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DATE:	**July 11, 2013**
TO:	**Historic Preservation Commissioners**
FROM:	**Daniel A. Sider, Planning Department Staff**
RE:	**Market Analysis of the Sale of Publicly Owned TDR**

In May 2012, Planning Department ("Department") Staff provided the Historic Preservation Commission ("HPC") an informational presentation on the City's Transferable Development Rights ("TDR") program. In February 2013, the Department retained Seifel Consulting, Inc. and C.H. Elliott & Associates (jointly, "Consultants") to perform a market analysis informing a possible sale of TDR from City-owned properties. The resulting work product ("Report") was delivered to the Department in late June. This memo and the attached Report are intended to provide the HPC with relevant follow-up information from the May 2012 hearing.

The City's TDR Program

Since the mid-1980's, the Planning Department has administered a TDR program ("Program") through which certain historic properties can sell their unused development rights to certain non-historic properties. The program emerged from the 1985 Downtown Plan in response to unprecedented office growth, housing impacts, transportation impacts and the loss of historic buildings. The key goal of the Program is to maintain Downtown's development potential while protecting historic resources.

The metric that underpins the Program is Floor Area Ratio ("FAR"), which is the ratio of a building's gross square footage to that of the parcel on which it sits. Under the Program, a Landmark, Significant, or Contributory building can sell un-built FAR capacity to a non-historic property which can then use it to supplement its base FAR allowance. TDRs can only be used to increase FAR within applicable height and bulk controls.

While the Program initially applied only to properties within San Francisco's Downtown, it was amended in the mid 2000's to allow for the transfer of TDR from City-owned landmarks located in "P" (Public) Zoning Districts near Downtown. To date, these amendments have been utilized only once.

The City is currently exploring the sale of TDRs from additional such City-owned properties in order to fund essential seismic safety improvements and rehabilitation projects for those properties.

The Consultant Report

Because the Program has proven generally successful in achieving its goals, the Department has sought a better understanding of whether additional publicly owned TDRs could be sold without significantly disrupting the current private-sector TDR marketplace and hindering the Program.

Accordingly, the Consultants were tasked with identifying the recommended quantity and price of publicly owned TDRs that the City could introduce into the marketplace without causing such a disruption, along with commensurate procedural changes.

The Report's key findings and recommendations are as follows:

- ***Supply of TDR.*** *Currently, 2.3 million square feet of unused, certified TDR are in the marketplace. An additional 2.7 million square feet of TDR is eligible to be certified on private properties but has not yet been certified. Despite this seemingly significant supply, not all of it is readily available for acquisition or use, either because it is contained in relatively small blocks or because of ownership and transactional issues. By developing a mechanism to add transparency to the TDR market – such as a centralized registry or database of available TDR – the City could better connect TDR buyers and sellers and enable a more dynamic market for the private and public sectors, alike.*

- ***Demand for TDR.*** *Despite certain recent rezonings that have diminished or eliminated the need for TDR, a near-term unmet demand of 860,000 square feet of TDR is projected. The City could further increase demand for TDR by including additional areas in the Program, especially areas in the dense northeast quadrant of the City. Additionally, when developing planning controls for the Central Corridor and elsewhere, the City should ensure that the Program is given appropriate consideration when balancing the public benefit of impact fees versus historic preservation.*

- ***Amount of public TDR to be sold.*** *Given the current real estate market and near-term demand for TDR, certify 1.2 million of the 3.6 million square feet of publicly owned TDRs, beginning with buildings that are both (1) already eligible to certify TDR and (2) prioritized in the City's 10-year Capital Plan, such as the War Memorial Opera House and Veterans Building. While these TDRs would likely require between 6 and 12 years to be fully absorbed, they would be uniquely positioned to meet demand from projects requiring large amounts of TDR. Additionally, the City should determine eligible FAR on Port of San Francisco properties such as Piers 19, 23 and 29 and adopt legislation to enable them to participate in the Program.*

- ***Price of public TDR to be sold.*** *Historically, TDR pricing has not correlated with supply, demand or use, but rather with the overall real estate market for development. In order to provide certainty and to streamline the transactional process, the City should set a minimum offer price (to be annually reviewed) of no less than the current market price - $25 per unit of TDR.*

REPORT

TDR Study

San Francisco's Transfer of Development Rights Program

June 2013

Prepared for

San Francisco Planning Department

Prepared by

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C.H. Elliott & Associates

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Executive Summary

In the mid-1980s, in response to unprecedented downtown growth and the potential loss of historic buildings, the City and County of San Francisco established its Transfer of Development Rights (TDR) program as part of the City's Downtown Plan (Ordinance 414-85). The program recognizes the Downtown's concentrations of historic buildings that together create a unique historic, architectural and aesthetic character.

As a planning tool, the TDR program has helped the City to accommodate growth in the Downtown while providing property owners of historic buildings with economic incentives to maintain cultural resources. Specifically, the TDR program allows unused development potential from a preservation property to be transferred and ultimately used on a development property in order to increase the allowable gross floor area of development above what would otherwise be allowed. The Planning Department processes San Francisco's TDR program, but does not regulate the sale of TDR or set TDR pricing. To ensure compliance with Planning Code, the Department reviews and certifies TDR eligibility, transfer and use.

2013 Analysis of TDR Program

In February 2013, the San Francisco Planning Department retained the team of Seifel Consulting, Inc. and C.H. Elliott & Associates (the Seifel team) to analyze San Francisco's TDR program and market activity, as well as the impact of the potential sale of TDR from public properties on the TDR market.

The Seifel team completed a comprehensive review of the City's existing TDR program and policies, and conducted in-depth analysis on the Planning Department's database used to track TDR certification, transfer and use. It assessed the historical pace of TDR activity, key market factors in TDR transactions, and the value of TDR to the real estate development community. To provide insight into program implementation, as well the TDR market and pricing, the team interviewed brokers and other stakeholders involved in the TDR market and prepared case studies on specific TDR transaction in San Francisco. Finally, the team researched historic preservation-related TDR programs in other cities.

The report is organized into the following sections:

I. Introduction
II. San Francisco's TDR Program in Practice
III. San Francisco's TDR Market
IV. San Francisco TDR Market Participant Interviews
V. Historic Preservation TDR Programs in Other Cities
VI. Recommendations
Appendices

The study's key findings and recommendations are presented in italicized text.

TDR Program in Practice

TDR Supply (Certification)

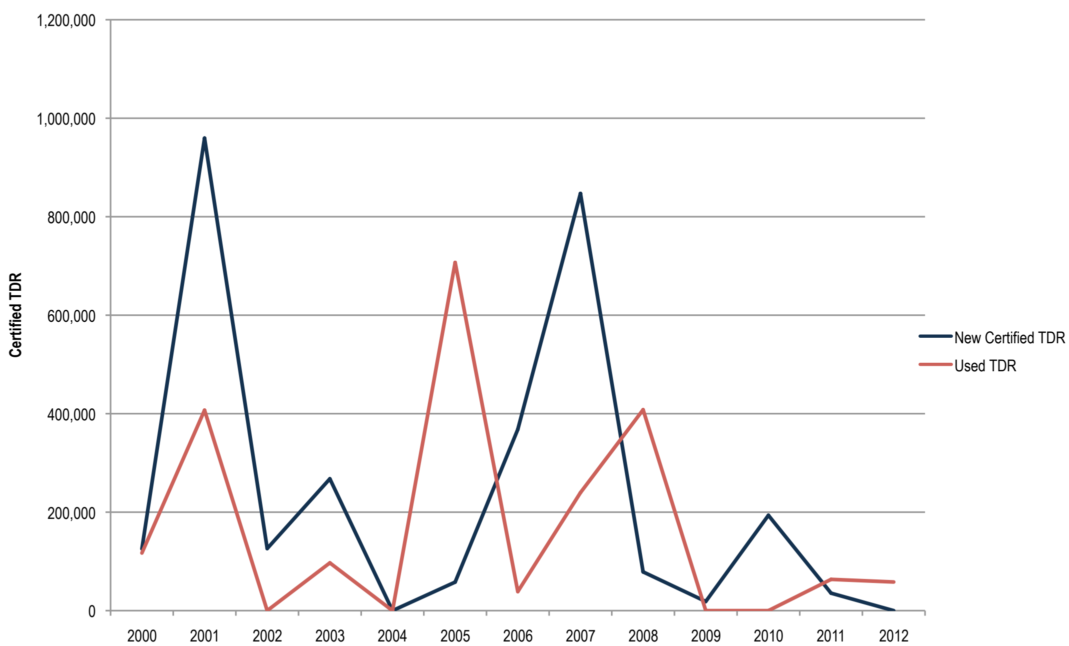
Since the TDR program's inception, the City has certified 5.3 million TDR originating from 112 parcels. The amount of certified TDR on an individual originating parcel ranges from 1,800 to 489,452 TDR. The average amount of TDR generated on each originating parcel is approximately 47,500 TDR, with half of the parcels originating less than 22,000 TDR.

TDR Demand (Usage)

Of the 5.3 million certified TDR, over half have been used in the development of 32 buildings on receiving sites, including 26 newly constructed buildings. The amounts of TDR used on individual developments range from 1,000 to 453,900 TDR. The average amount of TDR needed for development on the receiving site is approximately 80,000, with half of the parcels requiring less than 40,000 TDR. On average, developers using TDR have needed 2.5 TDR transactions to acquire sufficient TDR for their developments.

Since 2000, on average, approximately 237,000 TDR have been certified per year while on average, 164,000 TDR have been used per year. Figure ES-1 shows the actual amounts of TDR certified and used each year since 2000.

Figure ES-1
TDR Certified and Used, 2000-2012

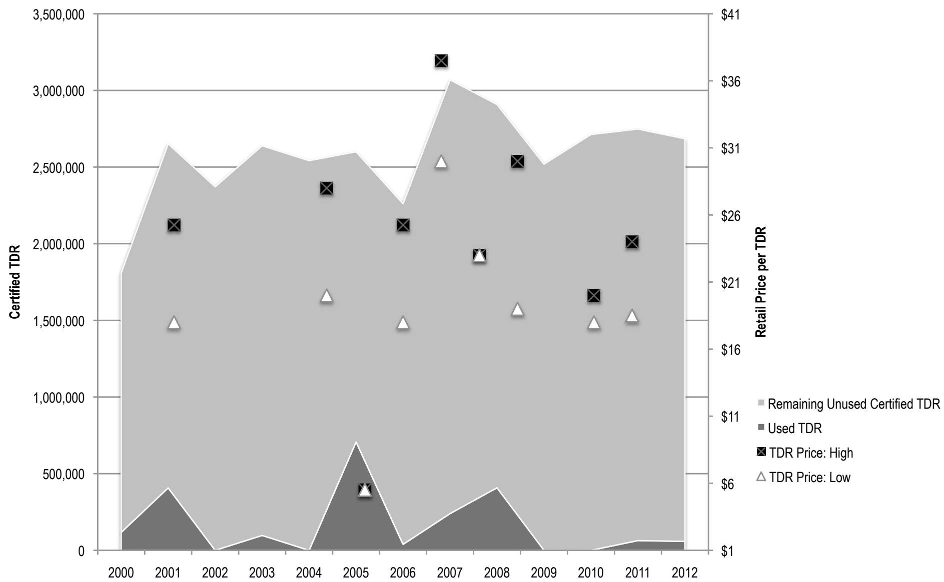


Source: San Francisco Planning Department.

Historical TDR Pricing

Until late 2010, the City did not require the recordation of TDR sales prices, so pricing data on historical TDR transactions is not readily available. According to research, since 2000, TDR pricing has varied from a low of $5.51 to a high of $37.50, with most transactions in the range of $18 to $25. (See Figure ES-2, which shows the total amount of certified TDR in existence each year, the number of TDR used per year, and market pricing.)

Figure ES-2
Certified TDR, TDR Usage and Market Pricing, 2000-2012



Price per TDR includes brokerage fees and is based on the available data for each year. Years 2005 and 2008 only have one price point. Additional transactions could have occurred with pricing outside of the ranges shown above.
Source: San Francisco Planning Department, Broker Interviews.

Key Findings on Program in Practice

- *Since 2001, the annual amount of unused certified TDR in existence has been 2 million square feet or more.*
- *TDR usage fluctuates with market cycles, with recent TDR usage peaks in 2001, 2005 and 2008.*
- *Property owners/developers typically have had to acquire TDR through multiple transactions.*
- *TDR pricing has not correlated with supply, demand or use, but rather with the overall real estate market for development, as well as the characteristics of unique individual transactions.*

San Francisco's Current TDR Market

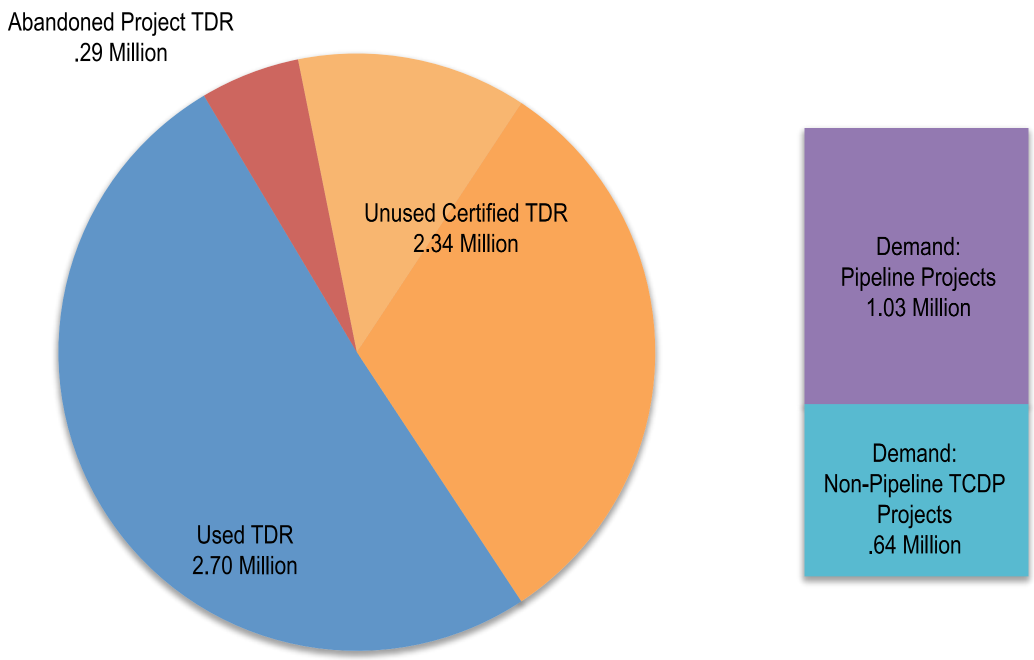
Existing TDR Supply

The TDR market has accumulated a significant supply of certified TDR. Of the TDR that have been certified since the beginning of the TDR program, 2.7 million have been used and an additional 300,000 have been applied to proposed projects that were subsequently abandoned, leaving 2.3 million unused certified TDR (see Figure ES-3). Not all certified TDR are currently available for purchase in the TDR market, and some may never likely enter the market. Approximately 700,000 TDR (or 30 percent) remain with the originating properties, and on average, these TDR have been certified for 10 years. In addition, most of the blocks of certified TDR that are not known to be identified for specific developments are small in size, ranging from 10,000 to 25,000 TDR.

Current TDR Demand and Pricing

Near-term TDR demand from pipeline and non-pipeline Transit Center District Plan (TCDP) projects is estimated at 1.67 million TDR based on about 1.03 million from pipeline projects and 640,000 from non-pipeline TCDP projects. Of this amount, approximately 810,000 TDR have already been acquired by project developers and 860,000 TDR need to be acquired (see Figure ES-3).

Figure ES-3
Current TDR Market



Source: San Francisco Planning Department.

According to Seifel team interviews and research, the most recent TDR transactions were for developments to be constructed directly adjacent to the future Transbay Transit Center—the Transbay Tower to be built at First and Mission and a potential high-rise residential development located at 524 Howard Street. Both transactions closed in March 2013, with sales price reported as follows:

- Transbay Tower: 151,454 TDR at $24 per TDR
- Potential project at 524 Howard: 14,756 TDR at $24.94 per TDR

Key Findings on Current TDR Market

- *The TDR market has accumulated a significant supply of unused certified TDR.*
- *The market analysis does not indicate that all certified TDR has been or is readily available for transfer and/or use.*
- *Current unmet TDR demand is estimated at 860,000 TDR.*
- *The TDR market price based on recent transactions is about $25 per TDR.*

San Francisco's Future TDR Market

Future TDR Supply

The supply of TDR could increase in the future as a result of the certification of potential TDR that is be eligible under the current TDR program, and/or planning or zoning modifications that would make additional properties eligible for the TDR program. Overall, the following amounts of TDR could be certified from properties currently eligible for the TDR program:

- 2.7 million potential TDR from private properties not yet certified (a significant portion of this supply, however, might not actually enter the market); and
- 3.6 million potential TDR from eligible P-zoned properties in the Civic Center.

The Port has proposed legislative modifications to the TDR program that would allow Port properties Piers 19, 23 and 29 to certify and transfer TDR. The Port has estimated that approximately 924,000 TDR could be available from these properties.

Potential TDR could also be created in the Central Corridor Plan Area—the April 2013 Public Review Draft of the Central Corridor Plan discusses implementation strategies such as expanding the TDR program to the Central Corridor to help preserve historic buildings.

Future TDR Demand and Pricing

To project additional future TDR demand, the Seifel team evaluated historical certification and use of TDR, and analyzed the development pipeline and potential future development requiring TDR. Several factors influence future TDR demand, including the following:

- TDR program is limited to C-3 Districts in Downtown, and these areas have been extensively developed.
- San Francisco's real estate market can only support a certain level of new mid to highrise development to meet local employment and household demand, and most of the large-scale developments that are planned or underway do not currently require TDR.
- The City has had to balance historic preservation goals with other important public policy priorities. To address needs for community improvements and impacts from new development, the City has created mechanisms for new development to contribute to the funding of public infrastructure and facilities, open space and affordable housing. As a result, the City has either modified TDR program requirements or not required TDR for some area plans.
- The City has reduced TDR demand by exempting specific projects from TDR requirements in order to facilitate development on particular sites, improve financial feasibility and/or to meet other public policy objectives. For example, in 2006, the City entered into a Development Agreement for the Trinity Plaza development that eliminated the TDR requirement for the project. Without the exemption, the project would have required 879,000 TDR.

Key Findings on Future TDR Market

- *Land use policies have influenced demand in the current TDR market and will affect future TDR demand. Over the last decade, several area plans have been adopted that could have created additional TDR demand; however, these plans either did not create potential TDR demand or limited potential demand. As a result, the Seifel team does not project significant additional TDR demand in the future and expects pricing to continue to be influenced by the overall real estate market for development, as well as the characteristics of individual transactions.*

TDR from Public Properties

TDR from public properties could be an important source for meeting current and future TDR demand. It would have the advantage of being readily accessible and already assembled in larger amounts, overcoming key market challenges related to the current lack of transparency of TDR availability and the need for multiple TDR transactions in order to accomplish a major real estate development. The City could also control the annual release of public TDR to the real estate market, taking in to account changing demand over time as the real estate market fluctuates.

However, the market may not readily absorb the annual amount of TDR released by the City, particularly when the next downturn in the real estate market occurs.

Key Findings on TDR from Public Properties

- *The City has the opportunity to meet the demand for larger TDR requirements from P zoned properties. While existing certified TDR could potentially meet current TDR demand, not all of the certified TDR is likely to be available and would be difficult to assemble.*
- *Based on annual historical TDR demand, 1.2 million in new public TDR would likely take between 6 to 12 years to be fully absorbed.*

Market Participant Interviews

In order to obtain insight into how market participants perceive the TDR market and program, the Seifel team conducted interviews with various stakeholders.

TDR Availability

Many interviewees either believed few large blocks of TDR are available or did not have a sense of the available TDR supply. One stated that most historic building owners that could certify TDR have already done so, and many smaller buildings are owned by trusts that are incapable or unwilling to certify small amounts of TDR.

Most interviewees said they would probably use a broker to acquire any necessary TDR. Some commented that a centralized public database of available TDR would be helpful, yet they do not see the need for a centralized TDR bank. Two of the larger and more established property owners stated that they had acquired and certified their own TDR and had not used brokers or intermediaries.

Some were cautious about the idea of a central bank of TDR, or one group owning too many TDR—for example, if the City were to sell some of its TDR in bulk to a third party—as this could create a monopoly situation.

TDR Pricing

The appraisers interviewed reported that it is hard to get concrete data on the price or value of TDR as little public information is available. Generally, the brokers interviewed believed the current value of TDR is in the range of $20 to $30 per square foot, while the developers interviewed thought that TDR today are worth between $25 and $30 per square foot, up from around $20 per square foot a year ago.

Public TDR

Brokers like the idea of the City setting a price for its own TDR annually, as this would make it easier for brokers to do land deals. One interviewee stated that it was not a good idea for the City to set the price of its TDR annually, as this could put the City at a disadvantage when the market was either increasing or decreasing rapidly.

Capital market participants were split over how easy it would be for the City to sell its TDR in bulk, if it were to choose to do so. All those interviewed thought that such a bulk price would be heavily discounted.

Key Findings from Market Participant Interviews

- *One of the most common concerns voiced during the stakeholder interviews was the limited supply of readily available TDR.*
- *Brokers, developer and property owners/investors support the concept of a centralized registry or database of available TDR, but many do not see the need for a TDR bank.*
- *Some interviewees were skeptical that demand would be sufficient for the City to sell any significant quantity of publicly owned TDR.*

Historic Preservation TDR Programs in Other Cities

As part of the TDR market analysis, the City is interested in learning how other cities structure their historic preservation TDR programs and identifying best practices that could benefit the City's program. A recent review of TDR programs in the US identified 239 TDR programs with a range of structures and purposes. Nearly two dozen of these programs focus on historic preservation. The Seifel team reviewed the following five TDR programs with a focus on historic preservation: Los Angeles; Oakland; New York City; Portland, Oregon; and Seattle, Washington.

Key Findings

- *While San Francisco's TDR program focuses on historic resources, Los Angeles, New York, Portland, and Seattle have expanded their programs to focus on additional areas of public interest, such as the preservation and creation of affordable housing and open space.*
- *Unlike most other cities TDR programs, San Francisco's TDR program allows any third party—developers with entitled or proposed projects, brokers, investors, speculators, and financial institutions, among others—to own TDR.*
- *The TDR programs follow similar processes in which an originating parcel applies for TDR, and TDR are certified based on a formula that accounts for zoning, existing FAR and potential FAR. Most jurisdictions track TDR through recorded documents that note at minimum the originating owner, the receiving owner and the number of TDR.*
- *TDR pricing is influenced by the presence or lack of alternative options to TDR to increase FAR. Due to the constrained supply and no other alternatives to increase FAR in New York City, TDR pricing can become extremely expensive and trades for 50 to 60 percent of land value, and recently prices have approached $450 in prime neighborhoods. In other cities where multiple options and programs compete with TDR such as in-lieu fees, developers tend to opt for the lowest cost option, and pricing ranges from $20 to $30.*
- *Some cities generate revenues from their TDR program through fees and taxation. Los Angeles charges a TDR transfer fee with revenues deposited into a fund to be used for public services and facilities, while New York applies city and state real property transfer taxes on the TDR sales price.*

Recommendations

Based on analysis of San Francisco's TDR program and other jurisdictions' programs, the Seifel team presents several recommendations to refine the TDR program and its future implementation.

