would be no greater than that which would be permitted as a matter of right, if the entire project site were laid out as one zoning lot and remained in single ownership. These authorizations are a logical extension of those presently allowed under the large-scale provisions. They include authorizations which would allow cluster developments with common open space, but without the bulk and density bonus.”

Between its inception and 1990, when Section 74-74 rendered it more or less obsolete, Section 78-311 was used approximately 30 times, with 18 projects (listed below) using Subsection 78-311(a) to transfer floor area, lot coverage, and dwelling units by authorization. The provision has been used in all 5 boroughs. Without exception, in Manhattan Section 78-311(a) was used in conjunction with Urban Renewal projects; in other boroughs it was used for relatively low-density tract housing developments. One project, Spring Creek in East New York, was affordable housing, but the other LSRDs outside of Manhattan were market-rate.

	Project	Date	Community District
1	Lincoln-Amsterdam URA	1973	MN 7
2	Harlem-East Harlem URA	1973	MN 11
3	Harlem-East Harlem Renewal	1978	MN 11
4	80th Street LSRD	1978	QN 10
5	West Side URP	1979	MN 7
6	Riverview	1981	QN 7
7	Arden Wood	1981	SI 3
8	Ruppert Brewery	1982	MN 8
9	Arlington Place	1983	SI 1
10	Clark Ave	1983	SI 3
11	West Side URA Sites 30A and 30B	1985	MN 1
12	Clinton URA Sites 8 & 9C	1986	MN 4
13	Delafield Estates	1987	BX 8
14	Spring Creek	1987	BK 5
15	Spring Creek	1988	BK 5
16	West Side URA Site 32	1989	MN 7
17	South Richmond LSRD	1989	SI 3
18	Spring Creek	1990	BK 5

Since its inception in 1967, about 26 projects have used Section 78-312, but only one project has used 78-312(a), the mechanism that allows distribution of floor area, lot coverage, and dwelling units in conjunction with the Bonus for Good Site Plan (Section 78-32) and the Bonus for Common Open Space (Section 78-33). The project was “House Beautiful at Bayside” in Queens, listed below.

	Project	Date	Community District
1	64th Ave.	1980	QN 11

Section 78-312 is still used occasionally for modifications and renewals of old Large-Scale Residential Development plans or to create new large-scale plans in residential or low intensity commercial districts. Recent projects include Navy Green in Brooklyn (2009), College Point in Queens (2008), Waterpointe in Queens (2008), and Tides of Charleston in Staten Island (2004). None of these projects used the floor area transfer provisions.

Section 79-21 – Large-Scale Community Facility Development

Section 79-21 is the provision that enables developers of Large-Scale Community Facility Developments to distribute floor area, lot coverage, dwelling units, and open space over streets and without regard for zoning lot lines. It also allows modification to the minimum required distance between buildings, and to height, setback, and yard regulations.

Section 79-00 has been used approximately 12 times (including modifications to earlier plans) between 1969 and 1989, but not since. It seems that Section 74-74 rendered it obsolete. It has been used twice for colleges – Hostos Community College in Grand Concourse and Columbia University in Morningside Heights – and ten times for hospitals in Manhattan, the Bronx, and Brooklyn. Only three projects have made use of the 79-21 transfer provisions, all hospitals – two projects at Maimonides in Borough Park, and one at Saint Vincent’s in the West Village. These are listed below:

	Name	Date	Community District
1	Maimonides	1977	BK 12
2	St. Vincent's	1979	MN 2
3	Maimonides	1981	BK 12

Another common use for Section 79-00 was for special permits for development or bridges over streets. See Section 79-401 and 402.

74-743 – Large-Scale General Development

Section 74-74 was enacted in 1989. Since then, approximately 17 projects have used Section 74-743(a)(1) to transfer bulk around a large-scale development site. An additional 30 projects, approximately, have used Section 74-74 without invoking the bulk transfer provision.⁴⁸ As the

⁴⁸ Section 74-743(a)(12) further allows a special transfer from Astoria Houses as part of the Halletts Point project:

list below demonstrates, several projects are expansions of educational institutions that in years past may have qualified for Section 79-21. Others are updates to Urban Renewal Plans, or large, primarily residential projects in mixed-use and formerly industrial areas that may have been eligible for Section 78-00 before it was limited to residential and low-intensity commercial districts in 1989. Other projects, like Bronx Terminal, are exclusively commercial. The variety of projects developed under Section 74-74 is an indication of the provision's flexibility.

