

Land Development Incentives Summary

§ 136-66.10. Dedication of right-of-way under local ordinances.

- *Required* right-of-way dedication creates **density credits** provided under this regulation that are useful solely in a localized area defined as “contiguous land owned by the applicant.”
- *Voluntary* right-of-way dedication creates **density credits** provided under this regulation that can be used locally **or** that can be transferred as **severable development rights** to designated receiving districts.
- This regulation *solely* applies to roadways / corridors *already* identified in an established and adopted plan.

§ 136-66.11. Transfer of severable development rights.

- **Severable development rights** require separate use districts or overlay districts.
- **Severable development rights** allow for the transfer of density credits to separate parcels (provided the parcels are in the appropriate zoning districts).
- This regulation applies to development in general and may be applicable for preserving transportation corridors, natural resources, open space, future public facility development, etc.

§ 160D-704. Incentives.

- These incentives can be used to encourage more sustainable development, but they are unlikely to directly affect transportation planning alone.

Development Finance Tools

Tax Increment Financing (TIF)

- North Carolina Project Development Financing Act (2003-403, s. 2.).
- **Project development bonds** to finance capital costs within a specified district.
- Must enable, facilitate, or benefit private development.
- Debt is secured by and repaid from the **additional property tax revenue** resulting from the area’s new private development.
- Public transportation facilities, improvements to subdivision and residential streets, streets and sidewalks, and more.

Municipal Service Districts (MSDs)

- The Municipal Service District Act of 1973; §160A, Article 23. Municipal Service Districts.
- Defined area within a city, town or village in which an **additional property tax** is levied to provide projects or extra services that benefit the properties in that district.
- Construction of bike and pedestrian facilities, transit stops, parking facilities, and more.

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Land Development Incentives

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FIRST DRAFT

I. From the White Paper

Encourage member jurisdictions to consider land development tools allowed by the NCGS. Such tools contribute to incentives for development which attracts business and boosts the economy, and in turn, can be used to protect future corridors. Examples of land development tools include:

- *Density Bonus*: an incentive-based tool that allows developers to increase the maximum allowable development on a site in exchange for either funds or in-kind support for specified public policy goals. This tool is most useful where market demand is high and land availability is limited. *NCGS 136-66.10*
- *Density Transfer*: a method of retaining areas of significance on a property by compacting density, allowing for maintenance of open spaces, historic, or sensitive areas. In certain jurisdictions, developers can increase the density of a zone proposed for development by purchasing property intended for public usage and transferring the permitted density of that area into the proposed developmental zone. *NCGS 136-66.10*
- *Transfer of Development Rights* is a voluntary, incentive-based program that allows landowners to sell development rights of their land to a developer who then can use these rights to increase the density of development at another designated location. *NCGS 136-66.10*

II. What are Development Incentives?

First implemented in the late 1950s and 1960s, zoning incentive systems were a response to municipalities' desires to enjoin private developers in improving the appearance of cities without spending public money. Though initially designed to primarily improve community design, development incentives are now a fairly common tool used to meet a range of planning objectives. Municipalities are granted the authority to establish such incentive programs through their state enabling legislation.

Generally, incentive programs offer rights to a developer in exchange for public benefits to the community. These public benefits could include providing public plazas, bike facilities, affordable housing, or other amenities.

The most common form of development incentive is the density bonus, which allows a developer to construct a greater number of market rate units or building square footage than would otherwise have been allowed, in exchange for providing community benefits such as including affordable housing units. Generally, the density bonus does not exceed 20% of normal density and the exact bonus amount granted is determined by local officials. The incentive creates a voluntary path for affordable housing contributions that a developer may choose if the value of the incentive outweighs the cost of providing the community benefit.

A density bonus and other development incentive policies incur no direct cost for the local government. Because of its voluntary nature, development incentives can also benefit developers by providing a potential path to building more on a given site.

Development incentives can apply to either residential or nonresidential districts. It can be applied to all of the zoning district, or the incentive could be part of a zoning overlay district.

