RESOLUTION # 38

TRANSFER OF DEVELOPMENT RIGHTS (TDR) PROGRAM

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

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

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

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

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

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

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

**WHEREAS**, the cost of state preservation programs which deprive landowners of value in their land in order to provide benefits which are enjoyed by the entire state should be borne by the entire state, and not be shouldered entirely by the region being preserved; and

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

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

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

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

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

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

**WHEREAS**, on August 7, 2013, P.L. 2013, c.106 amended the Municipal Land Use Law to specifically authorize use of these density transfer techniques to provide municipalities a variety of development options as recommended in the Task Force report; and

**WHEREAS**, these examples point out that sending/receiving issues must be re-examined in the ever-evolving real estate market, especially as development pressure has shifted from developers seeking farms for housing developments to developers seeking farmland for warehousing development.

**NOW, THEREFORE, BE IT RESOLVED**, that we, the delegates to the 109th State Agricultural Convention, assembled in Atlantic City, New Jersey, on February 7-8, 2024, support the permanent protection of New Jersey’s farmland, historic and natural resources through, among other methods, the judicious and market-aware use of Transfer of Development Rights.

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

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

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

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

**BE IT FURTHER RESOLVED**, that the agricultural community should monitor the implementation of this law at the municipal level to maximize landowner protections and assess this program’s feasibility as an equity-enhancement opportunity for agricultural landowners.

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

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

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