	Project	Size of Transfer	Date	Community District
1	Riverside South	Unspecified	1992	MN 7
2	ABC Studios	11,210 sf	1993	MN 7
3	River Center	Unspecified	1999	MN 4
4	Polytechnic	48,415 sf	2000	BK 2
5	Cooper Square URA	74,407 sf	2001	MN 3
6	Clinton Green	28,500 sf	2004	MN 4
7	Bronx Terminal	39,070 sf	2005	BX 4
8	John Jay Expansion	32,000 sf	2005	MN 4
9	East River Realty Co (Denied)	161,354 sf	2008	MN 6
10	Crotona Park East West Farm	Unspecified	2011	BX 3
11	625 West 57th Street	174,018 sf	2012	MN 4
12	NYU Core	19,214 sf	2012	MN 2
13	Rudin West Village	15,102 sf	2012	MN 2
14	Hallets Point	118,615 sf	2013	QN 1
15	Astoria Cove	100,753 sf	2014	QN 1
16	Clinton URA Site 7	Unspecified	2014	MN 4
17	Domino	242,857 sf	2014	BK 1

One project listed above, East River Realty, was denied in large part because of CPC reservations about the proposed transfer of bonus floor area from the generating site to another lot within the proposed LSGD. The CPC did not want to sever the connection between the floor-area bonus and the amenity – in this case a public plaza – especially since the proposed receiving site could be developed with the inclusionary housing bonus, which the CPC found to be a more appropriate way to achieve the proposed density.

(12) within the boundaries of Community District 1 in the Borough of Queens, in the area generally north of 30th Road and west of 8th Street, within the Halletts Point Peninsula, the floor area distribution from a zoning lot containing existing public housing buildings, provided that upon approval of a large-scale general development there exists unused floor area on a separate parcel of land with existing light industrial buildings in an amount equivalent to, or in excess of, the floor area approved for distribution.

III. Summing Up: When and Why Have TDRs Been Used in New York City?

Understanding the role of TDRs in land use planning in New York City involves two general sets of questions. The first set relates to when and why TDRs have been used: In what circumstances have they been deployed, and for what purposes? The second set relates to when and why TDRs *haven't* been used: Given that the city can create and enable the transfer of TDRs for a range of purposes, what limits their use?

The circumstances surrounding the creation of each TDR mechanism are unique, but historically the mechanisms have fallen into two basic taxonomical categories: First are those that emerged somewhat organically and that simply allow floor area to move around a unified site, like ZLMs and LSDPs. Second are consciously designed zoning tools like Section 74-79 landmark transfers and the Special District mechanisms that grew out of them that promote the preservation of historic buildings and uses, create or preserve open space, or serve other limited and specific planning and land use purposes. Special District mechanisms are split between the two categories. The United Nations, Manhattanville, and Coney Island Special Districts resemble the first category. The South Street Seaport, Sheepshead Bay, Grand Central, Theater Subdistrict, Hudson Yards, and High Line mechanisms modify the template created by the Section 74-79 landmark transfer program.

ZLMs, LSDPs, and the Special Districts that Resemble Them. The first category of TDRs – ZLMs, LSDPs, and the Special Districts that resemble them – are the older, more basic form of floor area transfer. These are not the cutting-edge zoning tools debated by lawyers and planners in the late 60s and early 70s, like Landmark Transfers and their ilk. These transfers are largely allowable because they do not typically permit anything that couldn't theoretically be done already under existing bulk regulations. (To the extent they do, the mechanisms require CPC oversight and compensatory benefits.)

They exist in part because they can be analogized to the decision any developer makes about how to apportion allowable floor area on a development site. In that case, so long as the plans conform to applicable bulk regulations, the apportionment of floor area is thought not to implicate planning considerations beyond those already contemplated during the creation of the bulk regulations. In theory, ZLMs alone can never enable buildings on granting and receiving

sites that could not have been created as-of-right by a developer who owned the granting and receiving sites, apportioned the floor area as of right, and built the buildings from scratch.

A similar logic applies to LSDP transfers, which resemble ZLMs with a couple relevant differences. First, unlike granting and receiving sites for ZLMs, granting and receiving sites for LSDPs are typically under unified ownership or at least unified site control such that they can be developed as a unified site. In this sense, LSDP transfers are stricter than ZLMs. Second, unlike ZLM transfers, LSDP transfers can take place across zoning district boundaries and even across streets within the LSDP site. In this sense, LSDPs are looser than ZLMs, though LSDP transfers require authorizations or special permits, enabling the CPC to review and approve specific plans or intervene if the transfers or other aspects of the LSDP raise significant planning concerns.