Examples of incentive programs include:

- Inclusionary housing programs
- Flexible set back allowance
- Reduced parking standards
- Relaxed Floor Area Ratio (FAR) requirements
- Transfer of development rights
- Reduction of impact fees

III. Development Incentives in NC

§ 136-66.10. Dedication of right-of-way under local ordinances.

This section specifically examines situations in which development occurs on a portion of a street or highway corridor that is identified in an established and adopted plan. The General Assembly has delineated two options:

- (1) A city or county may require an applicant to dedicate right-of-way for a street or highway purpose, provided that the city or county “allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant.”
- (2) If a city or county does not require an applicant to dedicate right-of-way but the applicant still elects to dedicate such right-of-way, “the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts.”

Importantly, the General Assembly also defines the term **density credit** within this subsection as: “the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan.” (1987, c. 747, s. 7, 1989, c. 595, s. 4; 2014-108, s. 8(a).)

Key Takeaways:

- *Required* right-of-way dedication creates **density credits** provided under this regulation that are useful solely in a localized area defined as “contiguous land owned by the applicant.”
- *Voluntary* right-of-way dedication creates **density credits** provided under this regulation that can be used locally **or** that can be transferred as **severable development rights** to designated receiving districts.
- This regulation *solely* applies to roadways / corridors *already* identified in an established and adopted plan.

§ 136-66.11. Transfer of severable development rights.

The General Assembly begins this subsection by defining the term **severable development rights** as: “the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.”

The General Assembly follows that definition by establishing protocols for local jurisdictions wishing to use severable development rights:

- (1) To allow severable development rights, a city or county must provide for the establishment, transfer, and exercise of severable development rights in its zoning and subdivision ordinances.
- (2) A city or county must convey the deed for the severable development rights within *10 days* of approval of the final plat / issuance of the building permit.
- (3) A city or county wishing to implement severable development rights must amend their zoning ordinance to *designate severable development rights receiving districts*.
 - (a) These districts may be designated as separate use districts or as overlay districts.
 - (b) No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district.

- (c) A city or county may limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district.
- (d) A severable development right shall be treated as an interest in real property.

Key Takeaways:

- **Severable development rights** require separate use districts or overlay districts.
- **Severable development rights** allow for the transfer of density credits to separate parcels (provided the parcels are in the appropriate zoning districts).
- This regulation applies to development in general and may be applicable for preserving transportation corridors, natural resources, open space, future public facility development, etc.

§ 160D-704. Incentives.

In the latest critical update to land use regulations in North Carolina, the General Assembly explicitly allowed for local jurisdictions to offer incentives for developments that reduce energy consumption.

The General Assembly defined the intent of this subsection as providing incentives for new development or redevelopment that “makes a significant contribution to the reduction of energy consumption and increased use of sustainable design principles.”

Within this subsection the following incentives are identified:

- Density bonus
- Adjustments to otherwise applicable development requirements
- Other incentives

Further, the General Assembly identifies the following certifications as explicitly being worthy of incentives:

- Leadership in Energy and Environmental Design (LEED) certification
- Green Globes program standards adopted by the Green Building Incentive
- A certification or rating by a nationally recognized system that is equivalent or greater than the above

Key Takeaways:

- These incentives can be used to encourage more sustainable development, but they are unlikely to directly affect transportation planning alone.

IV. Using Development Incentives

With regards to transportation planning, incentive zoning can influence development in the following critical ways:

- Directly incentivize developers to dedicate right-of-way for transportation corridors
- Establish incentives that encourage increased density of development around transit stops (e.g., transit-oriented development)
- Guide land use and development along high-traffic corridors in a manner that allows for the maintenance of open spaces, historic, or sensitive areas

Implementing incentive zoning in your jurisdiction will require some or all of the following, depending on the methods and incentives you wish to use:

- Incorporate an incentive zoning program into your zoning and subdivision ordinances.
 - (1) **Define the purpose for the incentive.** Goals and objectives in a comprehensive plan should help define the purpose of the incentive (e.g. encourage developers to protect open space, agriculture, or historical structures, create an amenity such as a trail or public space, preserve critical right-of-way, or provide affordable housing).
 - (2) **Identify the area(s) the incentive is allowed.** Areas should be identified that meet the program’s goals. If the purpose is to increase density near public transit for example, then develop land near transit corridors should be identified. Identified areas should be mapped as part of the ordinance.