TDR Demand

- *Balance the need for potential impact fees with the City's historic preservation goals when developing the Central Corridor Plan and determining the extent TDR could be required for new development.*
- *Consider including additional areas in the TDR program such as (a) other Downtown areas that are not zoned C-3, but where office and/or residential is allowed, such as areas zoned C-M, MUG, and MUR; and/or (b) areas outside of the Downtown but within the northeast segment of the City.*

TDR "Bank"/Market Clearinghouse

- *Implement the annual TDR reporting requirements required in Ordinance 68-13 as soon as possible, and additionally, report on annual TDR certification and use, as well as market pricing, in order to inform and facilitate market activity.*
- *Provide information to the public on TDR that is available for purchase. For example, display TDR information on the San Francisco Property Information Map by indicating originating parcels with certified TDR remaining on the originating site.*
- *Devise a mechanism for potential buyers to contact TDR owners without displaying the names of the owners. This information could bring TDR sellers and buyers together and facilitate TDR transactions.*
- *Expand the amount of public TDR that is available for purchase, as described as follows.*

Publicly Owned TDR

- *Given the current active real estate market and unmet demand of about 860,000 square feet from pipeline projects and the TCDP, consider certifying approximately 1.2 million in public TDR in the near future in order to test the market demand for larger segments of TDR. Specifically, undertake the following:*
    - *Certify TDR from City-owned buildings that are eligible for the TDR program, prioritized in the City's 10-year Capital Plan, and approved by the Capital Planning Committee, such as the War Memorial Opera House and Veterans Building.*
    - *Consider requesting the Board of Supervisors to authorize the Department of Real Estate to transfer the TDR in the future. (The Department would determine how much TDR it would transfer in a particular transaction based on demand for the specific number of TDR.)*
    - *Consider establishing a minimum offer price to be annually reviewed in order to provide a level of certainty about TDR pricing to buyers and streamline the transaction process for selling TDR. Specifically, consider offering the initial release of TDR at a minimum of $25 per square foot and future releases at this minimum amount with any increases in price informed by fair market value.*
- *Consider requesting Board of Supervisors to designate properties owned by the Port of San Francisco as eligible for the TDR program. Specifically, undertake the following:*
    - *Include potential properties such as Piers 19, 23 and 29, which are among the priorities in the Port's 10-Year Capital Plan (FY 2011-20 Update), as properties eligible for the TDR program.*
    - *Determine eligible FAR on the piers.*

TDR Program Review

- *Every five years, undertake a third party review of the TDR program, in order to evaluate program effectiveness including success in achieving City goals, and as necessary, recommend program refinements. Specifically, implement the following:*
  - *Tie the five year review to the five year report required to be prepared by the Planning Department (Administrative Code 10E.1) for the purpose of monitoring the impact of downtown development, which already is required to monitor long-term policy indicators such as the TDR program.*
  - *Prepare the next review by July 1, 2015, which is the next deadline for the Administrative Code 10E.1 report. (A review within the next two years would be of benefit as it could assess the impact of the recent modification to the TDR program to allow TDR to transfer freely across the C-3 District and the potential near-term certification and transfer of TDR from City-owned properties.)*

Other Recommendations

- *Require Cancellation of Notice of Use for projects that are not developed within a certain time period (three to five years from building permit or first addendum), and if a cancellation is not filed within the specified time frame, deem the TDR expired.*
- *Recognize that the Preservation Plan requirement may discourage participation by historic buildings with smaller amounts of potential TDR and consider relaxing the rules for TDR transfers under a certain amount.*
- *Evaluate the cost of TDR program administration and review fee charges to ensure fee amounts cover the cost of providing service.*
- *Integrate the TDR program certification, transfers and use into the City's permit and project tracking system (PPTS) to make the data more accessible internally for the Planning Department. In addition, the PPTS could generate automated reports identifying TDR market activity.*
- *Consider implementing the payment of property tax and transfer tax on TDR transactions by assessing the TDR value based on the transaction price upon transfer.*

I. Introduction

San Francisco's program for the Transfer of Development Rights (TDR) allows unused development potential from a preservation property to be transferred and ultimately used on a development property in order to increase the allowable gross floor area of development above what would otherwise be allowed. The City established the TDR program in the mid-1980s as a means to maintain development potential in the Downtown while at the same time to encourage the preservation of historic buildings.

The TDR program is codified in Article 11 and Section 128 of the Planning Code. Restricted to the City's Downtown, it allows TDR from properties with designated significant or contributory buildings to be transferred and used to augment development on receiving properties if the height, bulk and other rules of the Planning Code permit the increased development square footage.

On April 23, 2013, the Mayor signed Ordinance 68-13, which modifies San Francisco's TDR program. Prior to this modification, TDR could only be used to augment development on receiving properties that were located within the same Downtown Zoning District as the parcel from which the TDR transferred or to other designated C-3 Districts per Section 128. As of the effective date of the ordinance, TDR from any eligible building in any Downtown Commercial (C-3) zoning district or the South of Market Extended Preservation District can be used on a development site in any C-3 district.

Since its enactment in 1985, the City's TDR program has resulted in the certification of 5.3 million TDR originating from 112 parcels, of which 2.7 million TDR (56 percent) have been used to provide additional development potential.

A. Study of San Francisco's TDR Program

In February 2013, the San Francisco Planning Department retained the team of Seifel Consulting, Inc. and C.H. Elliott & Associates (the Seifel team) to conduct an analysis of San Francisco's TDR program with the following components:

- Evaluate San Francisco's TDR program and policies.
- Analyze San Francisco's TDR program and market activity to date.
- Perform a market analysis to evaluate the impact of the potential sale of TDR from public properties on San Francisco's TDR market.
- Review similar TDR programs in other cities.
- Make recommendations regarding the TDR program and its future implementation, particularly with respect to TDR associated with public properties.

This report presents the Seifel team's program review and market analysis, highlights best practices from other jurisdictions' historic preservation TDR programs, and offers recommendations to the Planning Department.

The Seifel team completed a comprehensive review of the City's existing TDR program and policies, and conducted in-depth analysis on the Planning Department's database used to track TDR certification, transfer and use. The team assessed the historical pace of TDR activity, key market factors in TDR transactions, and the value of TDR to the real estate development community. To provide insight into program implementation, as well the TDR market and pricing, the team interviewed brokers and other stakeholders involved in the TDR market and prepared case studies on specific TDR transactions in San Francisco. Finally, the team researched historic preservation-related TDR programs in other cities.

The Planning Department staff formed and led a committee to advise the Seifel team as its work progressed. In addition to Planning Department staff, the committee included staff from the Real Estate Division, Office of Economic and Workforce Development, Office of the City Administrator Capital Planning Program, Controller's Office, and Port of San Francisco. The report is organized as follows:

I. Introduction
II. San Francisco's TDR Program in Practice
III. San Francisco's TDR Market
IV. San Francisco TDR Market Participant Interviews
V. Historic Preservation TDR Programs in Other Cities
VI. Recommendations
Appendix A: Documents, Sources and Market Participants Interviewed
Appendix B: Parcels Originating TDR and Parcels Using TDR
Appendix C: Case Studies of San Francisco TDR Transactions
Appendix D: Case Studies of TDR Programs in Other Cities

B. Overview of TDR Programs

TDR programs provide a mechanism for protecting certain types of land or buildings by allowing the transfer of unused development potential from one property to another property. TDR programs offer communities a tool to preserve sensitive areas, historic landmarks and/or other important resources by using market incentives to encourage the voluntary redirection of development away from areas or properties that a community wants to preserve, toward places that a community wants to grow.
Over 200 communities in the U.S. have adopted TDR programs, many of which have been created to preserve open space and agricultural land, and to protect sensitive habitats. Historic preservation is the focus of nearly two dozen TDR programs, including San Francisco's TDR program.

Under a TDR program, the development right is a distinct article of private property that can be transferred from one property to another, and as such, has economic value. An entity can purchase development rights and transfer them to a property to be developed. The owner of the property who has sold TDR retains existing use rights and receives compensation in the marketplace for the value of the development right, while the ultimate purchaser can use the TDR to achieve higher levels of development. In many programs, the TDR unit is a single-family dwelling unit. In historic preservation programs, such as the San Francisco program, the TDR unit is one square foot of floor area.

The most common TDR program allows a property owner to sell development rights directly to another property owner who uses the TDR to increase development potential. Another program type involves the formation of a TDR bank—an entity operated by a local jurisdiction, regional government or private nonprofit organization—to buy, sell, and hold TDR or facilitate private TDR transactions. While San Francisco's TDR program does not involve a TDR bank, it does allow TDR to be purchased without having to be recorded on a specific property. As a result, TDR can be purchased and held on a speculative basis.

To enhance its evaluation of San Francisco's TDR program, the Seifel team surveyed historic preservation TDR programs in Los Angeles, Oakland, New York City, Portland (OR), and Seattle (WA), reviewing program scope, implementation, tracking, pricing and revenue generation. Chapter V presents a summary of the Seifel team's survey and Appendix D includes more detailed descriptions of the five programs.

C. San Francisco's TDR Program

In September 1985, the City and County of San Francisco adopted the City's TDR program as part of the City's Downtown Plan (Ordinance 414-85) as a response to unprecedented downtown growth and the potential loss of historic buildings. The program recognizes the Downtown's concentrations of historic buildings that together create a unique historic, architectural and aesthetic character. The goal of the program is to maintain Downtown's development potential, while at the same time to create an incentive to maintain historic buildings located in the Downtown and directing development to appropriate areas.

1. Program Purpose

The TDR program purpose, set forth in Planning Code Article 11, Preservation of Buildings and Districts of Architectural, Historical and Aesthetic Importance in the C-3 Districts, Section 1101, is as follows:

> *(d) It is further found that the use of Transferable Development Rights ("TDR") as provided herein is necessary to promote the urban planning and design goals of the General Plan by:*
>
> *(1) Maintaining appropriate overall development capacities in each zoning district within the C-3 area, as defined by applicable floor area, height, bulk and other parameters;*
>
> *(2) Encouraging and directing development into the Special Development District in order to maintain a compact downtown financial district; and*
>
> *(3) Facilitating the retention of Significant Buildings and Contributory Buildings, and the compatible replacement or alteration of Unrated buildings in Conservation Districts, as defined in this Article.*

As a planning tool, the TDR program has helped the City to accommodate growth in the Downtown while providing property owners of historic buildings economic incentives to maintain cultural resources.

2. Definitions, Eligibility and Requirements

Planning Code Section 128, Transfer for Development Rights in C-3 Districts, lays out the TDR program's definitions and requirements. Under the program, owners of lots on which eligible buildings are located are allowed to certify and sell their unused development rights for use on other sites within the Downtown Commercial Zoning District (C-3 District). Transferring unused TDR units enables the owner of a "Preservation Lot" to sell unused development rights as a financial incentive towards the preservation of that structure and allows a structure on a "Development Lot" to be built that exceeds the basic floor area ratio (FAR) limit. Following is a summary of the TDR-related definitions included in Planning Code Section 128:

Preservation Lot–A parcel of land on which is (a) a Significant or Contributory building (i.e., Category I, II, III or IV building per Article 11); (b) a Category V building that has complied with the eligibility requirement set forth in Article 11; or (c) a structure designated an individual landmark pursuant to Article 10.

Transfer Lot–A Preservation Lot from which TDR may be transferred. A lot zoned P (public) may be a Transfer Lot if (a) the building is owned by the City and County of San Francisco; (b) located in a P District adjacent to C-3 District; (c) designated as an individual landmark pursuant to Article 10, or listed on the National Register of Historic Places; and (d) the proceeds from the TDR sale are used to finance a project to rehabilitate and restore the building in accordance with the Secretary of Interior standards.

Development Lot–A lot to which TDR may transfer to increase the allowable gross floor area of development beyond what otherwise would be permitted.

Transferable Development Rights (TDR)–Units of gross floor area that may be transferred from a Transfer Lot to exceed the allowable gross floor area of a development on a Development Lot.

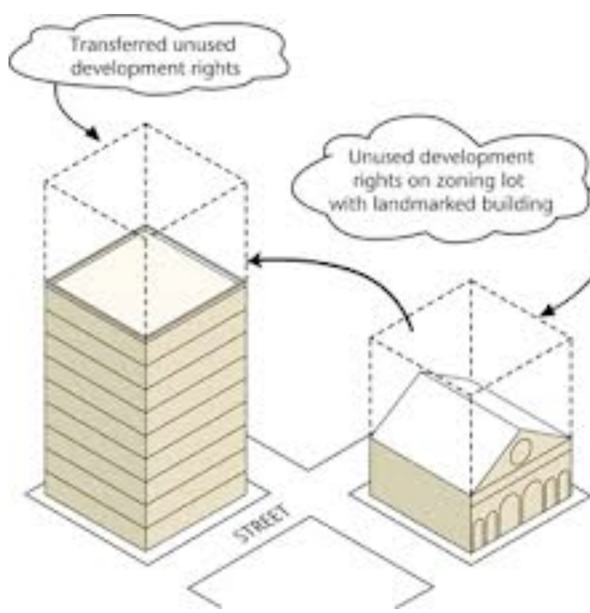
Unit of TDR–one unit of TDR is equal to one square foot of gross floor area.

Preservation, Rehabilitation and Maintenance Plan (Preservation Plan)–The Plan that must be submitted to Planning Department at the time of the initial transfer of TDR from the Transfer Lot. The Preservation Plan must also include a plan for ongoing maintenance; information regarding the nature and cost of any rehabilitation, restoration or preservation work to be conducted; a construction schedule; and any other information required by the Planning Department. The requirements of the approved Plan must be recorded along with the Certificate of Transfer in the Office of the County Recorder. Approval of the Certificate of Transfer is conditioned on the execution of the Preservation Plan, and a status report must be submitted to the Department within one year. Penalties can be invoked for failure to comply with the requirements, including a lien equal to the sale price of the TDR sold.

a. Calculation of TDR

The San Francisco TDR program is founded on the divergence between height limits—the absolute cap on building height—and Floor Area Ratio (FAR) limits—the limit on the ratio of a building's total floor area to the size of the piece of land upon which it is built. Through TDR, the owner of a development site can gain additional floor area to exceed the FAR and build up to the height limit. Figure I-1 presents an example of the FAR limiting development on a site to a height below the site's allowable height limit, indicates the unused development potential on the site, and demonstrates how unused development potential (TDR) can be transferred to another property.

Figure I-1
Transfer of Unused Development Potential



The essential element in determining the amount of development potential that is available for transfer is the FAR, as determined by Section 124 of the Planning Code. The maximum amount of TDR that is eligible for transfer is the difference between the allowable gross FAR permitted on the Transfer Lot and the gross FAR of the existing development on the Transfer Lot. Refer to Table I-1 for the FAR limits set forth in Section 124 for the C-3 Downtown Commercial Districts. Under the TDR program, a lot zoned P that qualifies as a Transfer Lot is deemed to have an FAR of 7.5:1 per Planning Code Section 128(a)(4).

Table I-1
FAR Limit on TDR Transfer Parcels by District

Transfer Lot District	FAR
C-3-S	5.0
C-3-C	6.0
C-3-G	6.0
C-3-O (SD)	6.0
C-3-R	6.0
C-3-S (SU)	7.5
C-3-O	9.0
P[a]	7.5

a. FAR for P set forth in Planning Code Section 128.
Source: San Francisco Planning Department.

b. TDR Transfer and Limits

Under the TDR program, TDR allow development projects to increase the permitted FAR on a lot; however, they do not allow projects to exceed height, bulk, setback, sunlight access, separation between towers, or any other rules or limitations applicable to the Development Lot. Article 2.5 of the Planning Code describes the maximum building height and bulk that is permitted, and the City is divided into height and bulk districts that are shown on the official zoning map.

The TDR program limits the amount of TDR allowed to transfer to a Development Lot. Specifically, the gross floor area of a structure on a lot located in the C-3-O District or the C-3-O (SD) District may not exceed a FAR 18:1, and the gross floor area of a structure on a lot located in the C-3-C, C-3-R, C-3-G, C-3-S, and C-3-S (SU) Districts may not exceed FAR that is 1.5 times the basic floor area limit for the specific district.

Until the effectiveness of Ordinance 68-13 on April 23, 2013, the Transfer Lot and the Development Lot had to be located in the same C-3 Zoning District or meet other geographic restrictions. The newly enacted legislation loosened the geographic restrictions to the following requirements:

- Transfer Lot and Development Lot are located in C-3 Zoning District, or
- Transfer Lot contains a significant building and is located in South of Market Extended Preservation District and the Development Lot is located in C-3 District, or
- Transfer lot is in P District adjacent to a C-3 District and Development Lot is located in C-3 District.

c. Effect of TDR Transfer

Transfer of TDR from a Transfer Lot containing a Contributory building or a landmark designated under Article 10 causes the building to become subject to the same restrictions on demolition and alteration that are applicable to Significant (Category I) buildings. Also, transferring TDR from a Transfer Lot permanently reduces the development potential of the Transfer Lot by the amount of TDR transferred. Section 124(f) provides two exceptions to this provision:

- Buildings in C-3-G and C-3-S Districts that are not designated as Contributory or Significant. Such a building may have additional square footage approved for the construction of dwellings affordable for 20 years to households whose earnings are within 150 percent of median income.
- Buildings in the C-3-G District designated as Significant or Contributory, in which TDR transferred from the lot prior to the effective date of the provision (May 2007) when the floor area transferred was occupied by a nonprofit corporation or institution meeting the requirements for excluding gross floor area from FAR calculation, and where the additional square footage includes only the amount to be used to accommodate dwelling units affordable for 50 years to households whose earnings are within 60 percent of median income.

3. Program Procedures

The Planning Department processes San Francisco's TDR program, but does not regulate the sale of TDR or set TDR pricing. To ensure compliance with the Planning Code, the Department reviews and certifies TDR eligibility, transfer and use. The TDR process involves three steps, and each step requires the submittal of an application and the ultimate recordation of a legal document that is signed by the Zoning Director. A fee is charged for each application type, per Planning Code Section 353(d)(6)-(8).

The following sections briefly summarize the steps in the TDR process and review how an owner can apply to cancel the use of TDR after the TDR has been recorded to a Development Lot, but not used.

Step 1: Statement of Eligibility

The Statement of Eligibility is the first step to determine whether a Preservation Lot is eligible to be a Transfer Lot and to calculate the amount of TDR available for transfer under Section 128.

1. An applicant submits the Application Packet for Statement of Eligibility for Transferable Development Rights to the Planning Department, which reviews the application and accompanying documents to determine whether the lot qualifies as a Transfer Lot, and if so, the amount of TDR units available for transfer.
2. If not appealed, the Statement of Eligibility becomes final on the 21st day after issuance, and at that time the Applicant must record the document at the Office of the County Recorder.
3. A certified copy of the recorded Statement of Eligibility must be returned to the Zoning Administrator. All of the information and exhibits submitted in connection with the application are retained as part of the permanent public record, which is subject to the Public Records Act.
4. The Zoning Administrator may issue a Notice of Suspension of Eligibility for a lot if it is determined that a building on a Preservation Lot has been altered or demolished in violation of Planning Code.

Step 2: Certificate of Transfer

The Certificate of Transfer is the second step in the process to transfer the previously determined amount of TDR units from the Transfer Lot to another party (transferee). TDR from a single Transfer Lot may be transferred as a group to a single transferee or in separate increments to several transferees. TDR may be transferred either directly from an original owner of the TDR to the owner of a Development Lot or to persons, firms or entities who acquire the TDR and hold them for subsequent transfer to other persons, firms, entities (secondary party) or to the owners of a Development Lot or Lots. When TDR are transferred, they must be identified by a number. For example, if 5,000 TDR are determined to be eligible for transfer, they are numbered "1" through "5,000".

1. The applicant prepares the Application Packet for Certificate of Transfer for TDR, which must include documents and information, including the amount and sale price of the TDR transferred. For initial transfers of TDR from the Transfer Lot, the Preservation Plan must be submitted.
2. The Planning Department reviews the application to confirm or verify the following:
   - Certified amount of TDR units (Statement of Eligibility);
   - Any alterations that may affect the gross floor area, if applicable (amended Statement of Eligibility);
   - Any applicable previous transfers;
   - Amount of TDR available for transfer; and
   - TDR units that remain on the Transfer Lot.
3. Upon verification and confirmation of the application, the Department prepares the Certificate of Transfer document, and the Zoning Administrator signs with notarized acknowledgement within five days.
4. The applicant must pick up the document, obtains signatures with notarized acknowledgements of both the Transferor(s) and Transferee(s), and proceed with recordation at the Office of the County Recorder.
5. A certified copy of the original recorded Certificate of Transfer must be returned to the Zoning Administrator.

Transfer of TDR from the Transfer Lot is valid under the following conditions:

- Statement of Eligibility has been recorded in the Office of the County Recorder prior to the date of recordation of the Certificate of Transfer; and
- Notice of Suspension of Eligibility has not been recorded prior to such transfer or, if recorded, has thereafter been withdrawn by an appropriate recorded Notice of Revocation, or an amended Statement of Eligibility has been recorded.

Step 3: Notice of Use

The Notice of Use is the third step in the three-step process to apply or attach TDR units to the Development Lot. When the use of TDR is necessary for the approval of a building permit for a project on a Development Lot, the permit will not be issued until written certification is recorded that the owner of the Development Lot owns the required number of TDR.

1. The Application Packet for the Notice of Use for Transferable Development Rights must be accompanied by a certified copy of each recorded Certificate of Transfer that documents the transfer of the TDR to the owner of the Development Lot, and all other matters of record affecting the TDR.
2. If applicable, certified copies of all intervening Certificates of Transfer of secondary parties must be attached to form a complete transfer record. The attached Certificates of Transfer mush show the recorded instrument number of each document and date of recordation.

Cancellation of Notice of Use

The owner of a Development Lot for which a Notice of Use has been recorded can apply for a Cancellation of Notice of Use if (a) the building permit or site permit for which the Notice of Use was issued expires or is revoked or cancelled, (b) any administrative or court decision is used or law is adopted that doesn't allow the applicant to make use of the permit, or (c) a portion or all of the TDR are not used.

1. The Zoning Administrator prepares the Cancellation of Notice of Use, which the Development Lot owner signs. The document must be recorded in the Office of the County Recorder.
2. Once cancelled, the owner of the Development Lot may apply for a Statement of Eligibility.

4. Program Tracking

The San Francisco Planning Department maintains an internal database that tracks the TDR process. The database has three types of entries, certified TDR, transferred TDR and used TDR, which coincide with the three steps in the TDR process:

- **Certified TDR** is entered once the Statement of Eligibility has been approved. These entries include parcel characteristics including the case number, the address, the block and lot, and the zoning for each parcel. The database indicates the building category as defined by the Planning Code and whether the building is a landmark. The certified TDR line item indicates when the Statement of Eligibility was filed and approved and the recorded document number. It also includes the total number of certified TDR and the amount of remaining TDR on the Transfer Parcel that have not been transferred.
- **Transferred TDR** is entered when Certificates of Transfer are filed. All transfer records are filed under the originating parcel (i.e., Transfer Lot) regardless of whether the TDR is being transferred from the originating parcel or the TDR are being transferred by a third party. As a result, multiple transfers for the same TDR segment may be included in the database. The entry includes the date when the transfer was filed, when it was approved, and the recorded document number. The transfer information includes the start and end number for the TDR segment transferred as well as the sales price (required since December 5, 2010), and the owner.
- **Used TDR** is entered when the Notices of Use are filed. Unlike Transferred TDR entries, these entries are filed under the address of the receiving parcel (Development Lot address). This entry includes the date when the Notice of Use was filed, when it was approved and the recorded document number. The used information includes the start and end number for the TDR segment used and the total number of TDR used on the parcel. A "block-used" section indicates the block, lot and address for the TDR originating parcel. The zoning for the receiving parcel is also indicated to verify that the use is in compliance with the zoning transfer restrictions.

The database includes an overall summary table of the TDR activity, indicating the amount of TDR certified, used and available by the originating TDR C-3 zoning category.

5. Recent Legislation

As previously noted, on April 23, 2013, the Mayor signed legislation revising the TDR program by amending the Planning Code Sections 128 and 819, and Administrative Code 10E.1.