The transfer mechanisms included in the Special United Nations District, Manhattanville Mixed-Use Special District, and – to a lesser extent – the Special Coney Island District grew out of the LSDP mechanisms. The transfers contemplated by these Special Districts are within areas under unified ownership and control.⁴⁹

As noted above, ZLMs were not deliberately designed with a special purpose or application in mind, but LSDP transfers and the Special District provisions were implemented to give large-scale projects a degree of flexibility that would result in better site plans. In most cases, the CPC must find that the LSDP and any transfers result in a better site plan, do not unduly increase bulk of any buildings, and do not adversely affect light and air access of zoning lots outside the LSDP.

Overall, ZLMs and LSDP transfers are fairly conservative mechanisms, confined to moving floor area within actually or constructively unified sites. Nevertheless, the luxury residential towers rising south of Central Park have focused new attention on the ZLMs that enabled them and occasioned proposals to subject them to discretionary review. Most of the controversy surrounding LSDPs, or Special Districts like Manhattanville, is not related to transfers per se, but rather to other aspects of the projects, like scale, the threat of displacement, or the use of eminent domain.

Landmark Transfers and the Special Districts that Resemble Them. The second category of transfers – Section 74-79 Landmark transfers and the Special Districts mechanisms that evolved

⁴⁹ The UN and Manhattanville Special districts also involve state development corporations and the use of eminent domain.

from them – were consciously devised as a new zoning tool adapted to a particular set of objectives. The tool started as a way to provide economic support to landmark owners (and to mitigate legal risk to the city from regulatory takings challenges) and have been adapted over time to preserve other low-density structures or less profitable uses, including theaters in Times Square, a neighborhood institution in Sheepshead Bay, or open space in Hudson Yards and along the High Line.

The common denominator among landmark and landmark-like transfers is that they employ otherwise unused development rights to generate money to support preservation and a range of other public purposes. In many cases, the money generated by TDRs allows the city to achieve public purposes without public outlays. (This is another difference with ZLMs, which typically involve private transactions for private ends, and LSDP transfers, which typically involve no transactions at all.) In some cases, the purposes serve broad planning goals, such as saving the theaters in Times Square; in other cases, the mechanisms take on a more parochial cast, such as the attempted transfer provision in Sheepshead Bay.

Below is a listing of the main objectives of this family of TDR mechanisms:

- **Preservation of Historic Structures:** Section 74-79 Transfers; South Street Seaport; Grand Central Subdistrict (including other landmarks within Subdistrict); Theater Subdistrict; High Line; Coney Island.
 - Several mechanisms have been created to make funds available for the preservation of historic structures, though the design of the mechanisms has varied widely. Seaport TDRs, created just four years after Section 74-79 transfers, feature designated granting and receiving sites and include a TDR bank that enabled an immediate infusion of funds.
 - Theater Subdistrict TDRs are more use-focused than Section 74-79 transfers, which preserve structures rather than uses, but they have helped to preserve many historic buildings in addition to the legitimate theater uses across the subdistrict.
 - The High Line and Coney Island TDRs support the preservation of older structures (the High Line and Child's Restaurant, respectively) less directly, not by generating funds through the sale of TDRs but as part of broader planning and redevelopment schemes that require the structures' continued existence.
- **Preservation of Historic Uses:** Theater Subdistrict; Sheepshead Bay.
 - Theater Subdistrict TDRs aimed to preserve Times Square as the center of New York City's economically important theater and entertainment industry.

- Sheepshead Bay TDRs were intended to generate funds to save Lundy's Restaurant, a neighborhood institution that nonetheless closed.
- **Creation or Preservation of Open Space/Parks:** Hudson Yards; High Line; Manhattanville; Hudson River Park/Pier 40.
 - Without the Hudson Yards TDR mechanisms, it would have required perhaps billions in public outlays to buy or condemn the land necessary to create the parks and open space planned there. The TDRs will also generate funds for the MTA.
 - The High Line TDRs open up a corridor around the High Line to create an appropriate urban scale adjacent to the park, and the ability to sell unused development rights garnered the support of affected property owners in a way that a simple downzoning probably would not have.
 - The proposed Hudson Park TDR mechanism would generate funds for the park and the rehabilitation of Pier 40.
- **Realization of Large-Scale Urban Design Goals:** Hudson Yards; High Line.
 - See above.