- (3) **Develop specific policy for allowing bonuses.** A written policy must complement every area identified on the map. Policy language should identify allowable density increases (i.e. Total number of units or maximum square footage). If resources are to be protected, legal means, such as easements, must be included. If amenities are to be created, such as trails, standards must be included for acceptable design, construction, and location.
- Adopt a plan that incorporates future transportation corridors (like the CTP).
 - **Right-of-way dedication** triggers when a subdivision or use pursuant to a zoning or building permit affects a corridor or a street or highway on a plan.
 - Create a zoning district designated for receiving severable development rights.
 - This can be a separate use district or an overlay district.
 - Carefully examine and follow notification requirements.
 - Right-of-way dedications require notification of both the applicant and the property owner (if they are different individuals), and the property owner shall be the one to receive the density transfer credits.
 - A deed for the severable development rights shall be conveyed within 10 days after the approval of the final subdivision plat or issuance of the building permit. This deed must be recorded within 15 days of receipt, or it becomes null and void.

V. Implemented Examples

Town of Chapel Hill

[3.9 - Incentive Zoning](#)

The Town of Chapel Hill has adopted incentive zoning to “provide for increased levels of allowable development intensities as incentive for the provision of certain public benefits beyond those normally required... [of] private developers.” This section identifies criteria for receiving bonuses, establishes sending and receiving areas for the transfer of development rights, and outlines the process for recordation or transfer of development rights.

City of Charlotte

[Chapter 20 - Subdivisions](#)

The City of Charlotte discusses the transfer of development rights for developments that affect public school and public parking sites (20-14 (h)) or public facilities (20-14 (i)) as well as with regards to the provision of street rights-of-way and necessary improvements (20-52. - Improvement responsibility).

City of Greensboro

[Article 4. 30-4-1.3 Application Requirements](#)

The City of Greensboro has explicitly identified review fee rebates for developments that reduce energy consumption (correlating directly to § 160D-704. Incentives).

City of Wilmington

[Article 10. - Exceptionally Designed Projects](#)

The City of Wilmington has specifically identified incentives to encourage high-quality development in areas classified as Watershed Resource Protection or Conservation Areas in the Coastal Area Management Act (CAMA) Land Classification Map.

[Sec. 18-196. - CBD, Central Business District.](#)

Furthermore, they provide for incentives of the development of undeveloped parcels in a particular area of their CBD to encourage infill development in terms of allowable height and density bonus.

[Sec. 23.11. - Low- and moderate-income housing; density bonuses.](#)

Finally, the City has established incentives for the development of low- and moderate-income housing in the form of density bonuses.

VI. Pertinent Statutes

§ 136-66.10. Dedication of right-of-way under local ordinances.

