

RESOLUTION # 36

TRANSFER OF DEVELOPMENT RIGHTS (TDR)

1 **WHEREAS**, Transfer of Development Rights, or TDR, offers a tool to achieve both
2 land preservation and economic growth by directing development from farmland, historic and
3 environmentally sensitive sites to where this development is most desired and
4 appropriate; and

5 **WHEREAS**, by harnessing forces in the real estate market, TDR can enable
6 landowners to access the equity from their land without having to convert their land to non-
7 agricultural uses, such as residential or commercial development; and

8 **WHEREAS**, the Pinelands Development Credit (PDC) program, New Jersey's first
9 TDR program, instituted in 1981, has to date resulted in the permanent protection of more
10 than 57,000 acres of environmentally sensitive forest and agricultural land in the New Jersey
11 Pinelands; and

12 **WHEREAS**, despite the long history of the program being established in the
13 Pinelands, much remains unpreserved, due largely to limitations on *where* Pinelands PDC
14 credits may, and must, be used (i.e. only within the Pinelands itself, and even there many
15 areas can develop without the use of PDCs); and

16 **WHEREAS**, in 2004, the Highlands Water Protection and Planning Act (N.J.S.A.
17 13:20-1 et seq.) was enacted, which included the establishment of a TDR program as a key
18 component to provide equity protection to impacted landowners; and

19 **WHEREAS**, the Highlands Water Protection and Planning Act relies on municipalities
20 to voluntarily participate in becoming receiving areas for Highlands Development Credits; and

21 **WHEREAS**, despite statutory incentives and grants from the Highlands
22 Commission, 18 years later, no receiving areas have been established to accept Highlands
23 Development Credits, and therefore no market for these credits currently exists; and

24 **WHEREAS**, the cost of state preservation programs which deprive landowners of
25 value in their land in order to provide benefits which are enjoyed by the entire state should be

26 borne by the entire state, and not be shouldered entirely by the region being preserved; and

27 **WHEREAS**, under the State TDR Act, Woolwich Township, Gloucester County, and
28 Berkeley Township, Ocean County, have enacted TDR ordinances, however neither have yet
29 successfully either marketed their receiving areas or provided the infrastructure necessary to
30 create a viable market for credits; and

31 **WHEREAS**, particular concerns have been raised in Woolwich Township about a
32 decision to continue with the program, with no ability for a landowner to “opt out,” even as
33 TDR credits have yet to sell for receiving area development during the program’s lifetime; and

34 **WHEREAS**, to provide landowner relief the Woolwich TDR Bank held a credit auction
35 in 2016 leveraging \$5,000,000 from the State TDR Bank for the purchase of 274.5 credits
36 from 16 properties, at a total cost of \$6,978,000, and resulting in the preservation of 817
37 acres bought at auction; and

38 **WHEREAS**, property owners whose land was “down-zoned” from two acres to 15
39 acres and who did not participate in the TDR auction have seen falling land values and are
40 left without an investment similar to that involved in the Farmland Preservation program,
41 where the landowner receives a monetary value for selling the non-agricultural development
42 rights of the land; and

43 **WHEREAS**, acknowledging the difficulty municipalities have had reestablishing TDR
44 programs, a State TDR Task force, which included staff of the State Agriculture Development
45 Committee, NJDA and New Jersey Farm Bureau, was created to discuss ways to foster use
46 of TDR and other cluster provisions; and

47 **WHEREAS**, efforts of the State TDR Task Force culminated in an August 2010 report
48 that outlined specific recommendations, which included amending the Municipal Land Use
49 Law to create enhanced provisions for tools such as non-contiguous and lot-size averaging;
50 and

51 **WHEREAS**, on August 7, 2013, P.L. 2013, c.106 amended the Municipal Land Use
52 Law to specifically authorize use of these density transfer techniques to provide municipalities

53 a variety of development options as recommended in the Task Force report.

54 **NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 108th State
55 Agricultural Convention, assembled in Atlantic City, New Jersey, on February 8-9, 2023,
56 support the permanent protection of New Jersey's farmland, historic and natural resources
57 through, among other methods, the judicious and market-aware use of Transfer of
58 Development Rights.

59 **BE IT FURTHER RESOLVED**, that we strongly urge coordinated efforts by and
60 among the various New Jersey state agencies to work with the State TDR Bank with regard to
61 establishing receiving areas necessary to drive demand for Highlands and Pinelands PDC
62 credits.

63 **BE IT FURTHER RESOLVED**, that we support prior bills that established a program
64 that enables the redemption of Highlands and Pinelands Development Credits statewide
65 which was designed to specifically motivate the purchase of Highlands and Pinelands TDR
66 credits in exchange for approval of projects that may or may not be in the Highlands or
67 Pinelands, but anywhere in the state.

68 **BE IT FURTHER RESOLVED**, that we support the participation of the Department
69 and the State Agriculture Development Committee (SADC) in helping to implement a New
70 Jersey Future Task Force report of recommendations to encourage the use of TDRs at both
71 the municipal level and regionally through changes to relevant statutes, regulations, policies
72 and programs as recommended in the State Plan.

73 **BE IT FURTHER RESOLVED**, that we support the use of municipal non-contiguous
74 clustering pursuant to N.J.S.A 40:55D-1, et seq. as a way of achieving development transfers
75 without disrupting underlying zoning by creating a voluntary program to transfer development
76 potential from areas where preservation is desirable to areas intended to support new
77 development.

78 **BE IT FURTHER RESOLVED**, that the agricultural community should monitor the
79 implementation of this law at the municipal level to maximize landowner protections and

80 assess this program's feasibility as an equity-enhancement opportunity for agricultural
81 landowners.

82 **BE IT FURTHER RESOLVED**, that we strongly urge coordinated efforts by and
83 among the various New Jersey state agencies to aid municipalities interested in TDR, in
84 particular, with regard to establishing the receiving areas and demonstrating a market for the
85 TDRs, necessary to drive demand for TDR credits.

86 **BE IT FURTHER RESOLVED**, that we urge municipalities to engage with their
87 planners, agricultural advisory committees, and the state to identify opportunities for use of
88 TDR, non-contiguous clusters and other density transfer techniques.

89 **BE IT FURTHER RESOLVED**, that we strongly urge any municipality or regional
90 entity establishing or with established TDR programs to ensure that landowner equity is given
91 the utmost consideration, and protected in the long term, by either creating lasting, viable
92 markets for TDR credits or discontinuing TDR programs promptly if found to be inoperable,
93 consistent with the State TDR Act, and that in lieu of a viable program, including adequate
94 funding, with no TDRs applied, the program in that area be terminated.