The legislation makes a significant modification to the TDR program by permitting the transfer of TDR from any Transfer Lot in the Downtown Commercial (C-3) District or the South of Market Extended Preservation District to a Development Lot in a C-3 District. The modification to allow TDR to transfer freely across the C-3 District was based on concern over gridlock in the TDR market. Since the TDR program enactment, a large percentage of TDR have transferred within the same C-3 Districts.
The background information presented with Ordinance 68-13 stated the following:

> *By allowing increased flexibility, more properties will be able to sell and use TDR in the TDR market. Facilitating TDRs will both protect and restore additional historic buildings, and permit desired job and housing growth Downtown. The original restriction, which only allowed TDRs within the same C-3 District, was done to ensure that development wasn't concentrated in any one C-3 District. Since the program was enacted in the mid-1980s, a large percentage of the TDRs have been transferred within the same C-3 Districts. Now that the program has been in place for 25 years and many districts in downtown have been built out, it's necessary to liberalize the controls in order to equalize the supply and demand ratio and keep the program alive.*

Chapter III, which assesses the City's current and future TDR markets, addresses the potential impact of this legislative change.

Ordinance 68-13 also implements the following:

- Requires that the Annual Report on the Downtown Plan per Administrative Code 10E.1 include an inventory of buildings eligible for TDR, an inventory of buildings where TDR transfers have been completed, and an inventory of TDR transfers completed within the year.
- Clarifies that the Preservation, Rehabilitation, and Maintenance Plan be submitted with an application for Certificate of Transfer rather than with the application for Statement of Eligibility.
  (A 2010 amendment to the TDR program created the requirement for the Preservation Plan.
  The requirement for Preservation Plan submittal is more appropriate at the application Certificate of Transfer stage, rather than at the time of the application for Statement of Eligibility.)

II. San Francisco's TDR Program in Practice

This chapter provides an overview of San Francisco's TDR program activity to date and summarizes case studies of TDR transactions.

A. Overview of Program History

A critical component of evaluating San Francisco's TDR program and market is understanding historical TDR activity.

1. Methodology

The San Francisco Planning Department maintains a database that tracks TDR certification, transfer and use. The Seifel team leveraged the City's TDR database for its review of the TDR market over time. When the Seifel team identified potential data inaccuracies or incompleteness, it discussed with the Planning Department how to account for the particular transactions and parcels.

2. TDR Certification and TDR Transfers

Since the TDR program's inception, the City has certified 5.3 million TDR originating from 112 parcels in Downtown San Francisco. (Refer to Appendix B for a list of the 112 originating parcels certifying TDR.) Based on historical data in the TDR database, it takes, on average, three months to process the Statement of Eligibility for TDR certification. The average amount of TDR generated on each originating parcel is approximately 47,500 TDR, with half of the parcels originating less than 22,000 TDR.
The amount of certified TDR on an individual originating parcel ranges from 1,800 TDR at 34 Mason Street to 489,452 TDR at 121 Spear Street. (Refer to Appendix C for the case study on the Rincon Annex at 121 Spear Street).

Of the total certified TDR, 700,000 TDR remain with their originating parcel (Preservation Lot), with 12 originating parcels not transferring any TDR and16 originating parcels having transferred most but not all of their TDR. On average, these 28 parcels each have approximately 25,300 TDR, and on average, their TDR has been certified for ten years.

The owners of the other 84 parcels have transferred all of the TDR that were certified on the originating parcel. Thus, it could be surmised that the TDR program has resulted in the retention at least 83 historic buildings. (Although 84 parcels have transferred all of their TDR, in one instance, TDR originated from a replacement building at 235 Front Street, which is compatible in scale and design to a historic building, rather than an actual historic building. Refer to Appendix C for the case study on the McDonald's at 235 Front Street.)

3. TDR Use

Of the 5.3 million certified TDR, over half (2.7 million TDR) have been used for 34 projects, involving 32 buildings on receiving sites, of which 26 are new buildings. (The buildings at 199 Fremont and 500 California have each had two separate projects requiring TDR.) The amounts of TDR used on individual developments range from 1,000 TDR at 111 Pine Street to 453,900 TDR at the Millennium Tower, located at 301 Mission Street. The average amount of TDR needed for development on the receiving site is approximately 80,000, with half of the parcels requiring less than 40,000 TDR.

Demand exists for large amounts of TDR for proposed new buildings, and particularly new high rises. (Refer to Appendix C for case study of the Millennium Tower at 301 Mission.) In addition, owners of 6 existing buildings have used TDR to expand their buildings, ranging from small additions such as

1 Market's use of 6,869 TDR to large additions involving additional building floors such as 120 Howard Street's use of 63,505 TDR. In at least one case, TDR was used on a historic building. The Omni San Francisco Hotel at 500 California used TDR to help renovate a historic 1927 office building to a hotel and re-create the building's three-story base that had been extensively renovated in the 1950s. Beginning in 1997, the renovation involved using 35,000 TDR to insert two additional floors (43,600 square feet) within the existing structure. The renovation project was completed in 2002. Prior to this renovation, TDR were used to upgrade the building's façade in 1988.Refer to Appendix B for a list of the 32 developments that have used TDR.

4. Abandoned Project TDR

A property owner with a development that has not gone forward may not realize that the TDR Notice of Use can be cancelled and that the TDR can be sold or applied to another project. Some of the TDR identified as Used in the database are associated with formerly entitled projects that were not developed. Specifically, in its database review, the Seifel team identified three formerly entitled projects that were not developed but their TDR are recorded as having been used:

- 524 Howard Street – 128,437 TDR
- 222 2nd Street – 103,146 TDR
- 949 Market Street – 56,498 TDR

Further complicating the record keeping, 222 2nd Street and 949 Market Street are currently approved for developments that are different from the previously permitted developments on those sites. The current 222 2nd Street development is estimated to require over 200,000 TDR, while the current 949 Market Street development has received a variance exempting it from any TDR requirement.

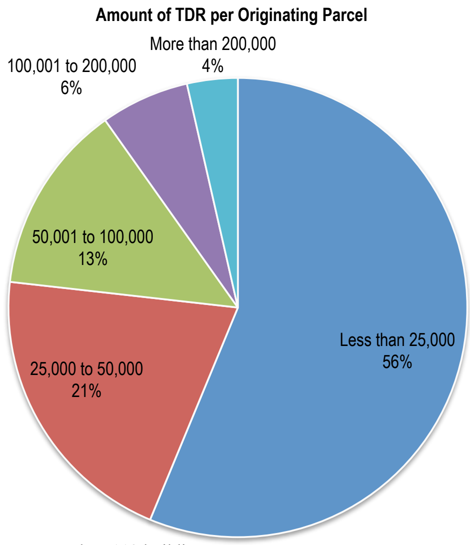
The owners of the TDR did not file a Cancellation of Notice of Use, and the TDR are not recorded as being transferred or used on other projects. Given the uncertain status of these TDR, the 288,081 TDR identified as Used on these projects has been categorized as Abandoned Project TDR in this analysis and has been isolated from Used TDR and Transferred TDR.

5. Comparison of Size of Certified and Used TDR Transactions

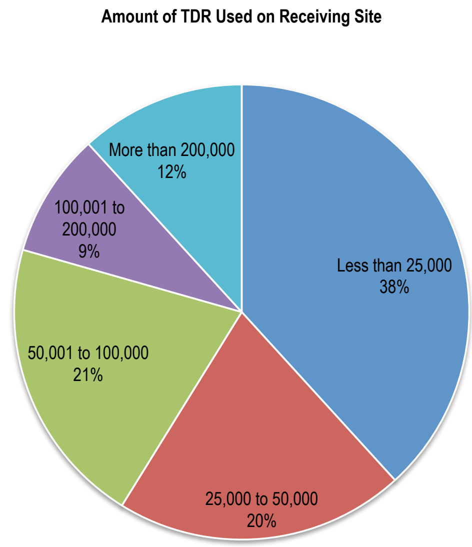
In addition to understanding the total number of certified TDR, it is important to consider the individual amount of TDRs originated by each parcel and the amount used by each development. The average amount of TDR generated on an originating parcel was approximately 47,500 TDR, however, over half of the originating parcels generated less than 25,000 TDR. On average, buildings used about 80,000 TDR on a receiving site, which is nearly double the average amount of TDR on originating parcels. Over 60 percent of the buildings used more than 25,000 TDR, and over 20 percent needed more than 100,000 TDR. Refer to Figure II-1 for the amount of TDR per originating parcel and the amount of TDR used per receiving site.

As a result of the different sizes of certified TDR versus the amount that is needed for developments, property owners/developers have had to acquire TDR from the few large TDR suppliers or accumulate TDR through multiple transactions. Of the 34 projects, 13 have required only one transaction, including 2 developments requiring over 100,000 TDR. Other projects (of all sizes) have required multiple transactions. On average, developers using TDR for their projects have needed 2.5 TDR transactions to acquire sufficient TDR. For example, 3 projects requiring less than 25,000 TDR needed to acquire TDR through multiple sources, and the majority of projects needing more than 100,000 TDR had to acquire more than five TDR segments. Figure II-2 shows the number of transactions and total TDR required for development.

Figure II-1
Amount of TDR per Originating Parcel and Amount of TDR Used on Receiving Site

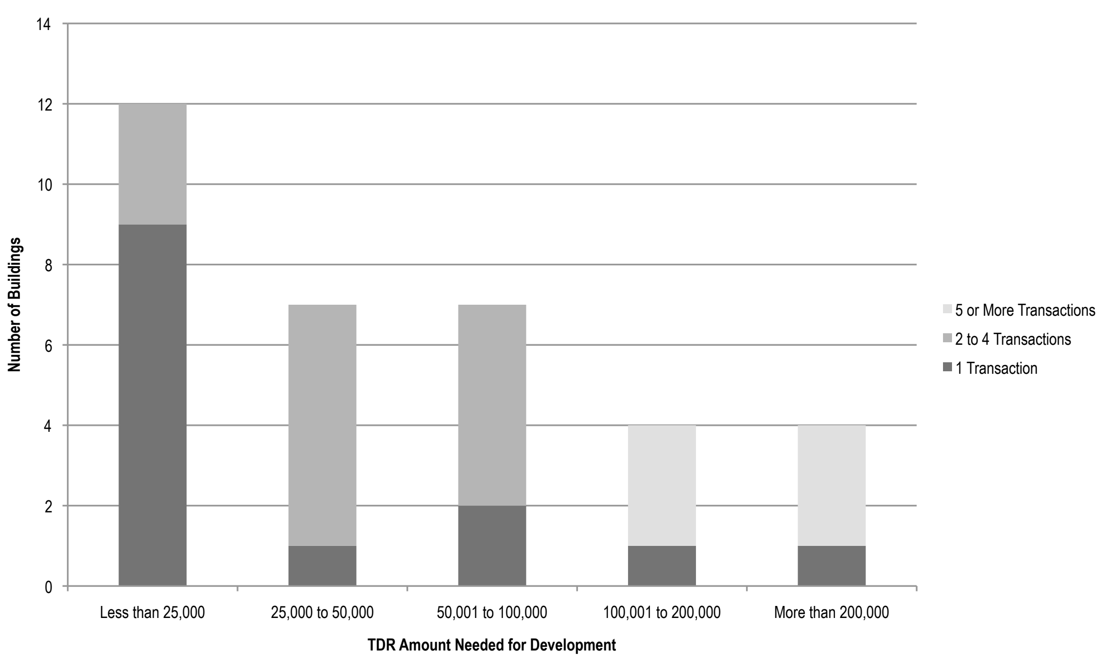


Based on 112 buildings.
Source: SF Planning Department.



Based on 34 developments.
Source: SF Planning Department.

Figure II-2
Analysis of TDR Used for Development

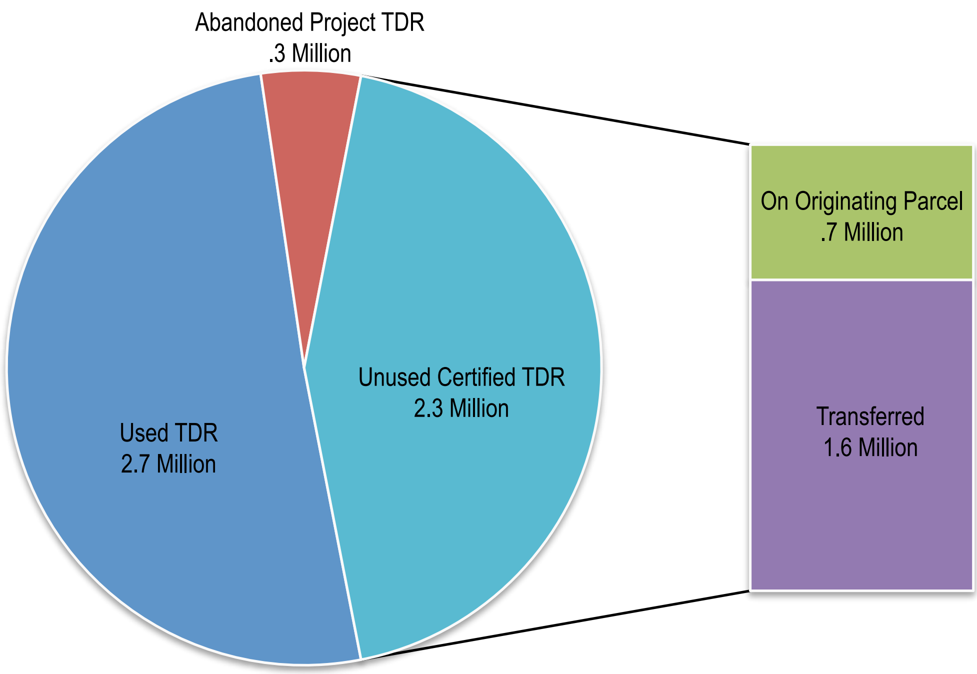


Source: San Francisco Planning Department.

6. Transferred TDR

Understanding and tracking the status of the transferred TDR is another critical component to understanding the TDR market and the implications of proposed TDR program modifications. Based on the 5.3 million certified TDR, the 700,000 certified TDR remaining on originating parcels, the 2.7 million used TDR, and the 300,000 abandoned project TDR, 1.6 million TDR are considered transferred TDR. Transferred TDR are certified TDR that are no longer owned by the property owner of the originating parcel but have not yet been used for a development. The TDR program allows any third party—developers with entitled or proposed projects, brokers, investors, speculators, and financial institutions among others—to own TDR. Refer to Figure II-3 for a breakdown of certified TDR.

Figure II-3
Composition of Certified TDR



Source: San Francisco Planning Department.

The status of the transferred TDR varies. Some of the transferred TDR have been purchased for future projects such as the TDR recently acquired for the Transbay Tower to be developed by Hines and Boston Properties. Developers who are interested in developing in areas that require TDR such as the Transit Center District Plan, but who do not yet have a specific project likely have accumulated TDR. Investors and speculators have held TDR with the intention of transferring to another entity. Financial institutions have acquired TDR through various mechanisms, including foreclosures.

7. Historical TDR Certification, Use and Pricing

TDR certification and use has fluctuated, and over time the market has accumulated a significant supply.

a. Certified TDR (Supply)

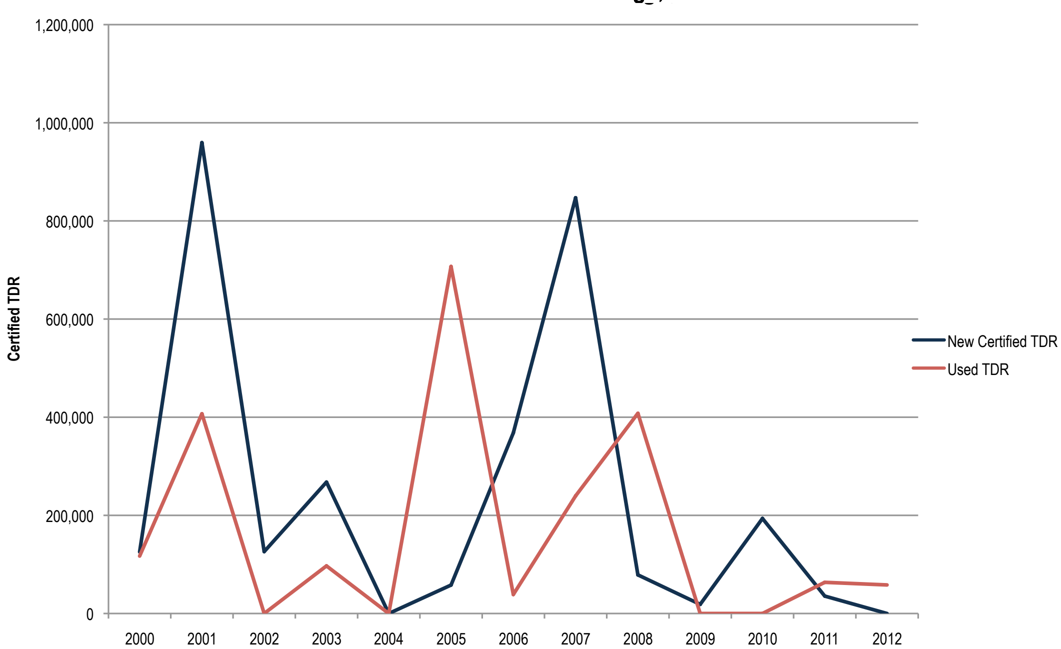
On average, 190,000 have been certified each year since the TDR program inception. Since 2000, on average, approximately 237,000 TDR have been certified per year. TDR certification peaked in 2001 with multiple originating parcels each certifying over 100,000 TDR. TDR certification peaked again in 2007 with 121 Spear Street alone originating 489,452 TDR. (Refer to Appendix C, case study of Rincon Annex at 121 Spear.)

b. Used TDR (Demand)

On average, 100,000 TDR have been used each year since 1985. (The year of TDR usage is based on the year identified in the planning case date and likely does not reflect the year that the construction was completed. In the TDR process, an adequate number of TDR must be acquired and filed for use prior to the issuance of the building permit.) Between 1985 and 2000, the average annual usage was 41,000. Since 2000, on average 164,000 TDR have been used per year. TDR usage has fluctuated with the market cycles, with the first TDR usage peaks in 1997 and 2001. The next TDR usage peak occurred in 2005 with Millennium Tower (453,900 TDR) and the Intercontinental Hotel (253,195 TDR). The most recent TDR usage peak was in 2008 with five projects using a total of 407,995 TDR. Since the market peaked in 2008, only 121,700 TDR have been used—63,500 in 2011 and 58,200 in 2012.

Figure II-4 indicates the amount of TDR certified each year since 2000 and the amount of TDR used each year since 2000. Figure II-5 also indicates the amount of TDR used per year since 2000, however, rather than show the amount of TDR certified in each year, it shows the total remaining unused certified TDR in existence in each year.

Figure II-4
Annual TDR Certification and Usage, 2000-2012



Source: San Francisco Planning Department.

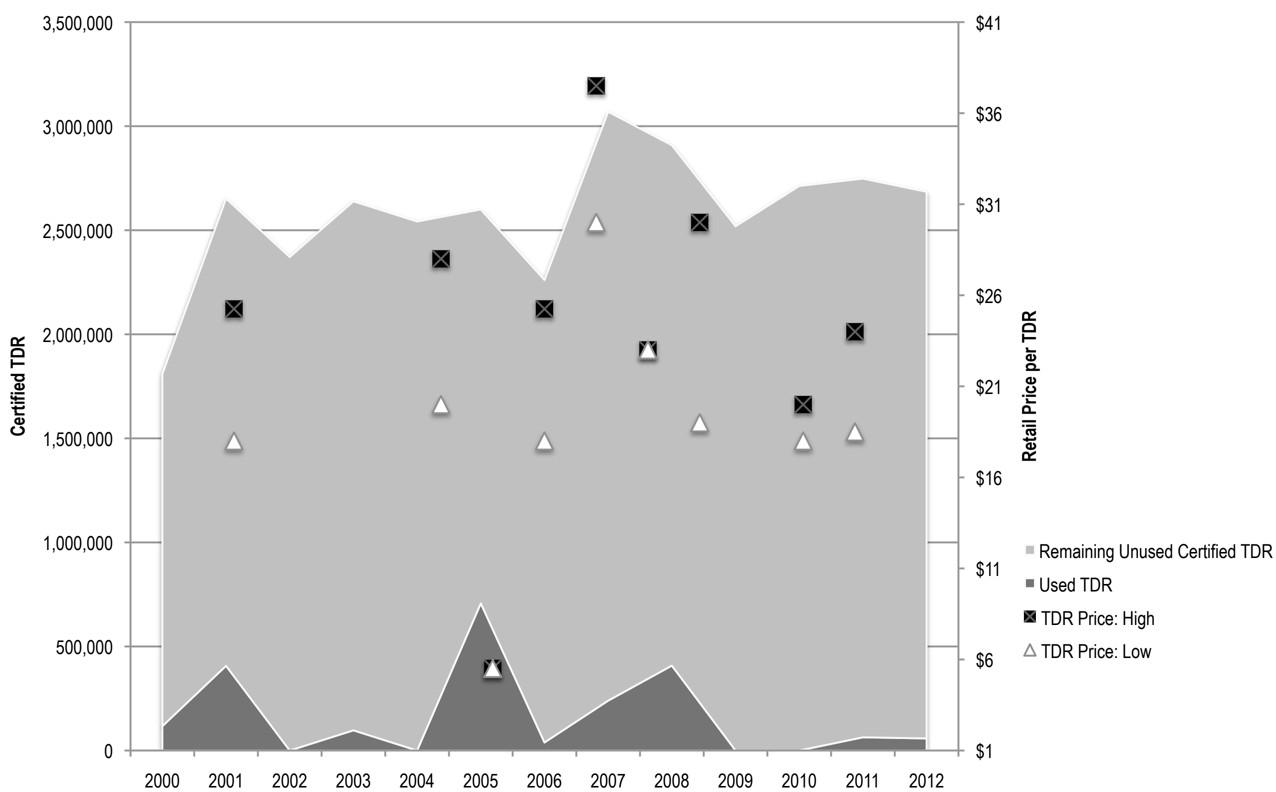
c. TDR Pricing

Until late 2010, the City did not require the recordation of TDR sales prices, so pricing data is not readily available for historical TDR transactions. However, based on a review of available data and interviews with TDR market stakeholders, the Seifel team found that TDR price has not correlated with supply, demand or use, but rather has been more closely correlated with the overall real estate market for development, as well as the unique characteristics of individual transactions that have occurred. TDR pricing has varied significantly since 2000, from a low of $5.51 in 2005 to a high of $37.50 in 2007, with most transactions in the range of $18-$25, as follows:

2000	*$18-$25.25*	2007	*$30-$37.50*	2012	*$18.50-$24*
2004	*$20-$28*	2008	*$23*		
2005	*$5.51*	2009	*$19-$30*		
2006	*$18-$25.25*	2011	*$18-$20*		

Figure II-5 indicates that while the supply of available TDR has not dipped below 2 million since 2001 and TDR usage peaked in 2001, 2005 and 2008, TDR pricing has varied significantly since 2000.

Figure II-5
Available Certified TDR, TDR Usage and Market Pricing, 2000-2012



Price per TDR includes brokerage fees and is based on the available data for each year. Years 2005 and 2008 only have one price point. Additional transactions could have occurred with pricing outside of the ranges shown above.
Source: San Francisco Planning Department, Broker Interviews.

B. San Francisco TDR Case Studies

As part of the TDR program review and market analysis, the Seifel team analyzed specific TDR transactions to provide insight into the TDR program implementation as well as how the TDR market operates. To provide further understanding of the TDR certification, transfer and use processes, the Seifel team researched, analyzed and prepared case studies on specific TDR transactions that represent different types of TDR transactions. Following is a listing of case studies:

- Rincon Annex–Property under SFRA and City TDR programs
- The Old Mint–Certification of TDR from City-owned property
- Old St. Mary's–Property re-zoning for TDR program eligibility
- Former YMCA, 220 Golden Gate–Approval of TDR restoration to originating property
- McDonald's, 235 Front Street–TDR certification from undesignated compatible building
- 80 Natoma–Use of Cancellation of Notice of Use
- First and Mission–Certified TDR in foreclosure
- Mission Street Developments–Projects requiring multiple TDR acquisitions

These case studies illustrate many of the complexities, challenges and opportunities associated with the TDR program and certification process, as well as project-specific TDR acquisition and use. Based on a review of case studies along with available data, the Seifel team found that TDR pricing has not correlated with supply, demand or use, but rather with the overall real estate market for development, as well as the characteristics of the individual transactions. The case studies also indicate that in some instances, to satisfy TDR demand, new TDR was created, rather than acquired in the market. Finally, the case studies indicate several modifications and exceptions to the program have occurred over time in order to satisfy the needs of property owners and developers.