- (a) Whenever a tract of land located within the territorial jurisdiction of a city or county's zoning or subdivision control ordinance or any other land use control ordinance authorized by local act is proposed for subdivision or for use pursuant to a zoning or building permit, and a portion of it is embraced within a corridor for a street or highway on a plan established and adopted pursuant to G.S. 136-66.2, a city or county zoning or subdivision ordinance may provide for the dedication of right-of-way within that corridor pursuant to any applicable legal authority, or:
- (1) A city or county may require an applicant for subdivision plat approval or for a special use permit, conditional use permit, or special exception, or for any other permission pursuant to a land use control ordinance authorized by local act to dedicate for street or highway purpose, the right-of-way within such corridor if the city or county allows the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land owned by the applicant. No dedication of right-of-way shall be required pursuant to this subdivision unless the board or agency granting final subdivision plat approval or the special use permit, conditional use permit, special exception, or permission shall find, prior to the grant, that the dedication does not result in the deprivation of a reasonable use of the original tract and that the dedication is either reasonably related to the traffic generated by the proposed subdivision or use of the remaining land or the impact of the dedication is mitigated by measures provided in the local ordinance.
 - (2) If a city or county does not require the dedication of right-of-way within the corridor pursuant to subdivision (1) of this subsection or other applicable legal authority, but an applicant for subdivision plat approval or a zoning or building permit, or any other permission pursuant to a land use control ordinance authorized by local act elects to dedicate the right-of-way, the city or county may allow the applicant to transfer density credits attributable to the dedicated right-of-way to contiguous land that is part of a common development plan or to transfer severable development rights attributable to the dedicated right-of-way to noncontiguous land in designated receiving districts pursuant to G.S. 136-66.11.
 - (3) Units of local government that require or accept right-of-way dedications under this subsection shall notify the applicant and the property owner when the local government begins review of or negotiations for a right-of-way dedication and associated density credit transfer, whichever first occurs. If the property owner is not the applicant, then the property owner shall be given notification of right-of-way dedications and any related density credit transfers under this subsection. The notification shall be sent to the last known address for the owner and shall include a copy of this section and any local ordinances, policies, or procedures governing the calculation and application of the density credit transfer.
- (b) When used in this section, the term "density credit" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, and/or other land use control ordinance authorized by local act, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land in that is part of a common development plan. (1987, c. 747, s. 7, 1989, c. 595, s. 4; 2014-108, s. 8(a).)

§ 136-66.11. Transfer of severable development rights.

- (a) When used in this section and in G.S. 136-66.10, the term "severable development right" means the potential for the improvement or subdivision of part or all of a parcel of real property, as permitted under the terms of a zoning and/or subdivision ordinance, expressed in dwelling unit equivalents or other measures of development density or intensity or a fraction or multiple of that potential that may be severed or detached from the parcel from which they are derived and transferred to one or more other parcels located in receiving districts where they may be exercised in conjunction with the use or subdivision of property, in accordance with the provisions of this section.

- (b) A city or county may provide in its zoning and subdivision control ordinances for the establishment, transfer, and exercise of severable development rights to implement the provisions of G.S. 136-66.10 and this section.
- (c) City or county zoning or subdivision control provisions adopted pursuant to this authority shall provide that if right-of-way area is dedicated and severable development rights are provided pursuant to G.S. 136-66.10(a)(2) and this section, within 10 days after the approval of the final subdivision plat or issuance of the building permit, the city or county shall convey to the dedicator a deed for the severable development rights that are attributable to the right-of-way area dedicated under those subdivisions. If the deed for the severable development rights conveyed by the city or county to the dedicator is not recorded in the office of the register of deeds within 15 days of its receipt, the deed shall be null and void.
- (d) In order to provide for the transfer of severable development rights pursuant to this section, the governing board shall amend the zoning ordinance to designate severable development rights receiving districts. These districts may be designated as separate use districts or as overlaying other zoning districts. No severable development rights shall be exercised in conjunction with the development of subdivision of any parcel of land that is not located in a receiving district. A city or county may, however, limit the maximum development density or intensity or the minimum size of lots allowed when severable development rights are exercised in conjunction with the development or subdivision of any eligible site in a receiving district. No plat for a subdivision in conjunction with which severable development rights are exercised shall be recorded by the register of deeds, and no new building, or part thereof, or addition to or enlargement of an existing building, that is part of a development project in conjunction with which severable development rights are exercised shall be occupied, until documents have been recorded in the office of the register of deeds transferring title from the owner of the severable development rights to the granting city or county and providing for their subsequent extinguishment. These documents shall also include any other information that the city or county ordinance may prescribe.
- (e) In order to implement the purposes of this section a city or county may by ordinance adopt regulations consistent with the provisions of this section.
- (f) A severable development right shall be treated as an interest in real property. Once a deed for severable development rights has been transferred by a city or county to the dedicator and recorded, the severable development rights shall vest and become freely alienable. (1987, c. 747, s. 7.)