The Limits to TDRs. Finding the purpose in each existing TDR mechanism is less difficult than coming to satisfying and specific conclusions about the limits to the zoning tool's use. There is no shortage of worthy buildings, parks, and public purposes that could benefit from money generated through the creation of a new TDR mechanism. A few general principles limit the use of TDR mechanisms:

First and foremost, there may be a general tension between the basic planning and land use principles of order, stability, and predictability in bulk regulation and TDR mechanisms that enable the transfer of bulk in potentially unpredictable ways. Too liberal use of TDR mechanisms could run afoul of the city's obligation to regulate land use in accordance with a comprehensive or well-considered plan.

Second, and related, is that land use regulations have to serve planning and land use purposes in service of the general health, safety, and welfare. Development rights can't be minted and sold to generate revenue outside of a sound planning rationale. To do otherwise would be to impose an invalid tax or to engage in "zoning for dollars". While the courts are generally permissive when it comes to land use regulations, there are limits.

Third, there is a reluctance to use TDR schemes when more basic zoning tools will do. For instance, many objectives that recent proposals aim to accomplish with TDRs can be accomplished through more basic tools like rezonings. If increased density is appropriate in a given area, it usually makes sense to go through a public area-wide rezoning process rather than, say, minting development rights on a single property and permitting transfers to the areas where more density is desirable. If limiting density is appropriate in a given area, the same is true – a basic downzoning is preferable to devising a TDR scheme to suction off unused development rights for use elsewhere.

Fourth, even when designed to further valid planning and land use goals, TDR programs must satisfy broad constitutional limits on land use regulations. One of New York City's early experiments with TDRs was struck down in Fred F. French Investing Company v. City of New York.⁵⁰ In 1972, before TDRs were a fully accepted mechanism, the city created a Special Park District that gave a Tudor City company TDRs in exchange for effectively rezoning two of its lots from high-intensity residential (R10) to public park use, eliminating all economic value. The New York Court of Appeals objected to the mandatory nature of the exchange, and found that the TDRs were worthless as compensation in the absence of possible receiving sites. For policy and legal reasons, TDR mechanisms must provide for realistic receiving sites so that any TDRs created have a place to land.

In extraordinary circumstances and for extraordinary purposes – the city may overcome a general hesitance to employ TDRs and implement them for uses akin to the limited purposes outlined above.

⁵⁰ 39 N.Y.2d 587 (1976).

IV. TDRs in Other Cities⁵¹

New York City has by far the largest and most diverse array of TDR mechanisms. With a few exceptions described below, other cities may have a single TDR program for a single purpose; most have none at all.⁵² A brief survey of TDR programs across the country provides useful context for New York City's programs.

Nationally, the most popular use of TDR programs is for environmental purposes or farmland and open space preservation. ("Open space" in this context can mean relatively unimproved land, not parkland as the term denotes in a New York City.) These are typically state-run, inter-jurisdictional programs that transfer development rights across municipal lines from rural areas to more urbanized areas. The most prominent example might be New Jersey's Pineland Program. Since the 1980s, the program has preserved about 50,000 acres of pinelands by enabling the transfer of development rights over long distances to 23 relatively urbanized receiving areas designated for growth. Long Island, in New York State, has a similar Pinelands TDR program. Some of these programs have involved major metropolitan areas. Kings County, in Washington State, has an inter-jurisdictional program that transfers development rights between farmland and open space in the county and Seattle and other urban receiving areas. Other environmental (and predominantly non-urban) TDRs help to preserve hillsides, watersheds, coastland, wetlands, scenic areas, and the like.

Urban programs represent a minority of programs overall. The core urban use for TDR programs is historic preservation, with about 20 cities across the country having programs of various designs, including Los Angeles, San Francisco, San Diego, New Orleans, Nashville, Denver, Dallas, Minneapolis, Pittsburgh, and West Palm Beach. As in New York, some programs aim to preserve individual landmarks and some aim to protect and enhance entire districts. Others operate strictly as unused development rights transfer mechanisms and others create and transfer development rights in a framework more akin to a bonus or incentive zoning scheme.