Following is a summary of some of the case studies, along with the team's observations on them. Refer to Appendix C for detailed descriptions of the case studies.

1. Rincon Annex

TDR were ultimately certified on a property that did not originally qualify for TDR under the TDR program of the San Francisco Redevelopment Agency (SFRA) because the historic building on the property had already undergone historic preservation and adaptive reuse and no FAR was authorized for the site. The SFRA modified its TDR policy, subject to a finding that the approval would promote the preservation, enhancement or maintenance of other landmark, significant, or contributory buildings owned by the SFRA or in or near any project area under the jurisdiction of the SFRA.

<u>Results</u>

- SFRA modified its TDR program and the Planning Department certified 489,452 TDR—to date, the largest amount TDR on an originating site.
- 65% of the TDR have been transferred to private parties.
- 35% of the TDR (171,308 TDR) were transferred to SFRA, which in turn transferred the TDR to the City, with the stipulation that the proceeds from the sale of the TDR be used for the development of the Fillmore Muni sub-station. The TDR have not been used to date and are unlikely to be used for historic preservation in the near future, given the challenges of developing the sub-station site.

Observations

- The TDR certification process was challenging due to the existence of two TDR programs that had conflicting policies.
- The proceeds from the sale of the TDR originating from the Rincon Annex site have not furthered the preservation of historic buildings to date.

2. The Old Mint

The TDR Program was modified to make eligible as a Transfer Lot any P zoned lot that is adjacent to a C-3 District and has situated on it a historic buildings owned by the City and County of San Francisco. In the early 2000s, Continental Development Corporation San Francisco LLC (CDC) approached the San Francisco Museum and Historical Society about the potential availability of TDR from the Old Mint property. Because it was zoned as Public (P), the Old Mint was ineligible for consideration as a Transfer Lot.

Results

- Any proceeds from the sale of TDR from a City-owned Transfer Lot must be used to finance rehabilitation and restoration costs.
- In 2003, the City certified 267,728 TDR on the Old Mint and authorized the San Francisco Museum and Historical Society to negotiate the sale of the TDR.
- In 2005, CDC San Francisco LLC bought 253,195 TDR for the development of the InterContinental San Francisco Hotel. It purchased the TDR for $1,395,000, or $5.51 per TDR. The remaining 14,553 TDR were sold at a price of $18 per TDR.

Observations

- The program modification broadened the TDR program by including City-owned historic buildings and strengthened the program by requiring that any TDR proceeds from City-owned Transfer Lots must be used for rehabilitation and restoration.
- The $5.51 sales price for each Old Mint TDR sold to CDC San Francisco LLC is the lowest known sales price. One of the 2010 modifications to the TDR program requires the recordation of the TDR sales price. With this information, potential TDR sellers will have better indication of market pricing.
- While TDR are a revenue source for rehabilitation and preservation, the proceeds may not be sufficient to fund a substantial portion of the cost. In this case, the TDR sale proceeds amounted to $1.7 million, a small portion of the estimated $50+ million it will take to restore the Old Mint.

3. Old St. Mary's

Although an important historic resource, Old St. Mary's was ineligible to generate TDR because it was located in the Chinatown Visitor Retail (CVR) Zoning District. The City re-zoned the property and amended the General Plan to change the zoning from CVR to C-3-O, thus making the property eligible for the TDR program.

Results

- In 2010, the Department certified 171,567 TDR for Old St. Mary's.
- Fortress Properties worked closely with Old St. Mary's to facilitate the changes needed to allow TDR to be created on the property and subsequent certification of the property's TDR.

- Fortress entered into an option agreement with Old St. Mary's to purchase all of the property's certified TDR at $18 per TDR.
- To date, 56,053 TDR have been transferred from the site, while 115,514 TDR remain on the parcel. Of the remaining TDR, 39,600 TDR are in the process of being transferred.

Observations

- The City rezoned the property in order to make it eligible for the TDR program.
- In many instances, the process to gain eligibility for the TDR program has been time consuming.
- Due to the speculative nature of optioning in the TDR market, the parcel originating the TDR may not receive the actual market price of the TDR when the TDR are ultimately transferred. The option price could be above or below the market price. For example, a recent transfer of a segment of the Old St. Mary's TDR has a $24 per TDR sales price, with proceeds of $18 per TDR paid to Old St. Mary's and the remaining $6 per TDR to Fortress Properties. In this instance, the option price is 75 percent of the market price.

4. Former YMCA, 220 Golden Gate

The TDR ordinance allows nonprofit corporations and institutions to certify the maximum amount of FAR allowed on their parcels under the zoning code, exclusive of any existing building FAR. However, if the transfer of TDR includes the FAR for the existing building, the existing building must remain occupied by non-profit organizations. The YMCA sold TDR that included existing building FAR. In the mid-2000s, the owners decided to sell the property. In 2005, the YMCA contacted the Zoning Administrator to determine whether TDR transferred from the site could be repurchased and restored to the site, thereby enabling the YMCA to sell the building unencumbered by the requirement that it be occupied by a non-profit organization per the TDR code.

Results

- Although the Certificates of Transfer of TDR specifically state that "[t]he transfer of TDR from the site of a Contributory Building…permanently restricts development of that site," the Zoning Administrator determined that the code does not explicitly prohibit re-transfer and allowed TDR to be restored to the site because it was a replacement of existing floor area, provided that the TDR was purchased in a quantity equal to the developed floor areas of the existing building, and that no TDR deriving from the existing structure is transferred from the lot so long as the existing building remains standing on the site.
- The City's TDR database does not indicate that the YMCA purchased any TDR for 220 Golden Gate to replace the FAR for the existing building.
- In 2010, the Tenderloin Neighborhood Development Corporation (TNDC), a nonprofit provider of affordable housing acquired the building and two adjacent parcels and rehabilitated the building and developed the site.

Observations

- The sale of TDR not only encumbers the building envelope, but can also impact the types of users allowed on the site in the future depending on the type and amount of TDR sold. When deciding whether or not to sell TDR, property owners must consider the implications for the future sale of the property and future users.

5. Other Case Studies

Other case studies demonstrate various aspects of the TDR program. Refer to Appendix C for descriptions.

McDonald's, 235 Front Street

The Zoning Administrator has taken extenuating circumstances into account in determining whether a property is eligible for TDR. For example, TDR were certified on a property at 235 Front Street in which a historic building was demolished due to severe damage incurred during the 1989 earthquake. A replacement building was constructed in 1993 that was compatible in scale and design with the conservation district. However, the building was not formally designated as a Compatible Replacement Building, which would have made the property eligible to transfer TDR.

Since the demolition of the building on the site was necessary to ensure public health, safety and welfare, the Zoning Administrator determined that it would be contrary to the spirit of the Planning Code to penalize the property owner by prohibiting the certification and transfer of TDR from the property.

80 Natoma

TDR can exist in the market without necessarily being attached to a property, be transferred multiple times before being used on a development site, and be cancelled if not used and enter the market again. As an example, 160,000 TDR were acquired from six separate Transfer Lots for a residential high rise to be developed at 80 Natoma. The TJPA ultimately purchased the property and the TDR. Not needing the TDR, the TJPA recorded a cancellation of the Notice of Use for each of the six groupings of TDR. The TDR were sold to Fortress Properties, who sold them to JP Capital, LLC, which filed Chapter 11 bankruptcy. MS Mission Holding, LLC acquired the 160,000 TDR through bankruptcy proceedings.

First and Mission

A significant amount of TDR can be assembled for future development and become concentrated in one large ownership through a complex set of transactions. David Choo, a real estate investor in San Francisco was one of the most active land buyers in San Francisco in 2006 and 2007, assembling seven parcels at First and Mission and acquiring 315,716 TDR (including the 160,000 TDR discussed in 80 Natoma above) to facilitate their development. (Based on the TCDP TDR program, the development at 50 First Street will only require approximately 150,000 TDR. The remaining 165,716 TDR may be transferred to another development project.) Choo financed the TDR acquisition process using funds from a $67.1 million loan, which was secured by the deeds of trust against the properties. Capital Source Finance LLC originated the loan, and MS Mission Holdings LLC, a Morgan Stanley/Lincoln Property joint venture acquired the loan in April 2011. In May 2011, MS Mission Holdings recorded a notice of default. In December 2011, Choo and MS Mission Holdings entered into a bankruptcy trial. The trial court concluded that MS Mission could foreclose on the properties. MS Mission Holdings acquired the properties and TDR in January 2012. As a result MS Mission Holdings is currently the largest non-developer owner of TDR in the market.

Mission Street Developments (Receiving Sites)

Due to large amounts of TDR that are required for some developments and a limited supply of large amounts of unused TDR, developers must acquire TDR from multiple sources. For example, the JP Morgan Chase building at 560 Mission required 287,133 TDR, which the developer acquired from six separate parcels. The Millennium Tower, at 301 Mission, needed 453,900 TDR, which were sourced from five different parcels. The Millennium Tower is the largest TDR development to date, with over one third of the 1.2 million square foot of development from TDR. Acquiring TDR from multiple sources has time and monetary transactional costs to the developer. However, depending on the receiving development, the value of the incremental development derived from TDR can be significantly higher than the TDR purchase price.

C. Key Findings

- *Since 2001, the annual amount of unused certified TDR in existence has been 2 million square feet or more.*
- *TDR usage fluctuates with market cycles, with recent TDR usage peaks in 2001, 2005 and 2008.*
- *Property owners/developers typically have had to acquire TDR through multiple transactions.*
- *TDR pricing has not correlated with supply, demand or use, but rather with the overall real estate market for development, as well as the characteristics of unique individual transactions*.

III. TDR Market

A. Current Market

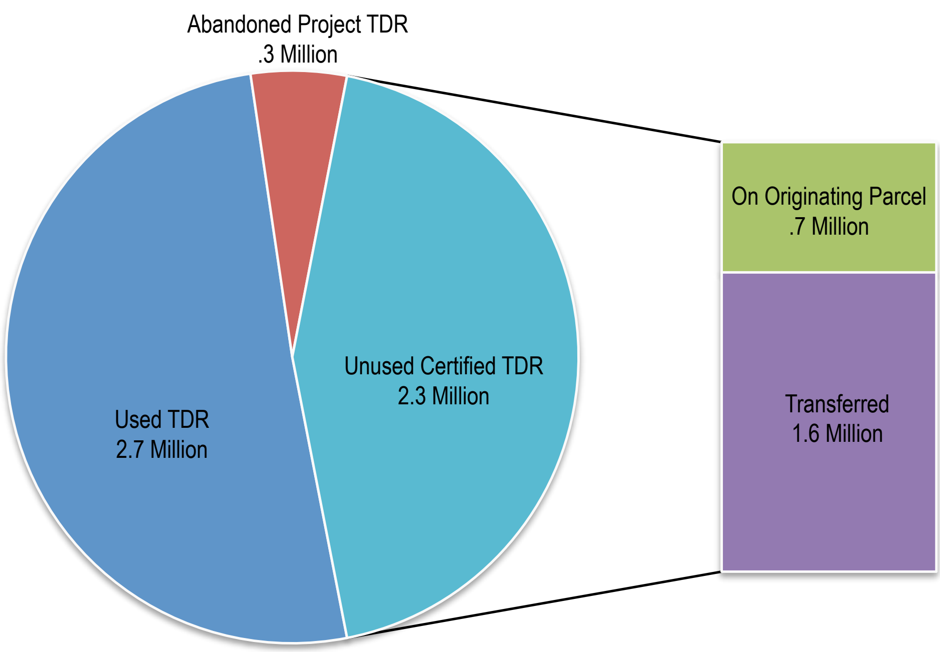
1. Methodology

To analyze the TDR market, the Seifel team reviewed the current TDR supply and demand, key market factors in TDR transactions, and the value of TDR to the real estate development community. It conducted extensive analysis of the TDR database and other research, and interviewed brokers and other stakeholders involved in the TDR program and marketplace.

2. Supply of Certified TDR

The TDR market has accumulated a significant supply of certified TDR. Of the 5.3 million TDR that have been certified since the beginning of the TDR program, 2.7 million have been used and approximately 300,000 TDR have been applied to development projects that were abandoned, leaving 2.3 million TDR available for use, of which approximately 700,000 (or 30 percent) remain with the originating properties. Refer to Figure III-1. (The Used TDR number of 2.7 million has been adjusted from what is reported in the City's TDR database to account for the 300,000 TDR reported in the database as used, but the associated development project did not occur, and no Notice of Cancellation of Use was filed with the Planning Department.)

Figure III-1
Composition of Certified TDR



Source: San Francisco Planning Department.

Not all of the 2.3 million certified TDR is likely to be currently available for purchase in the TDR market. Some of these TDR may never enter the market while others may enter the market at a later time. Based on the Seifel team's research, TDR could be held back from the market for the following reasons:

- TDR remain on the originating parcel, but the owner does not want to sell it.
- TDR amount is not large and thus, not a potential source of significant revenue for the TDR owner.
- TDR have been forgotten or abandoned.
- TDR are being held until the market reaches a higher price point.
- TDR are being accumulated, however, a specific development project has not yet been identified.
- TDR are intended for a specific project that has not yet been permitted.

Based on the variety of reasons that TDR supply may be withheld from the market, it is challenging to determine what amount of supply is considered active in the existing market.

As stated previously, 700,000 TDR have not transferred from their originating parcel. Although these TDR could potentially be available for future development, on average they have been certified for ten years without transacting in the TDR market. Even with the 700,000 TDR remaining on the originating parcels, since the average holding is approximately 25,300, a large future development would have to undertake several transfers to obtain the necessary amount of TDR. As will be discussed in Chapter IV, the real estate brokers active in the TDR market indicate that the current TDR supply is significantly constrained with few active sellers in the market possessing more than 50,000 TDR.

3. Demand

As described in Section II, TDR demand fluctuates with real estate market cycles, and the current cycle is generating TDR demand.

Pipeline TDR Demand

After several years of stagnant development in San Francisco, housing and commercial development has been booming since 2011, and the City's pipeline of development continues to be active, with many developments located in the C-3 District. The City's Pipeline Report includes the following activity:

- Nine projects are under construction in the C-3 District, comprising about 1,600 residential units and 311,000 square feet of net additional commercial space. Four of these projects will reportedly use approximately 337,000 TDR.
- Five commercial projects comprising about 1.5 million square feet of commercial development have filed for, or been issued, building permits but have not commenced construction. Four of these five will use approximately 428,000 TDR.
- Twenty-one projects in the C-3 zoning District have Planning Department approval or have filed applications for approval, yet have not yet filed for building permits. Combined, these projects will provide about 1,852 residential units and 2.2 million square feet of net additional commercial space. Based on currently available data, three of these twenty-one projects need a total of approximately 266,000 TDR for development, as follows:
  - 41 Tehama Street (Estimated: 57,825 TDR, located in TCDP—see below)
  - 425 Mission Street (Actual Purchase: 151,454 TDR, located in TCDP—see below)

- 300 California Street (Estimated: 56,307 TDR)

- The Planning Department identified three additional projects that have applied for or received project approvals that were not listed in the City's Pipeline Report for the fourth quarter of 2012. Combined these projects will require approximately 270,000 TDR for development, as follows:
  - 181 Fremont (Estimated: 46,000 TDR, located in TCDP—see below)
  - 50 1st Street (Estimated: 162,000 TDR, located in TCDP—see below)
  - 75 Howard (Estimated: 61,785 TDR)

In total, the pipeline is estimated to need 1.3 million TDR, with approximately 270,000 TDR classified as used, about 810,000 TDR acquired by developers for the intended project, and approximately 220,000 still needed for development.

Refer to Table III-1 for a listing of the pipeline projects requiring TDR (as known to date).

TCDP TDR Demand

The Transit Center District (TCDP) consists of approximately 145 acres centered around the Transbay Terminal, situated between the Northern Financial District, Rincon Hill, Yerba Buena Center and the Bay. The purpose of the TCDP is to increase development around San Francisco Transbay Terminal. Prior to the adoption of the TCDP and associated Planning Code amendments, project sponsors in the plan area would have had to acquire TDR to exceed the base FAR limit established in the Planning Code, which varied from 6:1 for the C-3-O (SD) District and 9:1 for the C-3-O District. Under the TCDP, the entire Plan area was rezoned as C-3-O (SD). The projects in the TCDP are required to purchase TDR for the increment of square footage exceeding the base FAR limit of 6:1 up to a maximum FAR of 9:1.

According to the TCDP Financial Program, the Planning Department estimated that the TCDP area would demand approximately 1.06 million TDR. According to the current pipeline and Planning Department staff, four TCDP projects are active and in the Planning Application Filed stage:

- Transbay Tower at 101 First Street/425 Mission Street), which will provide 1.37 million square feet of net additional commercial space (Acquired 151,454 TDR)
- 41 Tehama Street (Need to Acquire estimated 57,825 TDR, as cited above)
- 181 Fremont (Need to Acquire estimated 46,000 TDR, as cited above)
- 50 1st Street (Acquired 162,000 TDR, as cited above)

While the proposed project at 181 Fremont was not in the City's pipeline report for the fourth quarter of 2012, City staff indicated that it is progressing through the planning approval process.
The proposed development will include a 52-story building reaching a maximum height of 745 feet. The project will contain approximately 404,000 square feet of office space, 74 dwelling units and 2,000 square feet of retail space. The project will require approximately 46,000 TDR based on its parcel size. In the TDR analysis, the 46,000 TDR is categorized as pipeline TCDP that still needs to be acquired by the developer.

Table III-1
TDR Needed for San Francisco C-3 Pipeline Developments

Project Status	Address	TDR	TDR Database Categorization: Used[b]	Acquired by Developer[c]	Need to Acquire[c]
Construction	1401 Market St[d]	99,123		99,123	
	55 9th St[e]	27,310		27,310	
	535 Mission St	146,880	146,880		
	120 Howard St	63,505	63,505		
	Subtotal	*336,818*	*210,385*	*126,433*	*0*
Building Permit Issued	942 Mission St	24,000	24,000		
	350 Mission St[f]	170,145	10,585	159,560	
	525 Howard St	23,605	23,605		
	Subtotal	*217,750*	*58,190*	*159,560*	*0*
Building Permit Filed	222 2nd St[g]	210,436		210,436	
Planning Application Approved	949 Market Street[h]	0			0
	41 Tehama St[i]	57,825			57,825
	425 Mission St[j]	151,454		151,454	
	181 Fremont[k]	46,000			46,000
	Subtotal	*255,279*	*0*	*151,454*	*103,825*
Planning Application Filed	300 California St[l]	56,307			56,307
	50 1st St[m]	162,000		162,000	
	75 Howard[n]	61,785			61,785
	Subtotal	*280,092*	*0*	*162,000*	*118,092*
	Total	**1,300,375**	**268,575**	**809,883**	**221,917**

a. Project Status for 41 Tehama, 425 Mission St and 181 Fremont have been updated from the 4th Quarter 2012 Pipeline based on conversations with the San Francisco Planning Department.

b. Used based on used TDR entries in the San Francisco Planning Department's TDR Database dated February 2013. TDR usage may vary from the amounts listed.

c. Based on transfers in the San Francisco Planning Department's TDR Database dated February 2013, interviews and research. Actual TDR required may vary. Estimates are listed for properties with available information. Properties that do not have estimates may require TDR.

d. Based on an interview, 1401 Market Street, also known as Crescent Heights, used 99,123 TDR from 5 TDR transactions.

e. 55 9th Street based on TDR owned by AVA Ninth LLP according to the TDR Database.

f. Based on an interview, 350 Mission required 170,145 TDR from 13 transactions. TDR database has information for one of the 13 TDR transactions for 10,585 TDR.

g. 222 2nd Street TDR is based on TDR owned by 222 Second Street Owner LP according to the TDR database.

h. According to San Francisco Planning Department Case 2008.0217CVX Variance Decision dated November 15, 2010, the proposed project will not require TDR.

i. According to San Francisco Planning Department Case 2008.0801EVX Section 309 Determination of Compliance, the proposed project will require 57,825 TDR.

j. Based on information provided by the San Francisco Planning Department.

k. Based on estimates provided by the San Francisco Planning Department.

l. According to San Francisco Planning Department Case 2012.0605U Preliminary Project Assessment, the proposed project will require 56,307 TDR.

m. Property has already procured TDR and is currently in litigation. TDR estimate is based on information provided by the San Francisco Planning Department.

n. Based on information provided by the San Francisco Planning Department.

Source: San Francisco Planning Department, Broker Interviews, Seifel Team.

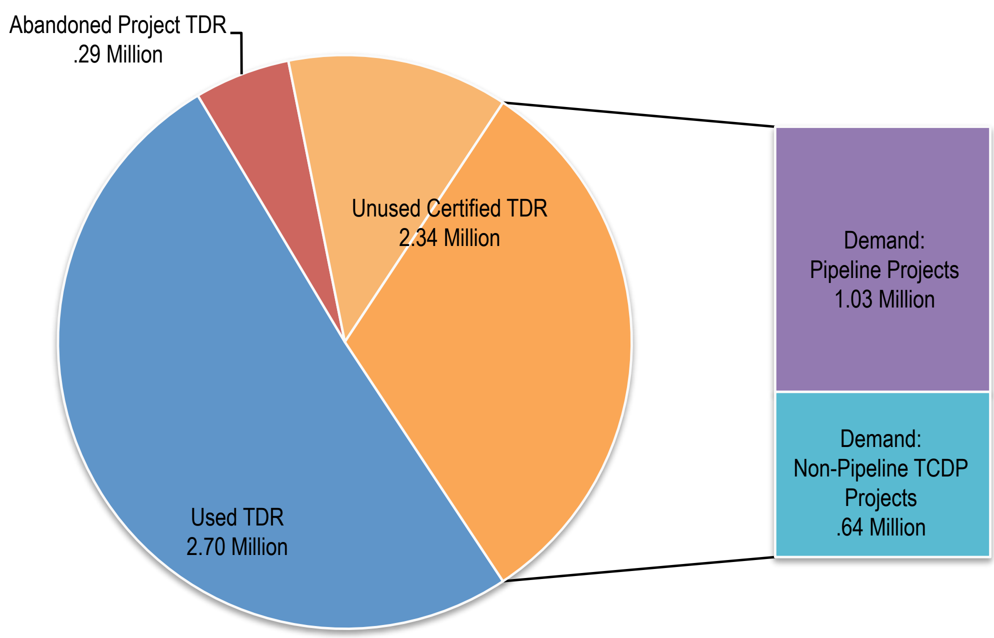
The proposed mixed use development at 50 1st Street would include two towers, one office tower with 1.2 million gross square feet of office and the other with 500 housing units. Although the developer acquired a total of 315,716 certified TDR, the project will only require approximately 162,000 TDR based on the parcel size. The project is identified as a pre-application in the City's office development database, but it is not included in the City's pipeline because the owner went into bankruptcy, which is currently in litigation. In the TDR analysis, the 162,000 TDR required for the project is categorized as pipeline TCDP, and the analysis considers these TDR to have been acquired by the developer.

After accounting for these four active TCDP projects, approximately 640,000 TDR are estimated to be needed for the non-pipeline TCDP projects.

Near-term Demand

As shown in Figure III-2, out of the 2.34 million unused certified TDR, near-term demand of TDR from pipeline and non-pipeline TCDP projects is estimated at 1.67 million TDR (based on about 1.03 million from pipeline projects and 640,000 TDR from non-pipeline TCDP projects). After accounting for this near-term demand, about 600,000 certified TDR would remain unused.

Figure III-2
Current TDR Market



Source: San Francisco Planning Department.

Of the 1.67 million TDR demanded in the current and near-term, the intended developers have already acquired a large portion of the TDR. As described above, about 1.03 million TDR are needed for the pipeline projects. Based on market research and interviews, approximately 810,000 of these TDR have been transferred to developers of the pipeline projects. Although the TDR have not yet been used for these projects, this analysis assumes that the need for TDR for these projects has been fulfilled. Thus, the estimated unmet TDR demand for pipeline projects is 222,000 TDR.