§ 160D-704. Incentives.

- (a) For the purpose of reducing the amount of energy consumption by new development, a local government may adopt ordinances to grant a density bonus, make adjustments to otherwise applicable development requirements, or provide other incentives within its planning and development regulation jurisdiction, if the person receiving the incentives agrees to construct new development or reconstruct existing development in a manner that the local government determines, based on generally recognized standards established for such purposes, makes a significant contribution to the reduction of energy consumption and increased use of sustainable design principles.
- (b) In order to encourage construction that uses sustainable design principles and to improve energy efficiency in buildings, a local government may charge reduced building permit fees or provide partial rebates of building permit fees for buildings that are constructed or renovated using design principles that conform to or exceed one or more of the following certifications or ratings:
 - (1) Leadership in Energy and Environmental Design (LEED) certification or higher rating under certification standards adopted by the U.S. Green Building Council.
 - (2) A One Globe or higher rating under the Green Globes program standards adopted by the Green Building Initiative.
 - (3) A certification or rating by another nationally recognized certification or rating system that is equivalent or greater than those listed in subdivisions (1) and (2) of this subsection. (2019-111, s. 2.4; 2020-3, s. 4.33(a); 2020-25, s. 51(a), (b), (d).)

VII. Development Finance Tools

North Carolina also allows for development finance tools that are designed to attract private investment into local communities and economic development projects. Unlike the above land development tools, these mechanisms focus on the financial aspects of development through additional taxes.

Tax Increment Financing (TIF)

Referred to as [project development financing](#) in North Carolina, a TIF is a debt financing mechanism that allows local governments to borrow money to fund certain public improvements with the purpose of attracting private investment in a designated area. Debt incurred in this manner is both secured by and repaid from the **additional property tax** revenue resulting from the area's new private development.

Project development bonds may be used only to finance the **capital costs** of specified purposes that enable, facilitate, or benefit private development within the **development financing district**, including:

- Capital costs of public transportation facilities, including equipment, buses, railways, ferries, and garages
- Capital costs of improvements to subdivision and residential streets
- Capital costs of streets and sidewalks

This tool is enabled by the [North Carolina Project Development Financing Act](#) (2003-403, s. 2.).

Municipal Service Districts (MSDs)

As enabled by The Municipal Service District Act of 1973 and updated in [Article 23. Municipal Service Districts of §160A](#), an [MSD](#) is a defined area within a city, town, or village in which the unit's governing board levies an **additional property tax** in order to provide projects or extra services that benefit the properties in that district.

§160A-536 defines the various purposes for which MSDs may be established. Among those purposes are:

- Downtown revitalization projects
 - Construction of pedestrian malls, bicycle paths, overhead pedestrian walkways, sidewalk canopies, and parking facilities both on-street and off-street
 - Improvements to relieve traffic congestion in the central city and improve pedestrian and vehicular access to it
- Urban area revitalization projects
 - Similar to downtown revitalization projects, but can be applied to areas within a city that meet one or more conditions:
 - It is the central business district of the city.
 - It consists primarily of existing or redeveloping concentrations of industrial, retail, wholesale, office, or significant employment-generating uses, or any combination of these uses.
 - It is located in or along a major transportation corridor and does not include any residential parcels further than 150 feet from the corridor or nonresidentially zoned parcels further than 1500 feet from the corridor.
 - It has as its center and focus a major concentration of public or institutional uses.
- Transit-oriented development projects
 - A public transit area is an area within a one-fourth mile radius of any passenger stop or station located on a mass transit line.
 - Includes the following services and facilities:
 - Passenger stops and stations on a mass transit line.
 - Parking facilities and structures associated with passenger stops and stations on a mass transit line.

MSDs must be established or amended by ordinance (instead of resolution), and property owner(s) may petition the governing board to establish, exclude, or remove property from an MSD.