Rarer are programs that focus on housing and infrastructure capacity, revitalized downtowns, or urban design and design flexibility. Seattle, Portland, and Washington, DC, are among a few

⁵¹ Much of the information in this section is derived from Arthur C. Nelson, Rick Pruetz, and Doug Woodruff "The TDR Handbook" (2012).

⁵² This section looks only at explicit TDR programs akin to New York City's landmark transfers and special district mechanisms, rather than ZLM-like mechanisms.

cities that have created multipurpose TDR programs to promote development in designated downtown areas while preserving and creating housing, some of it affordable housing. ZLMs are old hat in New York City, but there are only a very few other places, like Oakland, that enable such transfers through programs meant to encourage design flexibility.

Other major cities, like Boston, Philadelphia, and Chicago have no TDR programs at all.⁵³

Denver. Denver's program, enacted in 1982 and amended in 2005, allows landmark owners who engage in extensive rehabilitation to transfer up to 4 times the floor area of the existing landmarked building. The receiving areas are large and limited by designation rather than transfer radius, and procedure and oversight is relatively lax – transfers require only certification.

The size of the transfer depends on district and use. Some districts place a 6 FAR limit on transfers, and other districts limit transfers to 25 percent of the base FAR on the receiving site. Overall FAR is capped at 17, but exceptions can be made for buildings that are more than 50 percent residential.

There have been three transfers under the program since it was amended in 2005.

Los Angeles. Los Angeles's program dates back to 1975 and enables transfers for landmarks and other designated sites within the Transfer Floor-Area Ratio (TFAR) district. Sending and receiving sites must be within 1500 feet of one another and also be within the same designated subdistrict of the TFAR district located downtown. Transfers can be used to increase receiving site FAR up to 13. The program was amended in 1985 to include landmarks transfers to contiguous parcels over a larger area. Transfers may also occur between contiguous parcels with visually linked developments.⁵⁴

As of 1988, Los Angeles varies approvals procedure depending on the size of the transfer. Above 50,000 sf requires a special-permit like process with public hearings. Under 50,000 sf can be transferred through a process akin to certification. Transfers are accompanied by payments into a Public Benefit Trust Fund used for affordable housing, open space, historic preservation,

⁵³ Chicago's oft-cited "TDR" landmark-preservation program is actually a bonus mechanism by which developers in certain downtown districts get additional floor area for "adopting" designated landmarks. It is not counted as a TDR program in the exhaustive and authoritative "The TDR Handbook" referenced above.

⁵⁴ Nicholas Zuniga, "Turning Air Rights Right: Enhancing Transfer of Development Rights in Los Angeles" (2013).

transit and cultural facilities. Most TDRs have been generated by the Los Angeles Convention Center.

In total, Los Angeles's programs have transferred 6.6 million sf and generated an estimated \$90 million in public benefits since 1975. The transfers have expiration dates to prevent speculative accumulation.

Portland. Portland has a range of TDR programs. One allows transfers between abutting lots within a single project in certain zones of the city, promoting design flexibility. Owners of SROs (single-room occupancy residences) may sell unused development rights to receiving sites within designated districts, promoting the preservation of an important stock of Portland's low-income housing. Within the designated Central City District, owners of residential buildings are allowed to transfer unused development rights, lessening redevelopment pressures. TDRs are permitted in the South Waterfront District to achieve urban planning and open space goals. Similar to large-scale development plans in New York City, developers can shift floor area upon approval within any master planned area. In the Northwest Hills and Johnson Creek Basin districts, TDR programs preserve natural areas. Portland also has a landmark transfer program with a 2-mile transfer radius.

Portland also has a robust bonus program, with developers receiving additional floor area by picking from a menu of public amenities – eco-roofs, daycare, theaters, percent-for-art, and low-income housing, among others. While developer preference between TDR and bonuses may shift back and forth, Portland attempts to ensure that neither program overwhelms the other by requiring both TDRs and bonuses for a developer to achieve maximum FAR in areas where both are available. Receiving sites can typically exceed base density by 50 percent.

Despite individual successes, like the preservation of a large SRO in 1990, the results of the programs have been underwhelming. Bonuses and other competing programs are seen as easier ways to achieve desired FAR. Baseline FAR may be set too high to fully incentivize developers to buy TDR in Portland's current market.

San Francisco. San Francisco's program was created in 1985 and liberalized in 2013 in response to a recent dearth of transfers. Receiving areas are limited by designation rather than transfer radius. Designated areas are in C-3 districts primarily located downtown. Transfers in some districts are limited by a maximum FAR of 18 and in other districts by a maximum 50 percent increase above the base FAR. Transfers are executed through a three-step certification process.