TCDP buildout is estimated to require 1.06 million TDR. Of this amount, four projects are included in the pipeline analysis leaving approximately 640,000 TDR to be needed for the non-pipeline TCDP projects.

In total, of the 1.67 million TDR demanded by pipeline and non-pipeline TCDP projects, approximately 810,000 have been acquired by the end developer, and about 860,000 TDR need to be acquired and represent unmet demand.

4. Transactions/Pricing

According to Seifel team interviews and research, the most recent TDR transactions were for the Transbay Tower and the high-rise residential development site located at 524 Howard Street directly adjacent to the future Transbay Transit Center. Both transactions closed in March 2013, with sales price reported as follows:

- Transbay Tower: 151,454 TDR at $24 per TDR
- A potential residential project at 524 Howard: 14,756 TDR at $24.94 per TDR

B. Future Market

1. Supply

The supply of TDR could increase in the future as a result of (a) the certification of potential TDR that currently would be eligible under the TDR program and (b) planning or zoning modifications that would include properties currently ineligible for the TDR program as eligible.

Potential Eligible TDR Not Yet Certified

The Planning Department does not track the potential number of TDR that could be eligible to be certified but have not yet been certified to date. However, when the TDR program was created in 1985, the Planning Department estimated that the potential supply of TDR was approximately 8.0 million square feet based on the 1985 inventory of likely eligible historic properties. As 5.3 million TDR have been certified, the estimated potential supply of additional TDR not yet certified would be 2.7 million. Given that these potential TDR haven't been certified since the TDR program began 28 years ago, it seems unlikely that a substantial amount of these potential TDR will enter the TDR market.

Potential TDR from Eligible P zoned Properties

The Planning Department's estimate of 8.0 million square feet of potential TDR did not include potential TDR from P zoned properties because P zoned properties originally were not eligible for TDR. The TDR Program was modified in 2003 to make eligible as a Transfer Lot any P zoned lot that is adjacent to a C-3 District and has situated on it a historic buildings owned by the City and County of San Francisco. The only such eligible property that has certified TDR to date is the Old Mint. Several City-owned buildings, such as the Civic Center buildings are eligible for the TDR program, and the potential TDR from these properties are estimated at 3.6 million, as shown in Table III-2.

Table III-2
Potential Civic Center TDR

	Lot Area	Eligible	Actual	Available
City Hall	237,000	1,777,500	516,484	1,261,016
War Memorial Opera House and Veterans Building	238,064	1,785,480	563,200	1,222,280
Asian Art Museum	90,259	676,943	185,000	491,943
Bill Graham	113,437	850,778	302,250	548,528
101 Grove Street	24,815	186,113	104,000	82,113
Total	**703,575**	**5,276,814**	**1,670,934**	**3,605,880**

Source: San Francisco Real Estate Department.

Potential TDR from TCDP Properties

Ordinance 0182-12, which enacted the Transit Center District Plan (TCDP), increased the potential supply of TDR by expanding the New Montgomery-Mission-Second Street Conservation District to include additional historic resources along Mission and Natoma Streets, and reclassifying Category V buildings that are in the 150-S Height District to be eligible for the transfer of TDR. As a result, approximately 27 properties are TDR eligible.

Overall, the following amounts of TDR could be certified from properties currently eligible for the TDR program:

- 2.7 million potential TDR from private properties not yet certified, however, a significant portion of this supply may not actually enter the market, as explained above.
- 3.6 million potential TDR from eligible P zoned properties in the Civic Center.
- TDR from other eligible P zoned properties, such as 101 Grove.
- Additional TDR from the TCDP area from the expansion of the historic district.

Possible Future Modifications Increasing Supply

Central Corridor Plan Area

The April 2013 Public Review Draft of the Central Corridor Plan includes implementation strategies that would protect priority resources by designating additional buildings under Articles 10 and 11 of the Planning Code, extending the South End Historic District Extension, and expanding the TDR program to the Central Corridor to help preserve historic buildings. The plan identifies areas for proposed increased density that could create additional supply of TDR from historic buildings in the areas, but the amount of new potential TDR has not yet been quantified.

Port of San Francisco Properties

The Port has proposed modifications to the TDR program that would allow Port properties Piers 19, 23 and 29 to certify and transfer TDR. The Port has estimated TDR generation from the existing built area (shed area) on these three piers. The Port assumed an eligible FAR of 5.0 and that the actual shed area is built to a 2.0 FAR. Port staff have indicated that approximately 924,000 TDR could be available from these properties, as shown in Table III-3.

Table III-3
Potential Port Piers 19,23 and 29 TDR[a]

Pier No.	Shed Area	Eligible 5.0 FAR	Actual 2.0 FAR	Available 3.0 FAR
19	102,848	514,240	205,696	308,544
23	103,834	519,170	207,668	311,502
29	101,237	506,185	202,474	303,711
Piers 19, 23, and 29	**307,919**	**1,539,595**	**615,838**	**923,757**

a. FAR amounts based on Shed Area square footage, not on total site area. Assumes an eligble FAR of 5.0 and a built FAR of 2.0.

Source: Port of San Francisco.

2. Demand

As described above, approximately 1.7 million square feet of demand from buildings is identified in the Pipeline Report and potential development in the TCDP. Of this amount, approximately 810,000 TDR have already been transferred to the proposed project developers, and 860,000 TDR need to be acquired. Future demand for TDR will also be impacted by the Central Corridor Plan Area, as well as the City's Proposition M, which impacts office development.

At this time, significant additional TDR demand is not projected in the future for the reasons described below.

Central Corridor Plan Area

The Central Corridor Plan's intention to increase density within the Central Corridor could lead to additional demand for TDR, but how much is unknown at this time. The Public Review Draft of the Central Corridor Plan states the following:

> *Given the amount of high-rise space recently enabled through the Transit Center District Plan and goals to build on and complement the character of SoMa, this Plan does not envision high rise development as a major component of the Central Corridor Plan. Rather, it promotes the kind of mid-rise development that is more in line with SoMa's current character and can also enable the large floorplate work spaces that are in high demand, yet difficult to find and secure, in central City locations. In general, the mid-rise heights set by the plan provide for the same, and in some cases even more, density that would be provided with taller buildings. The large floorplates possible on large development sites, combined with heights ranging from 8 to 12 stories, enables a significant amount of density.*

Current Plan concepts being considered include the requirement for new development to purchase TDR for square footage of new development that exceeds a FAR of 4:1 or 5:1.The extension of TDR into the Central Corridor, as well as requiring new construction in the Plan area to purchase TDR, will be analyzed concurrently with the environmental review of the Plan.

Proposition M

San Francisco's Proposition M limits the annual amount of new office developments over 25,000 square feet to 950,000 square feet and could serve as a limiting factor on the demand for TDR in the short to medium term. According to the City's Office Development Annual Limitation Report, approximately 17.4 million square feet of office space, an annual average of 644,000 square feet, has been approved since 1985. Of this, the Transit Tower has been approved for approximately 1.4 million square feet, and Candlestick Point has been approved for 800,000 square feet.

The Pipeline Report for C-3 zoned parcels indicates a total of 4.2 million square feet of non-residential space under construction or planned. Of this, approximately 3.0 million square feet of office has already been approved under Prop M (inclusive of the Transit Tower).

According to the City staff as of May 2013, 2.2 million square feet is currently available under the Prop M program for large projects over 50,000 square feet. According to the March 2013 Office Development Annual Limitation Report, about 4.7 million square feet of development is in the pre-application stage (most of this square footage is within large multi-year master plans, such as Seawall 337, and intended to be built out over many years, if not decades.) If all of the large office projects in the pre-application stage were approved, they would exceed the amount available by about 3.4 million square feet. Within a year or two, large office projects may have to compete to be approved under the large office square foot annual limit in Prop M of 875,000 square feet. While this would not affect the demand for TDR from high rise residential developments, it could have a significant impact on the demand from office space.

3. Transactions/Pricing

Given the supply and demand considerations outlined above, the Seifel team does not expect significant upward pressure to mount on the value of TDR above approximately $25 in the short to medium term.

C. Trends Affecting TDR Demand

Trends in TDR demand will have a significant impact on the potential for sales of TDR from public properties.

Historic Demand

- <u>Demand Created in Program Foundation</u>
  Robust demand is an essential element of any successful TDR program, and San Francisco's TDR program created significant demand over time for two reasons:
  - The 1985 baseline development threshold is low enough that developers seek to exceed it, thus creating demand (in 1985 estimated to be 8 million TDR).
  - Developers cannot acquire bonus floor area through on-site features such as site design, architectural details, or public amenities. Thus, when developers want to exceed baseline FAR, they must acquire TDR.
- <u>Average Annual Demand</u>
  Since 2000, on average each year, 164,000 TDR have been used and 237,000 TDR have been certified. Since 2001, over 2 million unused certified TDR were in existence in any given year.
- <u>Demand by Development Projects</u>
  Since the TDR program inception, only 34 development projects involving 32 buildings have used TDR (two buildings have had two separate TDR-related projects). Of the 32 buildings using TDR, 26 were newly constructed buildings, while 6 were building expansions. The average TDR usage was 79,538 per development project, and 84,509 per building.

More than half of the demand for TDR square footage has been for office development (55 percent), with 30 percent for residential developments, and 15 percent for hotels. As described above, Proposition M limits the amount of office space that can be developed per year, and thus, can be a limiting factor in the use of TDR for high-rise office towers.

- Demand influenced by Real Estate Cycles
  TDR usage has fluctuated with real estate market cycles, with TDR usage peaks in 1997, 2001, 2005, and 2008. The highest TDR usage peak was in 2005, with only two projects accounting for all of the usage. 2013 is projected to be another peak year for TDR usage, with an estimated 500,000 likely to be used. Both 2005 and 2013 are considered to be within strong real estate market cycles in San Francisco.

Current and Future Demand

As discussed above, current and near term unmet demand is estimated at 860,000 TDR. Several factors influence TDR demand including the amount of remaining development opportunities in the Downtown, balancing historic preservation goals with other public policy objectives, and land use policies affecting future demand.

- C-3 Zone
  The TDR program is limited to the C-3 Districts located in the Downtown area of San Francisco. The C-3 Districts have been extensively developed, with a significant portion of the remaining opportunity sites located in plan areas such as the TCDP and Market and Octavia, which have limited the need for TDR. The limited number of development sites in C-3 Districts outside of plan areas will not generate significant TDR demand in the future.

- Balancing Historic Preservation Goals with Other Public Objectives and Benefit Programs
  With the loss of redevelopment in California and limited financial resources, the City must balance the TDR requirement and historic preservation goals with other demands for services and public policy objectives. These are key considerations in policy decision making, and particularly with consideration of new plan areas such as the Central Corridor Plan, which have the potential to increase demand for TDR.

  Concentrated new development often results in significant demand for infrastructure and services. While new development generates a variety of local public revenues (property taxes, sales taxes, real estate transfer taxes, etc.), additional investments in parks, streets, transportation facilities, and community facilities and services beyond what can be provided through these local General Fund revenue sources are essential to meet demand attributable to the new development.
  To address the impacts of the new development, the City has created mechanisms for development to contribute to the funding of public infrastructure while balancing other City programs. As a result, the City has altered TDR program requirements for some particular projects and plan areas, such as the modified TDR program and impact fee implementation in TCDP.

- Land Use Policies Affecting Future Demand
  Land use policies can affect TDR demand. Just as the downtown rezoning in 1985 created demand potential, upzoning of areas that do not require TDR reduces the potential for creating additional demand. Over the last decade, several area plans have been adopted that could have created additional TDR demand, however, these plans either did not create TDR demand potential or limited potential demand. Examples of such plans include:
  - 2005 Rincon Hill Area Plan allowed for high rise residential towers without requiring the use of TDR.

- 2007 Market and Octavia Neighborhood Plan includes high density land uses with heights of 120-400 feet close to transit. Rather than including a TDR provision, payments to the Citywide Affordable Housing Fund and the Van Ness and Market Neighborhood Infrastructure Fund are required for developments that receive greater FAR.
- 2012 TCDP generated demand for 1.06 million TDR, which represents a significant component of current demand. However, if TDR were required on the full FAR above 6:1, this could have created demand for up to 7.5 million TDR. However, other policy priorities were also considered and implemented in the Plan, including affordable housing and significant impact fee contributions to public transit and open space.

- <u>Individual Development TDR Exemptions</u>
  The City has exempted specific projects from TDR requirements in order to facilitate development on particular parcels, improve financial feasibility and/or to meet other public policy objectives.
  - Trinity Plaza Development – In 2006, the City entered into a Development Agreement with the developer, Angelo Sangiacomo, for the residential development in Mid-Market that includes three towers with 1,900 residential units with frontages along Market, Mission, Eighth, and Stevenson. The agreement removed the requirement for TDR. The project would have required 879,000 TDR.
  - 706 Mission Proposed Project – The proposed project would have 215 dwelling units, 52,000 square feet for the Mexican Museum and 4,800 square feet of retail and includes the rehabilitation of the 10-story Aronson Building. The Special Use District proposed by the project sponsors would eliminate the need to purchase the 178,000 TDR required for the project.
- <u>Future Large Scale Developments that do not Require TDR</u>
  San Francisco's real estate market can only support a certain level of new mid to high-rise development to meet local employment and household demand. Most of the large-scale developments that are planned or underway currently do not require TDR, such as:
  - Hunters Point Shipyard/Candlestick Point
  - Mission Bay
  - Pier 70
  - Park Merced
  - Seawall Lot 337
  - Treasure Island

D. Certification of TDR from City-Owned Properties

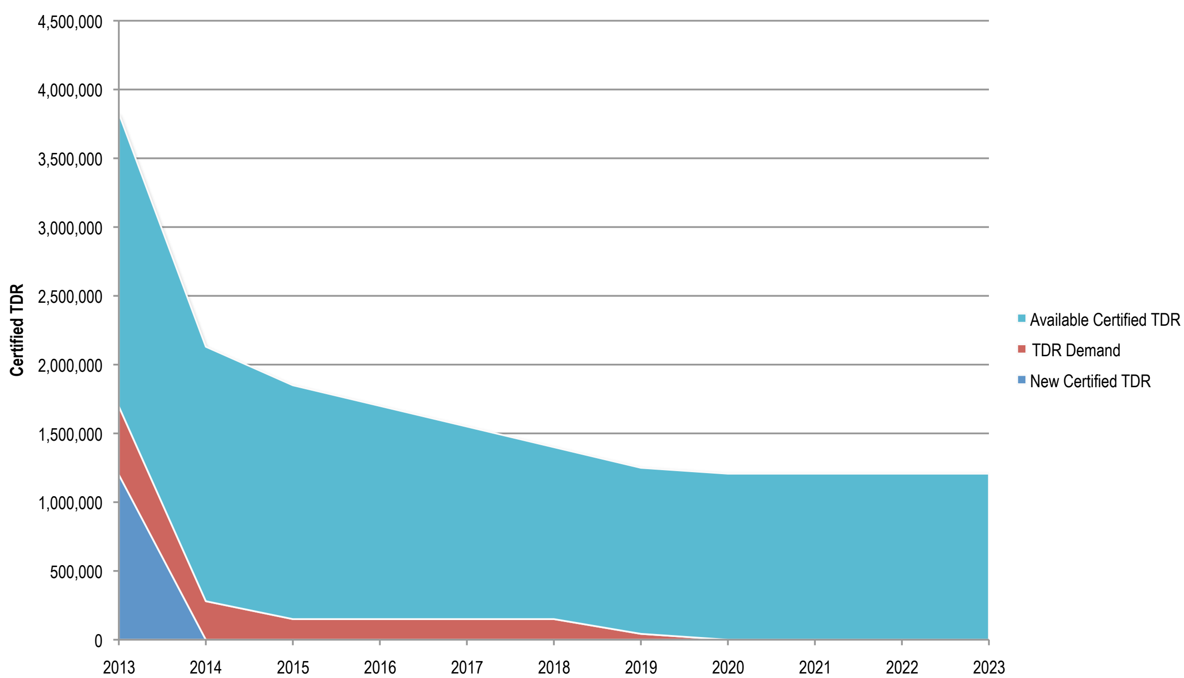
TDR from public properties could be an important source for meeting demand for larger TDR requirements. It would have the advantage of being readily accessible and already assembled in larger amounts, overcoming key market challenges related to the current lack of transparency and the need for multiple TDR transactions in order to accomplish a major real estate development. The City can also control the annual release of public TDR to the real estate market, taking in to account changing demand over time as the real estate market fluctuates.

City staff have identified the War Memorial Opera House and Veterans Building in the Civic Center as a priority TDR originator. The Seifel team assumes that the City certifies up to 1.2 million in potential TDR from the War Memorial in order to test the market demand for larger segments of TDR, but not certify any additional public TDR from other properties at this time. It would be prudent for the City to certify TDR from the War Memorial in the near future given the current active real estate market and near-term demand of about 860,000 square feet from pipeline projects and the TCDP.

As described above, the annual amount of TDR released by the City may not be readily absorbed by the market, particularly if there is a downturn in the real estate market. Based on annual average historical TDR demand ranging between 100,000 to 200,000, 1.2 million in new public TDR would likely take between 6 to 12 years to be fully absorbed. Furthermore, the future demand for TDR will be influenced by the large amount of development potential from high rise development in future large scale projects that do not require TDR.

Figure III-3 illustrates what would occur from the potential certification of 1.2 million in potential TDR from the War Memorial in the Civic Center. It shows the projected TDR from 2013 through 2023 based on the 2.6 million available certified TDR and TDR estimates from the pipeline and TCDP. The TDR demand assumes that pipeline projects under construction and projects that have filed for or received building permits will use TDR in 2013. The projects that have applied for planning applications, including the Transit Tower, are assumed to use TDR in 2014. The demand for the remaining 640,000 TDR for the non-pipeline TCDP is based on 150,000 TDR annually from 2015 through 2019.

Figure III-3
Projected TDR Market Demand and Supply



Timing and TDR Demand is based on project status in the 4th Quarter 2012 Pipeline, the TCDP and input from City staff. New Certified TDR is based on 1.2 million TDR generated from the War Memorial.

E. Key Findings

1. Current TDR Market

- *The TDR market has accumulated a significant supply of unused certified TDR.*
- *The market analysis does not indicate that all certified TDR has been or is readily available for transfer and/or use.*
- *Current unmet TDR demand is estimated at 860,000 TDR.*
- *The TDR market price based on recent transactions is about $25 per TDR.*

2. Future TDR Market

- *Land use policies have influenced demand in the current TDR market and will affect future TDR demand. Over the last decade, several area plans have been adopted that could have created additional TDR demand; however, these plans either did not create potential TDR demand or limited potential demand. As a result, the Seifel team does not project significant additional TDR demand in the future and expects pricing to continue to be influenced by the overall real estate market for development, as well as the characteristics of individual transactions.*

3. TDR from Public Properties

- *The City has the opportunity to meet the demand for larger TDR requirements from P zoned properties. While existing certified TDR could potentially meet current TDR demand, for the reasons stated above, not all of the unused certified TDR is likely to be available and would be difficult to assemble.*
- *Based on annual historical TDR demand, 1.2 million in new public TDR would likely take between 6 to 12 years to be fully absorbed.*

IV. Summary of Market Participant Interviews

In order to obtain insight into how market participants perceive the TDR market and program, the Seifel team conducted interviews with various stakeholders. A list of the market participants contacted is included in Appendix A. The findings from the interviews are summarized below, organized by type of stakeholder—Brokers, Developers, Property Owners/Investors, Consultants/Appraisers, and Equity Investors/Capital Market Participants.

1. Brokers

The Seifel team interviewed several brokers, including Edward Suharski, Managing Partner at Fortress Property Group LLC, who has been an active participant in many of the TDR transactions and has become known as the "go to guy" in the TDR market. Mr. Suharski has been involved in brokering as well as buying, optioning and selling TDR, and provided a substantial amount of information to the Seifel team over many telephone interviews.

<u>TDR Availability</u>

When the TDR program started, brokers thought that plenty of TDR were available in the marketplace; however, currently, it is not clear to them who has TDR or how many are available. For example, one broker stated he has a potential listing for a development parcel that will need 60,000 square feet of TDR, yet he does not know where to go to purchase them, other than to contact Edward Suharski.

The brokers interviewed, including Mr. Suharski, do not think that many large blocks of TDR are available. Some commented that a centralized public database of available TDR would be helpful, yet they do not see the need for a centralized TDR bank. Many like the idea of the City setting a price for its own TDR annually, as this would make it easier for brokers to do land deals.

<u>TDR Price and Transparency</u>

Edward Suharski reported that his most recent TDR sales prices were approximately $25 per TDR. Other brokers interviewed believe the current value of TDR is in the range of $20 to $30 per square foot.

Other than Mr. Suharski, brokers in the market involved in buying or selling development properties are generally of the opinion that the current TDR process is inefficient and not sufficiently transparent. Most commented that the certification and transfer processes are too cumbersome and not worth the effort for existing property owners with small amounts of eligible but uncertified TDR.

2. Developers

Developers interviewed have acquired development sites with the necessary TDR already in place as well as acquired sites that need TDR in order to be developed. One long established San Francisco developer said that in the early days of the TDR program it was relatively easy to acquire or option TDR because plenty of TDR were readily available.

<u>TDR Availability</u>

None of the developers interviewed had a sense of the supply of TDR available today. Most said they would probably use a broker to acquire any necessary TDR. All thought that more transparency in the TDR market would be helpful, in terms of what is currently available and prices paid, potentially through a centralized database. Developers like certainty and therefore a centralized TDR source would remove one of the risk factors from the development process in San Francisco.

TDR Price

The developers interviewed thought that TDR today are worth between $25 and $30 per square foot, up from around $20 per square foot a year ago.

They indicated that they factor the price of acquiring TDR into their proformas as if it was another fee. In other words, the price they bid for a site takes into account the cost of acquiring the necessary TDR—the higher the price of the TDR, the less they can afford to pay for the site.

3. Property Owners/Investors

Two of the larger and more established property owners in San Francisco stated that they had acquired and certified TDR using their own attorneys and architects and had not used brokers or intermediaries. Smaller property owners tend to use brokers to find or certify and sell TDR.

TDR Availability

Owners indicated that the current system is too bureaucratic given the numerous steps in the process, and the complex zoning transfer rules should be simplified, in particular. (Note, these interviews were conducted prior to the enactment of Ordinance 68-13.) Owners with small quantities of existing TDR, or the eligibility to certify TDR, often do not believe it is worth the effort to certify and sell the TDR. Also, they were cautious about selling all of their TDR, believing that they should reserve some in case they needed to increase the size of the building at some point.

They thought that a registry of TDR holders would be helpful. Some property owners were cautious about the idea of a central bank of TDR, or one group owning too many TDR—for example, if the City were to sell some of its TDR in bulk to a third party—as this could create a monopoly situation. Some were skeptical that demand would be sufficient for the City to sell any significant quantity of publicly owned TDR.

TDR Price

Some were also concerned that the City pricing of its TDR could be subject to political pressure or other external influences. The idea of the City setting the price for its TDR annually, based on the market, relieved some of these concerns.

4. Consultants/Appraisers

TDR Availability

One interviewee said that developers are scraping for TDR these days, although the more established owners and developers know where to find them. One consultant believed that most historic building owners who could certify TDR have done so by now and stated that smaller buildings are owned by trusts incapable or unwilling to certify small amounts of TDR.

Consultants interviewed thought that publishing a central database of available TDR by parcel would be a good idea, and the zoning transfer rules should be simplified. (Note, these interviews were conducted prior to the enactment of Ordinance 68-13.) One participant thought that negotiating the price for each individual sale or using an appraisal was more appropriate.

TDR Price

One consultant stated that it was not a good idea for the City to set the price of its TDR annually, as this could put the City at a disadvantage when the market was either increasing or decreasing rapidly.

The appraisers interviewed reported that it is hard to get concrete data on the price or value of TDR as very little public information is available. They tend to rely on anecdotal evidence and discussions with TDR owners and Mr. Suharski. Often a considerable time lag exists between when a block of TDR is optioned and a price is agreed upon, and when the transfer takes place, which can be misleading when trying to determine current values. In addition, a difference in value exists depending on whether TDR are sold to an end user or to an intermediary. In the opinion of one appraiser, this "wholesale" versus "retail" price difference could be as much as 40 percent.

5. Equity Investors/Capital Market Participants

Bulk Transactions

Capital market participants were split over how easy it would be for the City to sell its TDR in bulk. Because this would essentially be a speculative investment, like a land banking fund, it would mostly appeal to private equity investors or entrepreneurial funds. Institutional investors would not likely be interested in this type of investment.

Those interviewed thought that the bulk price would have to be heavily discounted. A prospective buyer would probably approach this by projecting out likely demand over the next ten years, and then use a relatively high internal rate of return (IRR) to arrive at a net present value. Another metric described was to calculate how long it would take to return all the initial capital invested; that is, some investors might look to get all their money out after the first two or three deals, rather than within a number years.

One interviewee thought this could be an interesting opportunity for a group looking to invest in the San Francisco market. If a group became the main holder of TDR in the City, it could leverage that position to obtain either debt or equity positions in future developments. In other words, it would contribute the necessary TDR in return for becoming a partner in the development.

One person interviewed thought that developers in the city with large projects in the pipeline might be interested in bulk buying more TDR than they need at a discounted price. For instance, if they could buy twice what they needed at half the retail price, they would get their money's worth up front, and then could hold the rest, effectively at a zero basis, to be sold over time.

Another observed that the potential TDR market could be broadened if the City were to sell a portfolio comprising TDR bundled with existing income producing property or properties. This would then appeal to investors looking for income as well as capital growth.

6. Key Findings

- *One of the most common concerns voiced during the stakeholder interviews was the limited supply of readily available TDR.*
- *Brokers, developer and property owners/investors support the concept of a centralized registry or database of available TDR, but many do not see the need for a TDR bank.*
- *Some interviewees were skeptical that demand would be sufficient for the City to sell any significant quantity of publicly owned TDR.*

V. Historic Preservation TDR Programs in Other Cities

As part of the TDR market analysis, the City is interested in learning how other cities structure their historic preservation TDR programs and identifying best practices that could benefit the City's program. A recent review of TDR programs in the U.S. identified 239 TDR programs with a range of structures and purposes. Nearly two dozen of these programs focus on historic preservation. This chapter highlights best practices from five cities based on a comparative review of each program's purpose, process and tracking, pricing, and program revenues.

A. Cities

TDR programs in two California cities and three other US cities were chosen for study. Los Angeles and Oakland are California cities that have utilized TDR to preserve historic buildings and meet other key planning objectives. New York City has one of the most well-known and used TDR programs in the nation, and its program has been a model for many other TDR programs. Portland, Oregon and Seattle, Washington are included based on their similar historic building stock and emphasis on revitalized downtowns. Each program is briefly described below, and Appendix D presents a more detailed description of each program.

- **Los Angeles**
  As part of its plan for the Central Business District (CBD) in 1975, Los Angeles and its Community Redevelopment Agency (CRA) initiated its TFAR program for the transfer of floor area rights (TFAR) to encourage a high-density, mixed use downtown, preserve historic landmarks, promote affordable housing, create public open space, and meet other policy objectives to create a vital downtown.
- **Oakland**
  Another Bay Area TDR program focused on historic preservation, Oakland's program allows transfers of residential density between abutting properties in order to encourage the preservation of turn-of-the-century historic homes. Oakland's program has not been frequently used, so limited information is available.
- **New York**
  In 1968, New York adopted its program to mitigate possible financial losses by owners whose properties were designated as historic landmarks and to allow greater flexibility through zoning lot merger or density zoning.
- **Portland**
  From 1988 through 2003, Portland instituted a number of density bonus and transfer programs to meet a range of public policy objectives, such as preserving historic landmarks, residential housing and SRO units in the Central City, and open space in the South Waterfront.
- **Seattle**
  As part of the comprehensive Downtown Restoration effort in 1985, Seattle initiated its program to help retain low income housing, preserve historic landmarks, encourage infill development, and create incentives for varying building scale in the downtown. In order to facilitate TDR use, the city created a TDR bank that buys and sells housing TDR.

The following subsections describe the best practices gained from the comparative analysis of the five programs.

B. Program Purpose

Similar to San Francisco's program, the five TDR programs that are examined focus on the preservation of historic resources while encouraging new development. The intent of the historic preservation TDR programs is to create a process in which otherwise unusable development rights from historic resources may be converted into an asset that may to sold to increase development opportunities on other parcels while generating revenues for the owners of historic resources for rehabilitation and preservation.
As a condition of the TDR certification, all five TDR programs provide guidelines for the rehabilitation and maintenance of the the originating buildings. Aside from these requirements, none of the programs specifies the portion of TDR revenues that must be allocated to the rehabilitation or preservation of the historic resource.

While San Francisco's TDR program focuses on historic resources, Los Angeles, New York, Portland, and Seattle have expanded their programs to focus on additional areas of public interest, such as the preservation and creation of affordable housing and open space. In addition, some of the programs such as New York's and Portland's have removed geographic constraints for particular types of TDR to allow its use throughout the city and to increase demand.

C. Program Process and Tracking

Although each TDR program is unique, the TDR programs follow similar processes in which an originating parcel applies for TDR, and TDR are certified based on a formula that accounts for zoning, existing FAR and potential FAR. Most jurisdictions track TDR through recorded documents that note at minimum the originating owner, the receiving owner and the number of TDR.

After the TDR certification process, the five TDR programs function differently. In San Francisco, the TDR originator may retain the certified TDR or may transfer it to another entity, and the TDR does not need to be used within a specific time frame for development. Thus, third parties may speculatively purchase and hold TDR in San Francisco for an unlimited period of time. Other cities did not report having a speculative TDR market, and certified TDR typically transfer directly to the receiving site.
The City of Los Angeles is the main source for TDR, which it refers to as TFAR–Transferable Floor Area Rights. In its TFAR transfer agreements, Los Angeles establishes use-of-TFAR expiration dates in order to deter speculative accumulation. In Seattle, developers can purchase TDR from private owners, or they can purchase TDR for housing from the city's TDR bank, which was created to facilitate TDR transactions.

Tracking the creation, transfer and use of TDR is an essential component to the TDR program implementation and understanding the TDR market. It ensures that TDR are properly being processed from certification through use and documents the existing market supply and owners of certified TDR. This is particularly important when TDR may transfer multiple times before they are ultimately used for development and when multiple owners and users exist in the market. Seattle tracks TDR certification, ownership, transfers, and pricing and publishes a quarterly report documenting TDR transactions.
Los Angeles began creating a TFAR database to track the origination, transfer and use of TFAR but to date has not completed its database.

San Francisco maintains an internal database that tracks TDR certification, transfers and use. When available, the individual records include the transaction's recorded document and the name of the owner. Beginning in 2010, the City's TDR program requires the recordation of pricing information, although this information has not been collected for all of the transactions since 2010. The City is in the process of gathering this information.

D. Program Pricing

Determining the value of TDR is a critical component to the market functioning. Despite the supply of public TDR in some cities, none of the five cities have set prices for public TDR, although one City has set a formula to calculate the price of public TDR.

Due to the nature of New York's program requiring abutting parcel, constrained TDR supply, and no other alternatives to increase FAR, TDR pricing can become extremely expensive. TDR in New York is estimated to trade for 50 to 60 percent of land value, and in recent years, TDR in prime neighborhoods has approached $450 per square foot.

Los Angeles originally charged $35 for publicly owned TFAR, but revised its TFAR valuation to a formula that bases the pricing on the appraised value of the receiving site. TFAR valuation has averaged $21 to $23 per TFAR. Private TFAR owners are able to negotiate their own pricing.

In Portland, developers can can achieve maximum height density and height parameters through 18 bonus options and 6 TDR options that compete with each other. Developers tend to opt for the lowest cost option for additional FAR. As a result, TDR value varies, with pricing in 2007 ranging from $6.50 to $18.00 per square foot.

Seattle TDR pricing ranges from $15 to $20. The TDR bank does not have fixed pricing as transactions are individually negotiated. For some projects, developers in Seattle may elect to pay the housing–childcare fee at $22 per square foot in lieu of purchasing TDR. This option impacts the pricing in the TDR market.

TDR pricing in San Francisco has reportedly ranged from $5.51 to $38 and currently is $25. To date, the City of San Francisco has not sold TDR in the market. (The San Francisco Museum and Historical Society sold TDR from the Old Mint, which is owned by the City of San Francisco.)

E. Public Revenue

Public revenues are not necessarily generated through TDR programs. However, in some of the cities the TDR program generates revenues. In others, TDR are considered taxable.

Seattle's TDR bank was originally funded through the Cumulative Reserve Fund to purchase housing TDR to preserve low-income housing. Any revenues that the city generates from selling TDR are reinvested into the bank for future housing TDR purchases.

Like Seattle, Los Angeles is involved in the sale of TFAR. Los Angeles is the largest TFAR supplier, and revenues from TFAR sales are deposited into a fund to be used for affordable housing, open space, historic preservation, public transportation, and public/cultural facilities. Los Angeles also charges a Public Benefit Transfer fee on publicly and privately transacted TDR, and proceeds from the sale are also deposited in the TFAR revenue fund.

New York considers TDR to be a transfer of real property interest and upon its recordation the parties are required to pay city and state real property transfer taxes on the sales price.

Currently, San Francisco does not assess property transfer fees or property taxes on TDR.

F. Key Findings

- *While San Francisco's TDR program focuses on historic resources, Los Angeles, New York, Portland, and Seattle have expanded their programs to focus on additional areas of public interest, such as the preservation and creation of affordable housing and open space.*
- *Unlike most other cities TDR programs, San Francisco's TDR program allows any third party—developers with entitled or proposed projects, brokers, investors, speculators, and financial institutions, among others—to own TDR.*
- *The TDR programs follow similar processes in which an originating parcel applies for TDR, and TDR are certified based on a formula that accounts for zoning, existing FAR and potential FAR. Most jurisdictions track TDR through recorded documents that note at minimum the originating owner, the receiving owner and the number of TDR.*
- *TDR pricing is influenced by the presence or lack of alternative options to TDR to increase FAR. Due to the constrained supply and no other alternatives to increase FAR in New York City, TDR pricing can become extremely expensive and trades for 50 to 60 percent of land value, and recently prices have approached $450 in prime neighborhoods. In other cities where multiple options and programs compete with TDR such as in-lieu fees, developers tend to opt for the lowest cost option, and pricing ranges from $20 to $30.*
- *Some cities generate revenues from their TDR program through fees and taxation. Los Angeles charges a TDR transfer fee with revenues deposited into a fund to be used for public services and facilities, while New York applies city and state real property transfer taxes on the TDR sales price.*

VI. Recommendations

The 2012 TDR Handbook states that the San Francisco TDR Program is one of the most successful historic preservation TDR programs in the US due to several factors, including the following:

- The 1985 baseline development threshold for the Downtown is low enough that developers seek to exceed it, thus creating demand.
- Designated landmarks are difficult to alter or demolish in San Francisco. In other cities with TDR historic preservation–focused TDR programs, preservation protections are imposed only after owners have consented to landmark designations.
- San Francisco developers cannot gain bonus floor area through on-site features such as site design and architectural details. When developers seek to exceed the baseline, they must acquire TDR.
- Unlike programs that require close proximity of sending and receiving sites, San Francisco allows sending and receiving sites anywhere within the Downtown, creating a larger, more viable market for potential buyers and sellers.

The Seifel team observed additional factors contributing to the success of San Francisco's TDR program. First, the program has been modified and expanded over time to further historic preservation goals. For example, it has been expanded to include historic buildings owned by the City that are located on P zoned lots adjacent to the C-3 District. Recent modifications include eliminating the requirement that the Transfer Lot and Development Lot had to be located in the same C-3 Zoning District, requiring a Preservation Plan when TDR are transferred, and recording the TDR sales price.

Second, unlike many other historic preservation TDR programs, San Francisco's program does not require certified TDR to be directly transferred to a receiving parcel. Because a Transfer Lot can sell TDR to a speculative buyer without having to wait until a proposed development uses TDR, TDR demand is created sooner than would otherwise occur, and historic buildings can be preserved before TDR is actually used. In addition, under San Francisco's program, TDR do not expire after a specified time. On the downside, with speculation, the parcel originating the TDR may not receive the actual market price of the TDR when they are transferred for ultimate use. By tying the transfer of TDR to a receiving site, TDR pricing would more closely correlate with the value of the receiving site, similar to New York City's program.

Based on the analysis of San Francisco's TDR program and other cities' programs, as well as discussions with City staff, the Seifel team presents recommendations grouped by the following categories:

A. TDR Demand
B. TDR "Bank"/Market Clearinghouse
C. Publicly Owned TDR
D. TDR Program Review
E. Other Recommendations

A. TDR Demand

One of the primary ingredients for a successful TDR program is the existence of strong demand in the market. As described in Chapter III, demand for TDR could decrease after the TCDP demand is satisfied. If the City seeks to continue the success of its TDR program, it may need to consider creating additional TDR demand by expanding the areas that could receive TDR or making it easier for developers to use TDR. Los Angeles, for instance, revised its program's calculation formula to allow higher density for priority development areas using TDR near transit. The TDR program could be expanded in the Downtown beyond the C-3 District and/or beyond the Downtown into other San Francisco areas.

Recommendations

- *Balance the need for potential impact fees with the City's historic preservation goals when developing the Central Corridor Plan and determining the extent TDR could be required for new development.*
- *Consider including additional areas in the TDR program such as (a) other Downtown areas that are not zoned C-3, but where office and/or residential is allowed, such as areas zoned C-M, MUG, and MUR; and/or (b) areas outside of the Downtown but within the northeast segment of the City.*

B. TDR "Bank"/Market Clearinghouse

The Seifel team was tasked with reviewing TDR programs in which the local government acts as a prime or central TDR bank or TDR broker. A local government can serve as a TDR bank for the purpose of buying, selling, and holding TDR or facilitating private TDR transactions. A TDR bank can serve as a clearinghouse that connects buyers and sellers, creating a pool of TDR to assure availability of TDR when needed, offer TDR at a set price, provide financing to acquire TDR, use the proceeds from TDR sales to purchase additional TDR, and provide sales price information. By providing a single point of contact, a TDR bank can streamline the process for TDR buyers and sellers.

The San Francisco TDR program already has some of the advantages of a TDR bank because TDR can be purchased and held, and pools of TDR can be created. In addition, San Francisco's TDR market is a mature market, and thus does not require the creation of a TDR bank. However, one of the most common dissatisfactions with San Francisco's TDR program is the lack of information on TDR available in the marketplace and how to access it, as well as data on recent sales prices.

With the recent passage of Ordinance 68-13, additional reporting on TDR will be required as part of the Annual Report on the Downtown Plan. This new reporting, which requires inventories of buildings eligible for TDR, buildings where TDR transfers have been completed, and TDR transferred within the year, will address some of these concerns about lack of information. However, additional steps could be taken to make other useful information more readily available.

Recommendations

- *Implement the annual TDR reporting requirements required in Ordinance 68-13 as soon as possible, and additionally, report on annual TDR certification and use, as well as market pricing, in order to inform and facilitate market activity.*
- *Provide information to the public on TDR available for purchase. For example, display TDR information on the San Francisco Property Information Map by indicating originating parcels with certified TDR remaining on the originating site.*

- *Devise a mechanism for potential buyers to contact TDR owners without displaying the names of the owners. This information could bring TDR sellers and buyers together and facilitate TDR transactions.*
- *Expand the amount of public TDR that is available for purchase, as described in C following.*

C. Publicly Owned TDR

TDR from City-owned properties could be an important source for meeting current TDR demand. One of the most common concerns voiced during the stakeholder interviews was the limited supply of readily available TDR, which could be offset by the certification of publicly owned TDR. Certifying publicly owned TDR would not only provide a readily accessible supply of large amounts of TDR that are required for some developments, it would also provide financial resources for the preservation and rehabilitation of City-owned historic buildings, many of which are designated as landmarks.

<u>Recommendations</u>

- *Given the current active real estate market and unmet demand of about 860,000 square feet from pipeline projects and the TCDP, consider certifying approximately 1.2 million in public TDR in the near future in order to test the market demand for larger segments of TDR. Specifically, undertake the following:*
  - *Certify TDR from City-owned buildings that are eligible for the TDR program, prioritized in the City's 10-year Capital Plan, and approved by the Capital Planning Committee, such as the War Memorial Opera House and Veterans Building.*
  - *Consider requesting the Board of Supervisors to authorize the Department of Real Estate to transfer the TDR in the future. (The Department would determine how much TDR it would transfer in a particular transaction based on demand for the specific number of TDR.)*
  - *Consider establishing a minimum offer price to be annually reviewed in order to provide a level of certainty about TDR pricing to buyers and streamline the transaction process for selling TDR. Specifically, consider offering the initial release of TDR at a minimum of $25 per square foot and future releases at this minimum amount with any increases in price informed by fair market value.*
- *Consider requesting Board of Supervisors to designate properties owned by the Port of San Francisco as eligible for the TDR program. Specifically, undertake the following:*
  - *Include potential properties such as Piers 19, 23 and 29, which are among the priorities in the Port's 10-Year Capital Plan (FY 2011-20 Update), as properties eligible for the TDR program.*
  - *Determine eligible FAR on the piers.*

D. TDR Program Review

According to City staff, the 2013 review of the TDR program is the most comprehensive and detailed review of the TDR program since the program's inception, and provides useful information on the program status and effectiveness. Regular updated reviews of the TDR program would be useful for policy and implementation considerations.

<u>Recommendations</u>

- *Every five years, undertake a third party review of the TDR program, in order to evaluate program effectiveness, including success in achieving City goals, and as necessary, recommend program refinements. Specifically, implement the following:*

- *Tie the five year review to the five year report required to be prepared by the Planning Department (Administrative Code 10E.1) for the purpose of monitoring the impact of downtown development, which already is required to monitor long-term policy indicators such as the TDR program.*
- *Prepare the next review by July 1, 2015, which is the next deadline for the Administrative Code 10E.1 report. (A review within the next two years would be of benefit as it could assess the impact of the recent modification to the TDR program to allow TDR to transfer freely across the C-3 District and the potential near-term certification and transfer of TDR from City-owned properties.)*

E. Other Recommendations

Based on the findings presented in this report and the Seifel team research and analysis, the TDR program could be improved by the enhancements listed below.

1. Expiration of TDR Recorded as Used but not Actually Used

As discussed in Chapter II, in some instances, TDR has been recorded as used TDR in the City's database when it has not actually been used because the intended development projects were not actually developed. In such an instance, if the TDR owner does not file a "Cancellation of Notice of Use," the TDR continues to be recorded as used.

In other instances, developers may acquire TDR in excess of what is needed to accomplish a development. As an example, Tishman Speyer acquired 25,000 TDR for the Foundry III development at 525 Howard. However, the project required 23,605 TDR, leaving 1,395 TDR designated as used remaining with the developer, who may hold the TDR to apply to future development, or may abandon them if the value does not exceed the transactional cost of selling the TDR to another entity.

<u>Recommendation</u>

- *Require Cancellation of Notice of Use for projects that are not developed within a certain time period (three to five years from building permit or first addendum), and if a cancellation is not filed within the specified time frame, deem the TDR expired.*

2. Applicability of Preservation Plan Requirement

Some historic preservation TDR programs in other cities require that historic buildings on parcels with originating TDR be rehabilitated and maintained. Recent modifications to the San Francisco program requires the submittal of the Preservation Plan, which must describe any proposed preservation and rehabilitation work and related maintenance and upkeep of the Transfer Lot. Of the 112 parcels from which TDR originated, 84 parcels have transferred all of the TDR that were certified on the parcel. Thus, the Preservation Plan requirement does not apply to these 84 parcels. The requirement would apply to the 12 parcels that have certified but not transferred any TDR. Presumably, if any TDR were subsequently transferred from the 16 parcels that have transferred a portion but not all of their certified TDR, the requirement would apply.

<u>Recommendations</u>

- *Recognize that the Preservation Plan requirement may discourage participation by historic buildings with smaller amounts of potential TDR and consider relaxing the rules for TDR transfers under a certain amount.*

3. Program Administration

The Planning Department's administration of the program involves review and approval of applications for certification, transfer, use, and cancellation of use, as well as coordination with the Recorder's office. It also involves updating and maintaining the TDR database. A program modification passed in 2010 places additional responsibility on the Department, including the review of preservation plans and status reports, as well as additional program reporting.

<u>Recommendations</u>

- *Evaluate the cost of TDR program administration and review fee charges to ensure fee amounts cover the cost of providing service.*
- *Integrate the TDR program certification, transfers and use into the City's permit and project tracking system (PPTS) to make the data more accessible internally for the Planning Department. In addition, the PPTS could generate automated reports identifying TDR market activity.*

4. Property Taxation and Property Transfer Fee

TDR transactions mark the transfer of a real property interest, and TDR constitutes taxable property. In Mitsui FudoSan v. County of Los Angeles (1990), the California Supreme Court let stand a ruling of the Second District Court of Appeal that TDR are taxable property interests, and their conveyance constitutes a change in ownership that permits a reappraisal of that property interest. The court also recognized that the base year value of the seller's property should be proportionately reduced.

According to historical documents, the City may have levied transfer fees and property taxes on TDR transfers during the l980s and into the early 1990s. Records of TDR transfer and use from this period contain references to "grantor declares documentary transfer tax…computed on full value of property conveyed." Some include a fee and others stated no fee. One record stated that the "amount of real property tax due is shown on separate paper."

<u>Recommendation</u>

- *Consider implementing the payment of property tax and transfer tax on TDR transactions by assessing the TDR value based on the transaction price upon transfer.*

Appendix A: Documents and Sources

Information presented in the TDR Report was compiled from the following sources.

Documents Related to San Francisco's TDR Program

Dyett & Bhatia and Keyser Marston Associates. *TDR Program Analysis Phase 1, Prepared for The City of San Francisco*, February 15, 2008.

San Francisco Planning Department Executive Summary. *Initiation of Planning Code Text Change, Zoning Map Amendment, and General Plan Amendment, Hearing Date: May 20, 2010, Continued from April 22 and March 25, 2010,* May 20, 2010.

San Francisco Planning Department Ordinance 68-13 File No. 120474. An ordinance amending Planning, Administrative Codes related to the Transfer of Development Rights - Planning Code, Sections 128 and 819, and Administrative Code, Section 10E.1, San Francisco, April 23, 2013.

San Francisco Planning Department Staff Memo. *New Planning Code Amendment: Section 128: Transfer of Development Rights*, Board File No. 10-1200, December 5, 2010.

San Francisco Planning Department TDR Database Updated February 22, 2013.

TDR Resources

Nelson, Arthur C., Rick Pruetz and Doug Woodruff. *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, Island Press, 2012

San Francisco Planning Department Documents and Resources

San Francisco Planning Department. *Central Corridor Plan, Draft for Public Review*, April 2013.

San Francisco Planning Department, Historic Preservation Committee. *Transfer of Development Rights Overview and Update*, May 2, 2012.

San Francisco Planning Department. *Office Development Annual Limitation ("Annual Limit") Program*, March 8, 2013.

San Francisco Planning Department. *Planning the Central Corridor, Urban Land Institute San Francisco*, February 26, 2013.

San Francisco Planning Department Ordinance. An ordinance implementing the Market and Octavia Area Plan of the General Plan, San Francisco, April 16, 2008.

San Francisco Planning Department. San Francisco Redevelopment Agency and AECOM. *Transit Center District Plan, Draft for Public Review*, November 2009.

San Francisco Planning Department, San Francisco Redevelopment Agency and Transbay Joint Powers Authority. *Transit Center District Plan, Public Workshop #4 Financial Program*, May 26, 2009.