The lack of competing bonus mechanisms in San Francisco meant that the program has been well-used historically, though this is changing in recent years as incentives are layered into the zoning code in response to public demand. Since 1985, the program has generated 5.3 million sf of TDRs from 112 parcels; 2.7 million sf have been transferred.

Seattle. Seattle's programs date to 1985 and have been used extensively for a range of purposes: historic preservation, open space, affordable housing, and major performing arts theaters. These programs are in addition the King County's inter-jurisdictional program that preserves open space by transferring development rights from rural areas to urban centers including Seattle.

Receiving areas include most of downtown, which is divided into various subdistricts with rules that vary depending on sending site, type of transfer, and other criteria. Some areas have tiered and tranced maximum FARs, with bonuses necessary to reach an intermediate limit and TDRs necessary to achieve maximum bulk. Base FARs are relatively low – some districts have a base of 4 with a maximum of 14. In some districts, two types of TDRs are necessary to achieve maximum FAR – landmark plus affordable housing TDRs, for instance.

Landmark programs are the most frequently used. That program is similar in structure to New York City's, but with beefed up requirements to ensure that revenues generated by the transfer go to the long-term preservation of the landmark. The program includes extra incentives for landmarked performing arts theaters, and the program has been used for major projects like Benaroya Hall, home to the Seattle Symphony and several performance spaces. A few TDR-enabled projects have created major performing arts theaters that also provide affordable housing. Open space TDRs have been used to create urban parks. All categories of can make use of a city-owned TDR bank that enables developers and other to hold TDRs for future use or sale.

While Seattle also employs a number of bonuses for onsite amenities, the city employs low baseline FARs to encourage TDR take-up. As of 2012, there are approximately 2 million sf of available TDRs and about 1.4 million have been used.

Washington, DC. Washington, DC established its first program in 1984 to encourage retail downtown. In 1991, the program was expanded to preserve low-lying, landmark-heavy parts of downtown, encourage housing production in formerly non-residential parts of the city, and

channel development to Downtown Development (DD) Overlay District and other designated areas. The landmark program was recently retired; the program was so successful that the program had achieved its preservation goals and had no more development rights to transfer.

The amount that can be transferred from landmarks was limited to 4 FAR of unused development rights, based on the granting site. Washington has a strict height limit, sometimes making individual transfers challenging. The program made up for that in the volume of potential receiving sites, since the transfers could be made anywhere within the DD or other designated areas. Landmark transfers occurred by standard covenant between the property owners and the district; they are reviewed by planning and historic preservation staff but otherwise happen as-of-right. Once executed, transfers may be used immediately or banked for later use.

All district programs transferred a total of 9.5 million sf. Landmark transfers accounted for about 1.5 million sf, and permitted transfers of floor area generated by various bonus programs accounted for much of the remainder. Somewhat over 1 million sf are still banked and may be used in the future.

V. Conclusion and Next Steps

Over the last 50 years, New York City has pioneered the use of TDRs to achieve a range of planning and urban design goals. The various mechanisms outlined in this survey include a number of notable successes – that is, programs that have achieved or are achieving their stated objectives. Other programs, especially some of the earlier, more experimental mechanisms, have been less successful. DCP has conducted this survey in the belief that the city can learn lessons both positive and negative from the full complement of existing mechanisms.

DCP also believes that it has much to learn from TDR stakeholders and from the experience of other cities with TDR mechanisms. Beginning with a February 26, 2015, conference on TDRs, the city will reach out formally and informally to stakeholders and others with relevant knowledge, experience, and interest. (DCP also welcomes unsolicited feedback.) These conversations will inform the city's process as it evaluates existing TDR mechanisms, formulates a consistent and prospective TDR policy, and considers reform of existing mechanisms or the creation of new ones.

DCP will review TDR programs and policy with attention to how this zoning tool can support the overall planning and land use objectives of the administration, the equitable growth and development of the city, and the continued vitality of New York City's businesses and New York City's neighborhoods. Within these broad goals, TDR mechanisms – in limited circumstances and for a limited set of objectives – can be a powerful tool. This project will help DCP to use this tool more effectively and when appropriate, within the bounds of its institutional commitment to sound land use policy enacted in accordance with a well-considered plan.