Other Cities TDR Programs Documents and Resources

Nelson, Arthur C., Rick Pruetz and Doug Woodruff. *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, Island Press, 2012

Los Angeles

Section 14.5 Transfer of Floor Area Rights – Central Business District and City Center Redevelopment Project Areas:
http://www.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:lapz_ca

"Los Angeles" Smart Preservation TDR Updates. http://smartpreservation.net/los-angeles-california/

Oakland

"Oakland" Smart Preservation TDR Updates. http://smartpreservation.net/oakland-california/

Planning Code Text Section 17.106.050

New York City

Been, Vicki, John Infranca and Josiah Madar. "The Market for TDRs in New York City" NYU School of Law, Public Law Research Paper No. 12-50, NYU Law and Economics Research Paper No. 12-31. Brooklyn Law Review, Vol. 78, 2012.

Finn, Robin. "The Great Air Race" The New York Times, February 22, 2013.

Landis, Marc, Kevin McGrath and Lonica Smith. "Transferring Development Rights in New York City" New York Law Journal Real Estate Trends, September 29, 2008.

Portland

Johnson Gardner. "Evaluation of Entitlement Bonus and Transfer Programs Portland's Central City Report on Findings Prepared for The City of Portland Oregon Bureau of Planning November 2007".

Seattle

McKnight, Reuben. "September 2002: Block Exchange Transfer of Development Rights in Seattle" Preservation Seattle.

Seattle Municipal Code 23.49.014.

Smart Growth/Smart Energy Toolkit. "Transfer of Development Rights (TDR) Case Study Seattle, WA"

Financing Economic Development in the 21st Century.

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Ellen Ittelson, City of Denver, retired

Jim Lazarus, San Francisco Chamber of Commerce

Market Participants Contacted

Brookfield Properties
Brookwood Group
CAC Group
Carneghi-Blum & Partners
Cerberus Capital
City Center Retail
Colliers
Cushman & Wakefield
Eastdil Secured
Fortress Property Group
Grosvenor Americas
Holliday Fenoglio Fowler
Jones Lang LaSalle
Kidder Mathews
Laurence Badiner
McCarty Cook & Co.
Northwestern Mutual Life Insurance Company
Patson Development
Prudential Mortgage Capital Company
Shorenstein Properties
Strada Investment Group
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Appendix B: Parcels Originating TDR and Parcels Using TDR

As part of the TDR program review and market analysis, Seifel analyzed the Planning Department's TDR Database to identify TDR origination and use by parcel. The following tables identify parcels that originated TDR and parcels that used TDR in their development.

Appendix B
Parcels Originating Certified TDR
San Francisco TDR Market Analysis

Year[a]	Originating Address[b]	Building Name	Total Certified TDR	Total Remaining Certified TDR
1986	79 New Montgomery St	Academy of Art University Atelier and Non-Profit Gallery	90,433	2,233
	259 Front St		18,024	-
	660 Market St		73,253	2,253
1987	74 New Montgomery St		43,434	-
	722 Market St		14,786	-
1988	169 Steuart St	YMCA - Embarcadero	31,372	-
	255 Golden Gate Ave		19,476	-
1990	16 Jessie St		86,018	-
	220 Golden Gate Ave	Shih-Yu-Lang Central (Tenderloin) YMCA	81,795	-
	600 Stockton St	Ritz-Carlton	277,376	-
	121-123 2nd St		10,722	222
	301-315 Pine St	Pacific Exchange	118,146	-
1991	415 Geary St	American Conservatory Theater	89,437	-
	491 Post St	Academy of Art Morgan Auditorium	90,750	90,750
1998	1 Bush St	One Bush Plaza	48,501	-
	1 Grant St	Savings Union Bank	25,145	-
	2 New Montgomery St	Palace Hotel and Garden Court Room	336,764	168,382
	20 California St		22,286	-
	116 Natoma St	N. Clark & Sons Building	37,594	-
	116 New Montgomery St	Standard Building	17,487	-
	132 2nd St	Excelsior Glove Factory	20,642	-
	141 2nd St	Rincon Building	17,280	-
	153 Kearny St		31,562	-
	169 Steuart St	YMCA - Embarcadero	89,442	-
	240 California St	Buich Building	25,421	-
	364 Bush St		33,579	-
	530 Sacramento St		52,577	-
	590 Market St		95,424	-
	601 Mission St	The Stevenson Building	23,448	-
1999	28 2nd St		10,585	-
	42 2nd St		16,756	-
	50 Fell St		78,480	20,142
	57 Post St	Mechanics' Institute Library and Chess Room	23,633	3,723
	163 2nd St		10,240	-
	182 2nd St		22,678	-
	200 Kearny St		19,279	-
	230 California St	Hind Building	24,790	-
	400 Montgomery St	Kohl Building	15,336	-
	500 Montgomery St		34,677	-
	520 Montgomery St		11,279	-
	538 Montgomery St		13,707	-
	575 Sutter St		21,931	-
	631 Howard St		26,568	-

Appendix B
Parcels Originating Certified TDR
San Francisco TDR Market Analysis

Year[a]	Originating Address[b]	Building Name	Total Certified TDR	Total Remaining Certified TDR
2000	154 Sutter St		19,807	2,807
	445 Geary St	Curran Theatre	56,498	-
	460 Bush St		14,759	2,759
	576 Sacramento St		4,641	-
	1067 Market St		17,158	-
	609-611 Market St		12,590	12,590
2001	77 Beale St		37,639	-
	120 2nd St		19,568	-
	133 Kearny St		37,586	-
	149 2nd St		25,128	-
	215 Market St		151,511	-
	220 Jessie St	Jessie Street Substation	168,300	-
	564 Bush St	Notre Dame des Victoires Church and Rectory	54,930	-
	566 Bush St	Notre Dame des Victoires Church and Rectory	15,402	-
	606 Folsom St		21,130	-
	657 Howard St		75,268	-
	666 Mission St		60,264	-
	748 Mission St		186,590	-
	1182 Market St		106,222	39,207
2002	1 Jones St	Hibernia Bank (San Francisco)	82,980	-
	333 Sacramento Street		13,424	-
	1072 Market St		29,706	-
2003	88 5th St	Old Mint	267,728	-
2005	25 Kearny St		18,456	-
	83 McAllister St		12,103	-
	640 Sutter St	Metropolitan Club	27,405	7,405
2006	1 Mission St	Audiffred Building	34,762	-
	36 2nd St		9,742	-
	54 Mint St		5,278	-
	66 Mint St		15,516	-
	96 Jessie St		15,623	-
	99 Battery St		16,015	-
	150 Powell St		17,549	17,549
	200 California St		19,859	-
	209 Kearny St		9,128	-
	236 Front St		36,251	-
	237 Front St		30,526	-
	332 Pine St		21,748	-
	348 Pine St		8,903	-
	429 Bush St	Peter Building	15,873	-
	447 Bush St	Hotel des Arts Hotel	8,650	-
	565 Commercial St		24,037	-
	572 Folsom St		11,536	-
	576 Market St		15,349	-
	600 Stockton St	Metropolitan Life Insurance Building	17,864	17,863
	679 Sutter St		14,812	-

Appendix B
Parcels Originating Certified TDR
San Francisco TDR Market Analysis

Year[a]	Originating Address[b]	Building Name	Total Certified TDR	Total Remaining Certified TDR
2007	1 Taylor St		41,823	41,823
	34 Mason St		1,800	-
	121 Spear St	Rincon Center Post Office	489,452	-
	235 Front St		38,803	-
	407 Sansome St		21,678	13,090
	435 Powell St		6,537	-
	559 Clay St		18,636	4,000
	583 Howard St		16,354	-
	625 Pine St		29,700	-
	635 Pine St		110,550	-
	701 Taylor St		20,742	2,000
	982 Market St.	The Warfield	33,510	3,510
	1000 Market St		17,634	17,634
2008	101 Howard St		18,318	18,318
	168 2nd St		6,342	6,342
	225 Front St		9,167	-
	369 Pine St	Exchange Block Building	16,592	16,592
	421 Powell St		28,284	28,284
2009	545 Mission St		18,589	18,589
2010	608 Folsom St		22,044	-
	680 California St	Old St. Mary's	171,567	115,514
2011	144 2nd St		21,450	21,450
	156-160 2nd St		14,040	14,040

a. Year is based on year of case in TDR Database.

b. Originating Address is based on address listed in the TDR Database. Parcel may have multiple or alternate addresses than what is listed.

Source: San Francisco Planning Department TDR Database Dated February 2013.

Appendix B
Parcels Using Certified TDR
San Francisco TDR Market Analysis

Year[a]	Database Address[b]	Building Name	TDR	TDR Purchases
1983	100 First St	100 First Plaza	38,176	2
1984	235 Pine St		55,267	2
1985	101 2nd St		83,664	2
	343 Sansome St	Crown Zellerbach Building	6,850	1
1986	**222 2nd St**	**Not Developed.**	103,146	0
	600 California St	Federal Home Loan Savings Bank	5,001	1
1987	111 Pine St		1,000	1
	720 Market St		14,786	1
	142-158 California St		75,981	4
1988	500 California St	Omni San Francisco Hotel	9,999	1
1997	199 Fremont St.		188,000	1
1998	299 2nd St	Courtyard San Francisco Downtown	89,376	1
1999	**70 Natoma St**	**Not Developed. (80 Natoma)**	0	0
2000	1 Market St	Southern Pacific Building/One Market Plaza	6,869	1
	69 Clementina St	69 Clementina Lofts	36,095	2
	199 Fremont St.		12,480	1
	500 California St	Omni San Francisco Hotel	35,000	2
	949 Market St	**Not Developed. (CityPlace Center)**	56,498	0
2001	215 Fremont St	Del Monte Building, Charles Schwab Building	49,246	3
	405 Howard St	The Orrick Building/Foundry Square II	22,253	2
	417 Montgomery St	General Petroleum Building, America California Bank	41,374	4
	451 Montgomery St		33,615	1
	524 Howard St	**Not Developed.**	89,437	0
	554 Mission St	JPMorgan Chase Building	287,133	6
2002	**524 Howard St**	**Not Developed.**	39,000	0
2003	199 New Montgomery St		97,000	3
2005	101 Fremont St	Millenium Tower (301 Mission St)	453,900	5
	155 5th St	Intercontinental Hotel	253,195	1
2006	400 Howard St	Foundry Square I	22,712	3
	466 Bush St	Orchard Garden Hotel	16,000	1
2007	555 Mission St		239,636	9
2008	1 Polk St	Argenta	62,838	4
	535 Mission St		*146,880*	*6*
	645 Howard St	One Hawthorne	149,509	6
	1407 Market St	*Crescent Heights Planned Development - NeMa*	*48,768*	*4*
2011	120 Howard St		63,505	1
2012	*350 Mission St*	*Planned Development.*	*170,145*	*13*
	942 Mission St	*Planned Hotel Development.*	*24,000*	*2*
	505-525 Howard St	*Foundry III*	*23,605*	*1*

Note: Bolded projects were not developed and italicized projects are currently planned or under construction.

a. Year is based on year of case in TDR Database.
b. Originating Address is based on address listed in the TDR Database. Parcel may have multiple or alternate addresses than what is listed.

Source: San Francisco Planning Department TDR Database Dated February 2013.

Appendix C: Case Studies of San Francisco TDR Transactions

As part of the TDR program review and market analysis, Seifel identified and analyzed specific TDR transactions to provide insight into the TDR program implementation and effectiveness as well as the TDR market. The following descriptions of TDR transactions illustrate many of the complexities, challenges and opportunities associated with the TDR program and certification process, as well as project-specific TDR acquisition and use.

A. Rincon Center, 121 Spear Street

Located at 121 Spear Street and built in 1940 as part of the New Deal Work Project Administration, the Rincon Annex U.S. Post Office building contains 27 murals illustrating California history. In 1980, the City designated the historic building as San Francisco Landmark 107. In 1981, the Board of Supervisors approved the Rincon Point-South Beach Redevelopment (RPSB) Plan, which included the Rincon Annex and designated the San Francisco Redevelopment Agency (SFRA) as the entity with land use jurisdiction in the Rincon Point-South Beach redevelopment project area. In August 1985, the SFRA authorized an Owner Participation Agreement (OPA) with Rincon Center Associates for a mixed-use development on the Rincon Annex site and required the rehabilitation and adaptive reuse of the Rincon Annex as part of the agreement. (As noted above, the San Francisco TDR program was adopted on September 17, 1985.) A new 23-story mixed-use building was added on the south side of the block that contains a new post office, offices, and 320 apartments. In addition, two stories were added atop the original Rincon Annex building and a large atrium was cut into the interior.

On May 22, 2001, the Agency Commission adopted a TDR policy that applied Section 128 of the Planning Code to the Yerba Buena Center and RPSB Project Areas, allowing the transfer of development rights from historic properties located in the two project areas that had an underlying C-3 classification in the Planning Code's Zoning District Use Maps. The TDR policy gave the SFRA's executive director the authority to approve and concur as to a Statement of Eligibility prepared by the Zoning Administrator if the Agency Commission determined that such authorization would promote the goals for the applicable Redevelopment Plan and enable the preservation, enhancement or maintenance of a Landmark, Significant Building or Contributory Building.

1. TDR Certification

In November 2006, Rincon Center Commercial LLC, the owner of the Rincon Annex building and an affiliate of Beacon Capital Partners, submitted an application to the Planning Department for a Statement of Eligibility for 508,560 TDR related to the Rincon Annex based on its designation as a historic building and a TDR calculation based on the FAR standard for the underlying zoning for the site of C-3-O. In October 2007, the Zoning Administrator approved the application. As the Rincon Annex was located in the RPSB Project Area, SFRA staff reviewed the TDR application and made an initial determination that it could not concur with the approval because no TDR could be authorized from the site for two reasons. First, as the Rincon Annex had already been rehabilitated based on the 1985 OPA, the TDR would not meet the SFRA's TDR policy requirement of enabling the "preservation, enhancement or maintenance" of an historic structure. Second, the Redevelopment Plan and Design for Development did not authorize any FAR for the site, rather they established development capacity through height and bulk limits, and as the Rincon Annex had already developed to its full height and bulk capacity, staff determined that no excess development rights could be transferred.

After discussions with representatives of the building's owner, the Planning Department, the Mayor's Office, and the Office of the President of the Board of Supervisors, the SFRA Commission approved an amendment to the SFRA's TDR policy to provide for the authorization of TDR in cases such as the Rincon Annex. Under the revised policy, if the historic building that generated the TDR had already been preserved, the SFRA Commission could authorize the Executive Director to concur with the Zoning Administrator's TDR Statement of Eligibility, subject to a finding that the approval would promote the preservation, enhancement or maintenance of other landmark, significant, or contributory buildings owned by the Redevelopment Agency or in or near any project area under the jurisdiction of the SFRA. The policy also allowed the SFRA Commission to authorize concurrence with Zoning Administrator's Statement of Eligibility for TDR based on the underlying zoning map, even if under the standards of the redevelopment plan in which the preservation lot is located, no unused development capacity exists. This policy revision allowed for the creation of TDR on the Rincon Annex site as long as the approval resulted in the preservation of other historic buildings that that the Agency owned located or in or near a project area. To satisfy the revised policy, the Rincon Annex owner agreed to transfer 35 percent of the TDR to the SFRA. The Rincon Annex owner received 489,452 TDR, to date the largest amount of certified TDR on an originating parcel, of which the 35 percent (171,308 TDR) were transferred to the SFRA.

2. TDR Transfer and Use

Since their original authorization, many of the TDR on this parcel have been transferred multiple times, and some have been used.

Rincon Center Commercial LLC's TDR

Rincon Center Commercial LLC received 318,144 TDR from the Rincon Annex. Of these, 102,891 TDR have been used as follows:

- 535 Mission
  39,386 TDR used in 2008 for the entitlement of 535 Mission Street (27-story, 378 ft tall, 307,000 sq ft office building under construction, estimated completion 2014); and
- 120 Howard
  63,505 TDR used in 2011 for the entitlement of 120 Howard Street (constructed in 1972 as 7-story, 100 ft tall building. Currently, a 9-story, 145,060 sq ft Class A office building).
- One Hawthorne (TDR acquired, held, and resold to Rincon Center Commercial LLC)
  In 2007, citing "an apparent limited quantity of TDR currently available" the One Hawthorne development, located at Howard and Hawthorne, filed an application for a TDR Timing Acquisition Variance. If approved, the variance would have allowed the approved project to obtain a site permit and commence construction before the necessary TDR for the project were acquired and extension the TDR acquisition timing until the issuance of the final certificate of occupancy. The Zoning Administrator denied the variance and One Hawthorne LLC acquired 150,000 TDR from Rincon Center Commercial in 2007 and held these TDR until the developers were able to acquire from other sources the necessary TDR for the 25-story, 250 ft tall, 165-unit luxury condominium high rise project. After holding the TDR for four years, One Hawthorne LLC transferred them back to Rincon Center Commercial LLC in 2011.
- Transbay Tower
  At the end of 2011, Rincon Center Commercial LLC had 215,253 TDR remaining. In March 2013, Rincon Center Commercial LLC, which is an affiliate of Beacon Capital Partners, entered into an agreement with Hines and Boston Properties to sell approximately 150,000 TDR to be used for development of the 61-story, 920 ft, 1.3 million sq ft Transbay Tower, anticipated to be completed in 2017. Thus, Beacon Capital Partners will have approximately 65,253 TDR remaining.

SFRA's TDR

In 2008, the SFRA received 171,308 TDR. The resolution authorizing the SFRA to approve the Zoning Administrator's TDR Statement of Eligibility for the Rincon Annex and enter into an agreement with Rincon Center Commercial LLC for the transfer of 35 percent of the TDR, also authorized SFRA to offer the Agency's TDR for sale through a competitive process to maximize proceeds. The staff report accompanying the resolution noted that "there is significant demand at this time for additional development rights, and TDRs are presently valued in the range of $30-$35 per square foot." The current market value was cited as $5 to $6 million, however, SFRA did not sell its TDR at that time. The SFRA intended to use TDR for the Muni sub-station parcel located at Fillmore and Turk Streets, which SFRA had purchased in 2003. However, it was unable to find a developer interested in rehabilitating the sub-station and further developing the parcel and in 2009, transferred its 171,308 TDR to the City along with the Fillmore Muni sub-station. According to the transfer agreement, the revenues from the sale of the TDR must be used to develop the sub-station parcel. To date, the City has not identified a developer interested in the Fillmore Muni sub-station, and the TDR remain in its possession.

B. The Old Mint, 88 5th Street

In 1852, President Millard Fillmore authorized a branch of the United States Mint in California, and the building was completed in 1874. After minting operations were transferred in 1937, the Treasury Department and other government agencies occupied the building. In 1961, the "Old Mint" was designated a National Historic Landmark, and in 1988 it was listed on the National Register of Historic Places. Due to needed seismic upgrades and security improvements, the building was permanently closed in 1995 and became property of the General Services Administration (GSA).

In 2001, Mayor Willie Brown established the San Francisco Old Mint Task Force to address the rehabilitation and reuse of the building. In January 2003, the San Francisco Museum and Historical Society submitted a plan to renovate the building and establish a permanent home for the San Francisco Museum. Based on the proposal, the Task Force recommended that the City enter into negotiations with the Society for a 66-year lease. In June 2003, the Board of Supervisors voted to allow the City to take possession of the vacant building from the GSA and enter into exclusive negotiations with the Society to turn the building into a museum.

According to a 2002 study completed by BAE, the seismic and rehabilitation costs—seismic retrofit, historic preservation and rehabilitation, site improvements, building system replacements and upgrades and environmental abatement—were approximately $25.5 million in 2002 dollars. Today, the costs are estimated at $50 million to $60 million (2013 dollars), plus additional costs for museum outfitting.

1. TDR Certification

The City revised the Planning Code to allow as eligible transfer lots any P zoned lots adjacent to a C-3 District that had a historic building on it that is owned by the City and County of San Francisco under the condition that the proceeds from the sale of the TDR were used to finance certain rehabilitation and restoration costs. Any lot satisfying the criteria is deemed to have an allowable FAR of 7.5:1.

In 2003, the City certified 267,728 TDR on the Old Mint and authorized the San Francisco Museum and Historical Society to negotiate the sale of the TDR.

2. TDR Transfers and Use

In 2005, CDC San Francisco LLC bought 253,195 TDR for the InterContinental San Francisco Hotel located at 888 Howard Street, adjacent to the Moscone West Convention Center. Based on recorded documents provided by the City, CDC San Francisco LLC purchased the TDR for $1,395,000, or $5.51 per TDR. This is the lowest known sales price for TDR.

Fortress Property Group purchased the remaining 14,533 TDR for approximately $262,000, or $18 per TDR. These TDR have not yet been used.

C. Old St. Mary's, 680 California

Old St. Mary's is located at the corner of California Street and Grant Avenue in the Chinatown neighborhood at 660-680 California Street and is San Francisco Landmark 2. Built in 1854, Old St. Mary's was the first Roman Catholic Cathedral built in California and is the second oldest church in San Francisco still in use.

1. TDR Certification

Old St. Mary's was originally zoned in the Chinatown Visitor Retail (CVR) Zoning District and as such, was ineligible to generate TDR. In order to be eligible for TDR, the City needed to re-zone the property and amend the General Plan to change the zoning from CVR to C-3-O. The City based its rezoning recommendation on three factors:

- The property was located one lot to the west of the C-3-O Zoning District and integrating this lot into the commercial zoning would not have a negative effect on the mixed use Chinatown neighborhood.
- No changes in use for the Church property were proposed, and the church would continue serving the community with religious and community services.
- The proposed zoning would enable Old St. Mary's to participate in the TDR program, thus enabling the preservation of the significant landmark.
- In 2010, the Zoning Administrator certified 171,567 TDR for Old St. Mary's.

2. TDR Transfers and Use

Fortress Properties worked closely with Old St. Mary's to rezone the property to allow TDR to be created on the property, and subsequent certification of the property's TDR. Fortress entered into an option agreement with Old St. Mary's to purchase all of the property's certified TDR at $18 per TDR.

Fortress Properties brokers the sale of Old St. Mary's TDR through its option agreement. When it identifies buyers for the TDR, it transfers its option price to buyers at $18 per TDR. Old St. Mary's receives $18 for each TDR, and Fortress Properties charges a brokerage fee to the buyer through a separate agreement. A current transfer has a $24 per TDR sales price, with $18 per TDR attributed to Old St. Mary's and the remaining $6 per TDR to Fortress Properties.

To date, 56,053 TDR have been transferred from the site, while 115,514 TDR remain on the parcel. Of the remaining TDR, 39,600 TDR are in the process of being transferred.

D. Former YMCA, 220 Golden Gate

Built in 1908, the former Central YMCA is a historic 9-story building located on the corner of Golden Gate and Leavenworth Avenues in the Tenderloin neighborhood.

1. TDR Certification

The TDR ordinance allows nonprofit corporations and institutions to certify the maximum amount of FAR allowed on their parcels under the zoning code, exclusive of any existing building FAR. According to the C-3 zoning code, gross FAR excludes existing floor area that is permanently devoted to cultural, educational, recreational, religious, or social services facilities available to the general public at no cost or at a fee covering actual operating expenses, provided that nonprofit corporations or institutions provide the facilities. Selling all of the potential TDR encumbers the building and the user. Only users that qualify to have the same FAR calculation may occupy the building in the future. Based on zoning and the YMCA's ownership, the TDR calculation is based on the maximum floor area based on zoning and assumes no existing building square footage in the calculation. In 1990, the YMCA certified 81,795 TDR.

2. TDR Transfers, Use, Repurchase and Restoration

In 1990, the YMCA transferred to Sepulveda Properties 76,700 TDR, which were used for 101 2nd Street, a 26-story, 388,000 square foot office building developed by Hines in 2000. In 2001, the remaining 5,095 TDR were sold to Foundry Square II Associates for Foundry II, a 10-story office development at 401 Howard completed in 2003 by Wilson Meany Sullivan and Equity Office Properties.

The facility's size and maintenance issues were becoming a financial burden on the operations of the YMCA. The property had significant deferred maintenance and seismic upgrade needs, and it was determined that the best remedy would be to sell the asset, along with the two adjacent parcels of land. In 2005, the YMCA contacted the Zoning Administrator to determine whether TDR transferred from the subject site could be repurchased and restored to the site, enabling the YMCA to sell the building unencumbered by the requirement that it be occupied by a non-profit organization per the TDR code.

Although the Certificates of Transfer of TDR specifically state that "[t]he transfer of TDR from the site of a Contributory Building…permanently restricts development of that site," the Zoning Administrator determined that the code does not explicitly prohibit re-transfer and allowed TDR to be restored to the site because it was a replacement of existing floor area, provided that the TDR was purchased in a quantity equal to the developed floor areas of the existing building, and that no TDR deriving from the existing structure is transferred from the lot so long as the existing building remains standing on the site.
The City's TDR database does not indicate that the YMCA purchased any TDR for 220 Golden Gate to replace the FAR for the existing building.

In 2010, the Tenderloin Neighborhood Development Corporation (TNDC), a nonprofit provider of affordable housing acquired the building. TNDC worked with the San Francisco Mayor's Office of Housing on the rehabilitation and redevelopment of the site. Completed in 2012, the Kelly Cullen Community provides housing to 172 formerly homeless people and includes a Department of Public Health Medical and Wellness Clinic. In addition, the historic theater and common spaces provide social activities and recreational opportunities for Tenderloin residents.

E. McDonald's, 235 Front Street

The site had a three-story brick building built in 1909 and was designated a Category IV Contributory Building in the Front-California Conservation District. In 1989, the building was severely damaged during the Loma Prieta earthquake. Based on assessments from structural engineers, the Bureau of Building Inspection and the Department of Public Works determined that the building was a public health and safety hazard and issued a demolition order, and the building was subsequently demolished. According to the Front-California Conservation District, no new or replacement structure was allowed to be constructed unless it was compatible in scale and design with the surrounding area.

In 1993, a proposal for a replacement structure was filed for a 34-foot high, one-story-plus mezzanine building containing approximately 9,625 square feet. Since the proposal did not require any exceptions, exceed a height of 75 feet, or exceed 50,000 square feet, the Section 309 application was reviewed administratively. The replacement structure was determined to be compatible in scale and design with the Front-California Conservation District, the replacement structure application was approved, and the structure was built in 1994. However, at the time, the replacement structure was not formally designated as a Compatible Replacement Building, which would have made the property eligible to transfer its TDR.

1. TDR Certification

In 2007, McDonald's USA requested a ruling from the Zoning Administrator regarding whether the replacement building at 235 Front Street was eligible to certify and sell TDR despite not formally being designated as a Compatible Replacement Building.

A Category IV Contributory Building is eligible to transfer its TDR, but the alteration or demolition of a Category IV Contributory Building in violation of Sections 1110 or 1112 of the Planning Code addressing historic preservation eliminates that property's eligibility to transfer its TDR. However, the Planning Code did not contemplate a situation in which a Category IV Contributory Building would have to be demolished due to irreparable damage sustained in a natural disaster. Since the demolition of the Category IV Contributory Building on the site was necessary to ensure public health, safety and welfare, the Zoning Administrator determined that it would be contrary to the spirit of the Planning Code to penalize the property owner by prohibiting the certification and transfer of TDR from the property.

The Zoning Administrator determined that the Category V Unrated Building at 235 Front Street was a Compatible Replacement Building and authorized TDR certification on the site.

In 2007, 38,803 TDR were certified on 235 Front Street.

2. TDR Transfers and Use

In 2007, Stockbridge/WMS Foundry 3 Equity Venture, LLC, an affiliate of Wilson Meany Sullivan, purchased 25,000 of the TDR. In 2012, Tishman Speyer purchased the project from Wilson Meany Sullivan and broke ground on the 10-story 286,000 square foot office building at 525 Howard. The project required 23,605 TDR, leaving Tishman Speyer with 1,395 TDR remaining. The 1,395 TDR have not been transferred or used. In 2008, Fortress Properties purchased the remaining 13,803 TDR from McDonald's USA and transferred the TDR to Entrex Holdings, LP. These TDR have not transferred or been used.

F. 80 Natoma

Proposed in 1998 by Robert Swig of Swig Enterprises and Kent Swig of Swig Burris Equities, LLC, the Century was to be a 51-story luxury residential building at 80 Natoma Street at Second Street. Developer Jack Myers acquired the rights to the entitled project and the 160,000 square feet of TDR intended for the project. The proposed development was located directly in the path of the underground trackway leading to the Transbay Terminal Project/Caltrain Extension Project.

In 2005, the the Transbay Joint Powers Authority (TJPA) purchased the parcel from the developer Jack for $58 million, which included the 160,000 TDR. At that time, the TJPA determined that it did not need the TDR and prepared to sell the TDR.

1. TDR Cancellation of Use

The 160,000 TDR acquired for the Century development were from 6 different parcels:

- 1 Mission
- 169 Steuart
- 236 Front
- 237 Front
- 565 Commercial
- 576-580 Market

TJPA cancelled the planned use of the TDR at 80 Natoma by recording a Cancellation of Notice of Use for each grouping of TDR. It then recorded a Statement of Eligibility for each of the six TDR sets to document the availability of the TDR for sale.

2. TDR Transfers and Use

TJPA entered into a Purchase and Sale Agreement (PSA) with Fortress Properties for the 160,000 TDR. Fortress Properties transferred its purchase rights to JP Capital, LLC. TJPA and JP Capital LLC signed an amendment to Fortress Properties' PSA, and JP Capital, LLC purchased the 160,000 TDR for $4,040,000 ($25.25 per TDR) in 2006.

In August 2011, JP Capital, LLC filed Chapter 11 bankruptcy. As part of the bankruptcy proceedings, MS Mission Holdings, LLC, a Morgan Stanley/Lincoln Property joint venture, acquired the 160,000 TDR from JP Capital. To date, MS Mission Holdings, LLC owns the TDR, and they have not been used.

G. Transfer of TDR Ownership and Bankruptcy

David Choo, a real estate investor in San Francisco was one of the most active land buyers in San Francisco in 2006 and 2007. Over this time period, Choo through a group of entities assembled seven parcels at First and Mission where he and fee developer Solit Interests Group sought approvals to build four towers designed by architect Piano. The proposed development was based on the City's Transit Center District Plan and the use of TDR, which allowed for greater development potential on the assembled parcels. As part of the due diligence process and acquisition, Choo acquired over 315,716 TDR from 12 different parcels (which includes the 160,000 parcels JP Capital acquired from 80 Natoma).

Choo financed the property acquisition process with a $67.1 million loan secured by the deeds of trust against the properties. Capital Source Finance LLC originated the loan and in April 2011 MS Mission Holdings LLC, a Morgan Stanley/Lincoln Property joint venture, acquired the loan. In May 2011, MS Mission recorded a notice of default. At the time, Choo owed $90.8 million on the property. From May to August 2011, Choo entered into restructuring negotiations with MS Mission Holdings, before filing voluntary bankruptcy.

In December 2011, Choo and MS Mission Holdings entered into a bankruptcy trial. A key component of the trial was the appraisal value of the underlying assets. Choo's appraised valuation, which relied upon the TCDP and included TDR value, set a fair market value of $140 million, while MS Mission Holdings' valuation was based on existing zoning and did not include TDR value, set valuation at $70.7 million. The trial court concluded that MS Mission could foreclose on the properties. MS Mission acquired the properties and TDR in January 2012. As a result MS Mission Holdings became the largest non-developer holder of TDR in the market.

Choo sued MS Mission Holdings alleging wrongful foreclosure among other items, but it was dismissed. Choo appealed the decision, and the case was remanded to the trial court based on the exclusion of Choo's witnesses who would have offered testimony on the properties' valuation.

H. Large Projects Built with TDR

1. JP Morgan Chase, 560 Mission Street

The JP Morgan Chase Building is an office building located at 560-584 Mission Street, on the border between South of Market and the Financial District. The 31-story Class A building is 420 feet tall and contains approximately 668,000 square feet of office. This development required 287,133 square feet of TDR, which the developer acquired from six different parcels:

- 163 2nd Street – 10,240 TDR
- 1 Bush Street – 60,000 TDR
- 132 2nd Street – 20,624 TDR
- 2 New Montgomery Street – 168,382 TDR
- 601 Mission Street – 23,448 TDR
- 364 Bush Street – 4,439 TDR

2. Millennium Tower, 301 Mission

At 645 feet in height, the Millennium Tower is the fourth-tallest structure in San Francisco. The 1.2 million square foot, luxury high rise residential complex consists of two towers, 60-stories and 11-stories. In total, the project includes 419 condominium units, 21,500 square feet of amenity space, 8,000 square feet of retail space, and a five-level underground parking garage for 340 cars.

The Millennium Tower opened for sales in 2008, the first units closed in 2009, and the final units closed in 2013. The tower generated $750 million in sales, a 25 percent return on cost for the $600 million development. The average selling price was $1.8 million per unit with 5,000 square foot penthouses selling for nearly $10 million.

Over one-third of the development's square footage was from TDR. To date, this is the largest TDR development in San Francisco, requiring 453,900 square feet of TDR from five different parcels:

- 215 Market Street – 151,511 TDR
- 77 Beale Street – 37,639 TDR
- 220 Jessie Street – 168,300 TDR
- 748 Mission Street – 77,250 TDR
- 606 Folsom Street – 19,200 TDR

Appendix D: Case Studies of TDR Programs in Other Cities

To enhance its evaluation of San Francisco's TDR program, the Seifel team reviewed other historic preservation TDR programs and, working with the technical committee, selected five programs to survey in greater depth: Los Angeles, Oakland, New York City, Portland (OR), and Seattle (WA). Appendix D includes descriptions of the five programs.

Los Angeles, California

1. Purpose of Program

The City and its Community Redevelopment Agency (CRA) developed its transfer of floor area rights (TFAR) program as part of its plan for the Central Business District (CBD) to encourage a high-density, mixed use downtown. Approved in 1975, the TFAR program was designed to achieve a wide range of objectives: preserve historic landmarks, promote affordable housing, create public open space, provide public transportation and create public/cultural facilities as well as offer flexibility in the concentration of development without overwhelming the overall capacity of the public service and infrastructure system.

During the mid-1970s when the TFAR program was adopted, allowable FAR in the CBD was decreased 50 percent from 13:1 to 6:1, and the TFAR program allowed FAR transfer from underdeveloped sites to new development parcels up to the previous FAR limit of 13:1. The program allows unused floor area potential to be transferred within the CBD as long as the originating and receiving sites were within 1,500 feet of one another and located within the same sub-district.

In 1985, the City adopted a variation of the original mechanism called the Designated Building Site ordinance as a mechanism to preserve historic buildings in the downtown and the City's Central Library in particular. To use this variation, the City Council must find that the Designated Building Site designation is needed to preserve and restore a structure that is designated as historic by the Cultural Heritage Commission, and the building must be City owned and operated. Approval as a Designated Building Site establishes a maximum floor area ratio of 13:1 for the entire land area within the Designated Building Site, not just the receiving site.

2. Program Process

Historically, CRA was responsible for administering the TFAR program, the land use plan and the vision for the CBD Plan. In the original TFAR program, the CRA considered whether an application for TFAR was consistent with the Redevelopment Plan/Community Plan, appropriate within the circulation system and compatible with existing/proposed development as well as the infrastructure system. If the CRA Board approved the TFAR application, this process was repeated three more times by the City Planning Commission, Los Angeles City Council and the Mayor of Los Angeles.

In 2010, several of the CRA's Project Areas were about to expire which meant that the TFAR program would also expire. The City wanted to preserve the TFAR program for these areas, and thus the City adopted TFAR regulations to designate the City as lead on TFAR developments in expiring CRA Project Areas, but it did not include the other CRA Project Areas.

The statewide dissolution of redevelopment agencies in 2011 impacted the TFAR program for the then-active Project Areas. While the CRA had the responsibility for implementing land use regulations in its Project Areas, it was unclear whether the authority transferred to the Successor Agency. The Planning Department is in the process of absorbing the land use regulations and programs under its capacity.

3. Program Experience and Pricing

The City owns sizeable amounts of transferable floor area in the LA Convention Center and other public sites and have the largest TFAR supply in the market. This serves as an inventory of readily available TFAR, thereby assuring developers that they will be able to buy the floor area they need.

When the program was initially developed, CRA brokered publicly and privately owned TFAR. By doing this, private owners were able to have their TFAR based on the receiving site's valuation rather than the sending site's valuation, which would have been minimal. Over time, publicly owned TFAR has been the main source for TFAR transactions.

For many years, publicly owned TFAR was sold for $35 per square foot of TFAR. The revenues were put into a fund to be used for affordable housing, open space, historic preservation, public transportation and public/cultural facilities. The original $35 flat fee per TFAR has since been replaced by the following formula: (a) take the sales price or appraised value of the receiving site; (b) divide by the receiving site area; (c) divide again by the site's baseline density limit; (d) multiply by 40 percent; and (e) multiply again by the number of square feet to be transferred to the site. Based on the formulaic TFAR valuation, TFAR prices have ranged between $21 to $23.

For TFAR transactions, the developer must also pay a Public Benefit Payment. When the donor site is owned by the City or CRA, the payment to the City is called the Transfer Payment and is calculated as 10% of the per square foot TFAR price, or $5 per square foot of TFAR, whichever amount is greater. For privately transacted TDR, the Public Benefit Payment is $5 per TFAR. Subject to the City's approval, an applicant can apply a portion of the Public Benefit Payment directly to the actual benefits. For example, a developer could apply a portion of the funds for pedestrian amenities. The remainder is deposited in a Public Benefit Payment Trust Fund.

As part of public TFAR transfers, the City establishes timelines for optioning TFAR as well as an expiration date for each transaction. If the TFAR are not used by the negotiated expiration date, the developer must re-acquire TFAR for the project.

Recently the City revised the total buildable square footage calculation for TFAR receiving sites to encourage development around transit. For projects within 1,500 feet of transit, the buildable area calculation for receiving sites is extended from the property line to the middle of the road, which allows more density on the receiving sites.

In 2007, the City created the Downtown Housing Incentives to encourage downtown housing, which is an alternative to TFAR purchases to increase density. The City removed the density restrictions for housing from zoning based on the inclusion of affordable units. The ordinance modified several code sections, offering developers incentives to increase buildable area, reduce parking requirements, as well as yard and open space requirements on housing projects that contain a requisite number of affordable units within the zone. Projects that qualify must offer 5% of the total number of units to Very Low Income individuals; and either 10% / 15% / 20% of the total units to Low/Moderate/Workforce individuals and must replace, on a one-for-one basis, any affordable housing units that were lost through the redevelopment of the site. While this program has not been used yet due to the soft housing market, it could impact TFAR demand in the future.

Oakland, California

1. Purpose of Program

For over two decades, Oakland has had a mechanism that allows transfers of residential density between abutting properties. The TDR ordinance was designed to encourage the preservation of turn-of-the-century summer homes dating back to the days when wealthy families used Oakland as a retreat from San Francisco. However, the TDR ordinance is not limited to historic residential buildings, it can be used in specific residential zones. While Oakland revised its zoning code in 2011, the TDR provision (formerly Section 7057) was inserted in the new code unchanged as Section 17.106.050.

2. Program Process

Under the Oakland program, a potential sending site could be any property in the City zoned for high-density residential (R-60, R-70, R-80 and R-90). Development rights are made available for transfer by restricting the number of dwelling units or floor area that can be developed on the sending site. The legal document restricting future development on the sending site must be approved by the City Attorney and filed with the County Recorder. Only properties which abut the sending site may be used as receiving sites. Once approved, these receiving sites can use the development rights acquired from the sending sites to exceed the density allowed by the site's base zoning.

The transfer is made through the conditional use permit (CUP) process. In order to be approved, the proposed density increase must be provided for in the zoning regulations for the receiving site. A TDR application must also meet all of the criteria generally required for the granting of a CUP. In addition, the City must find that the transfer of dwelling units or floor space would have an impact that is at least no greater than the impact which would result from the amount of development automatically allowed by the zoning code for the sending and receiving sites.

3. Program Experience and Pricing

It is likely that interest in transferring development rights is reduced by the need for receiving sites to abut sending sites. In addition, base zoning can allow floor area ratios as high as 7:1 to potential receiving sites, typically supplying more density than most developers can use.

The City's TDR code section requires sending and receiving sites to be adjacent. But the City has previously approved a variance to allow this transfer between nearby but not adjacent properties.

New York City

1. Purpose of Program

New York's TDR program began in 1968 and is one of the most active and mature TDR programs in the U.S. It was initiated to mitigate possible financial losses by owners whose properties were designated as landmarks and to allow greater flexibility through a zoning lot merger, or density zoning. Over time, it has been modified to include an affordable housing component.

There are three ways to transfer TDR: zoning lot merger, certification or special permit, and through the inclusion of affordable housing.

Zoning lot merger is the most common type of TDR transfer. The transfers are limited to adjacent properties with a minimum of ten contiguous feet between adjacent properties. If the properties are not adjacent, but within the same block, neighboring parcels can be included through assemblage of adjacent parcels. For the zoning lot merger, the properties do not have to be under single ownership, but they are treated as one.

The certification process applies to special zoning subdistricts that promote historic preservation, open space and unique cultural resources such as the Theater District. The certification process does not require parcels to be adjacent, but they need to be within the same subdistrict. Designated landmarks that are not in a special subdistrict require a special permit. In these cases, the site may be adjacent, across the street, or diagonal if the site is on a corner.

Inclusionary housing TDR requires that the development allocates at least 20 percent of the floor area to households earning 80 percent AMI or below. For each housing square foot, the development receives an additional 0.25 square feet of development. The FAR can be transferred off-site to a project in the same community district or a project within ½ a mile.

2. Program Process

Because a zoning lot merger constitutes an actual purchase of some or all of the unused development rights of certain tax lots, the parties to this transaction customarily execute and record a deed-like instrument known as a Zoning Lot Development Agreement (ZLDA) documenting the sale and transfer of development rights.

The ZLDA, and any related purchase and sale contracts among the parties, govern the delivery of the TDR. The ZLDA contains the principal business terms of the transaction: the purchase price, the development rights, if any, retained by the grantor lot for potential future use, and the number of development rights that are being made available to the purchaser. Because a ZLDA marks the transfer of a real property interest upon its recordation, the parties are required to pay city and state real property transfer taxes on the sales price.

Occasionally, instead of a ZLDA, parties will execute a more streamlined instrument that, by its terms, completes the transfer of the development rights. Transfers that occur through mechanisms other than zoning lot mergers are recorded using different instruments.

3. Program Experience and Pricing

Supply and demand dictate the price of TDR in the market, but air rights are estimated to trade for 50 to 60 percent of the underlying land value. Twenty years ago, $45 a square foot was considered a typical price. Based on 210 arm length TDR transactions from 2003 to 2011, the average TDR price was

$171 per square foot. In the last six months of 2012, one broker was involved in the negotiation of 11 transactions totaling 291,623 square feet of air rights, with an aggregate worth of $75 million or $257 per square foot. Pricing in prime neighborhoods has approached $450 per square foot in recent years.

Portland, Oregon–Transfer of FAR (TDR)

1. Purpose of Program

The City of Portland's density bonus and transfer programs reflect a number of programs adopted from 1988 through 2003 for the Central City. The programs were instituted to meet a range of public policy objectives, including preserving historic landmarks, residential housing and SRO units and open space in the South Waterfront subdistrict. In particular, Portland wanted to encourage integrated design and development of larger areas to allow greater cohesion and place making while preserving historic landmarks and creating a revenue stream for rehabilitation in addition to protecting affordable housing.

These programs have been successful to varying degrees in achieving these objectives. The overall entitlement system consists of 18 bonus options and 6 transfer options adopted over almost 20 years. The programs operate within the maximum density and height parameters of the Central City.
The programs can compete with each other, with developers tending to opt for the lowest cost option for additional FAR.

The Central City's FAR transfer options break down into four basic types:

1) Intra-project transfer: The Abutting Lot transfer is used within a single development project that includes multiple entitled lots which border each other, or in some cases face each other across a right-of-way. This option involves shifting some FAR potential from one lot to boost the potential on another lot above its base FAR.
2) Cross-district transfers: There are three examples of this type (SRO, Historic Landmark, and Residential transfers). These options involve transferring the FAR from a site that contains a building to be preserved to a new development site. This development potential can be purchased from the owner of the sending site, and transferred over a fairly wide range, creating a market for FAR.
3) Sub-district transfer: Within the South Waterfront sub-district, FAR can be sold and transferred among sites that do not have to be abutting.
4) Central City Master Plan transfer: This option is used within a master planned area that includes multiple lots. The cumulative FAR potential from the lots may be shifted among the individual sites, so that any individual site may end up with density exceeding the base amount. This transfer option is unique because it does not limit the amount of FAR that can be transferred to an individual site (whereas other transfer and bonus options are generally limited to an additional 3:1 FAR). In addition, master planned areas can consist of non-contiguous sites, which potentially allow transfers across the Central City.

2. Program Experience and Pricing

The cost of FAR in the Transfer Program is determined in many cases through negotiation. Professionals in the market reported that transferable FAR sold within a range of $6.50 to $18.00 per square foot in 2007, with an average of roughly $10.00 per square foot.

Seattle, Washington

1. Purpose of Program

In 1985, as part of the comprehensive Downtown Restoration effort, the City developed its TDR program to help retain low income housing, preserve historic landmarks, encourage infill development, and create incentives for varying building scale in the downtown. In 1988, the City established a TDR bank.

2. Program Requirements

The Seattle downtown revitalization program includes a TDR program that is based on districts that have specific planning objectives. Each district has its own mechanisms, guidelines and TDR calculation formulas according to the specific planning goals for the district. Although the specific use determines the eligibility for sending and receiving areas, the amount of TDR rights is determined on square footage. In general, the transferable area is determined based on the potential floor area that could be developed on a site and subtracting the amount that has already been developed.

3. Program Process

In the TDR processing, the City reviews the TDR calculations and certifications to verify the accuracy of the amount of eligible TDR from the sending site, and also verifies the paperwork for the transfer from the sending site to the receiving site. The City tracks all of the TDR transactions in a manually updated database and generates quarterly reports.. All transactions, whether private or through the TDR bank, require execution and recordation of a TDR Agreement between the owner of the TDR site and the City. TDR are transferred by a Statutory Warranty Deed and are recognized by the courts as real property.

4. Program Experience and Pricing

The City has revised its zoning and TDR programs to incentivize TDR use. Under the original TDR program, maximum allowable density could be reached without the use of TDR credits through the inclusion of other amenities and bonuses. Height and density regulation revisions in 1989 significantly reduced building height limitations and the base and maximum FAR. As a result, many of the older buildings in the City were at or above their FAR, which reduced the available supply of TDR credits.

Due to the complexity of the program and to encourage the preservation and rehabilitation of particular uses, the City developed a TDR Bank to facilitate the purchase of TDRs. To encourage affordable housing preservation, the City gave the TDR bank $1.2 million to purchase housing TDR from sending sites. In 1994, the City contributed $3.1 million to the TDR bank for the purchase of development rights from landmark performing arts theaters. For the first 11 years, the City was the sole purchaser of TDRs. The first private purchase from Seattle's TDR bank was in 1997 for 130,000 square feet for $1.5 million, approximately $11.54 per TDR. Each deal processed through the bank is privately negotiated. Initially, the bank sold TDR for less than they were purchased, but increased oversight and tracking in early 2000 ensured that the bank was not losing money.

In Seattle, TDR pricing has ranged from $15 to $20 per TDR. The total TDR purchases made by the City between 1992 and 2012 is approximately $6.3 million, with an average square foot cost of $13. The city's total TDR sales between 1997 and 2012 is $12,257,305, with an average square foot cost of about $15.

Pricing has been impacted by other City policies. For increased FAR, the first 75% of the needed additional floor area can be acquired by paying the Housing/Childcare Fee or through the purchase of privately held TDR or housing TDR from the TDR bank. As a result, current housing TDR pricing is comparable to the Housing/Childcare Fee, which is approximately $22 per square foot.