

**TRANSFER OF DEVELOPMENT RIGHTS FOR
THE EFFECTIVENESS OF THE CONSERVATION
PLANS: A CASE FROM HISTORIC KEMERALTI,
1st RING RESIDENTIAL AREAS IN IZMIR**

**A Thesis Submitted to
the Graduate School of Engineering and Sciences of
İzmir Institute of Technology
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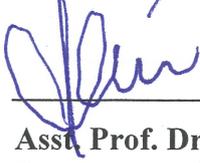
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**by
Gamze GÜZLE**

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İZMİR**

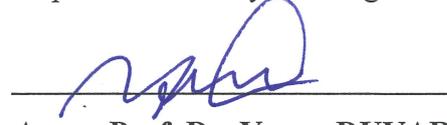
We approve the thesis of **Gamze GÜZLE**

Examining Committee Members:



Asst. Prof. Dr. Figen AKPINAR

Department of City and Regional Planning, İzmir Institute of Technology



Assoc. Prof. Dr. Yavuz DUVARCI

Department of City and Regional Planning, İzmir Institute of Technology



Prof. Dr. Şeniz ÇIKIŞ

Department of Architecture, İzmir Institute of Technology



Assoc. Prof. Dr. Muhammed AYDOĞAN

Department of City and Regional Planning, Dokuz Eylül University



Assoc. Prof. Dr. Mine TURAN

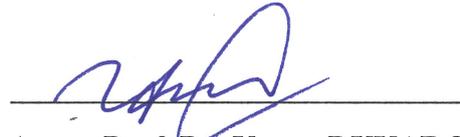
Department of Architectural Restoration, İzmir Institute of Technology

11 July 2019



Asst. Prof. Dr. Figen AKPINAR

Supervisor, Department of City and Regional Planning, İzmir Institute of Technology



Assoc. Prof. Dr. Yavuz DUVARCI

Co-Supervisor, Department of City and Regional Planning, İzmir Institute of Technology



Assoc. Prof. Dr. Ali Can DEMİRKESEN

Head of the Department of City and Regional Planning

Prof. Dr. Aysun SOFUOĞLU

Dean of the Graduate School of Engineering and Sciences

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ABSTRACT

TRANSFER OF DEVELOPMENT RIGHTS FOR THE EFFECTIVENESS OF THE CONSERVATION PLANS: A CASE FROM HISTORIC KEMERALTI, 1ST RING RESIDENTIAL AREAS IN IZMIR

The efforts for conservation of cultural heritage in historical settlements are highly problematic issue in Turkey. One of the main reasons for this is highly associated with the limited fiscal compensation provided by the central ministries and local bodies for those people who live and/or possess immobile property under restrictions of their development rights. For this reason, it is indispensable to introduce new tools for the effectiveness of the conservation activities of the heritage areas. On the other hand, with the enactment of the regulations Transfer of Development Rights (Law no: 5226/2004) is entered Turkish Planning System as a new and innovative solutions. However, there has been any available application of the TDR and implementing regulation yet. The main objective of the thesis is to discuss the applicability of the TDR as an instrument for the ease of the conservation procedure in the 1st Ring Residential Area which is located in *Izmir's* Historic core areas, *Kemeralti* region. In methodology, a bundle of techniques such as survey analysis and depth questionnaires are used. We made a comparative study based on a typical "what-if case" that if the case study area were not really under the status of conservation then how it would be developed in accord with the Development Plan's right. Assumption that "If the Agora-Kemeralti region were not really under the conservation status, it would be similar to the Alsancak-Çankaya region which is 500 meters away." the comparison of the housing market value between the two areas realized the restricted development right by the conservation plan. The Ministry of Culture and Tourism grants only accounts for 48% of the total maintenance and restoration cost. Due to financial deficiencies, it is not feasible to preserve the region with current planning tools. Even though, the preservation of Historic *Kemeralti* seems to be a difficult challenge, there seems to be some positive clues for the future with the application of the TDR.

Keywords: Cultural heritage, conservation planning, TDR, and its applicability.

ÖZET

ETKİN BİR KENTSEL KORUMA PLANLAMASI İÇİN TAŞINMAZ HAKLARININ TRANSFERİ: TARİHİ KEMERALTI BÖLGESİ, 1.HALKA KONUT DOKUSU, İZMİR ÖRNEĞİ

Türkiye’de tarihi yerleşimlerde kültürel mirasın korunmasına yönelik çabalar, oldukça sorunludur. Bunun temel nedenlerinden biri taşınmazı üzerinde koruma amacıyla imar kısıtlaması olan mülk sahipleri için, merkezi ve yerel yönetimler tarafından verilen maddi kaynakların yetersiz olmasıdır. Bu nedenle kültürel miras alanlarında etkili koruma faaliyetleri için yeni araçların gerekliliği kaçınılmazdır. Diğer taraftan, 2004 yılında düzenlenen 5226 sayılı kanunun yürürlüğe girmesiyle birlikte İmar Haklarının Aktarımı, “Yapılanma haklarının devri” Türk Planlama Sistemine yenilikçi bir çözüm olarak girmiştir. Ancak kanunun düzenlendiği tarihten bugüne, İHA’nın mevcut bir uygulamasının yanısıra uygulama yönetmeliği de henüz hazırlanmamıştır. Bu çalışmanın amacı, İHA’nın İzmir’in tarihi kent merkezi Kemeraltı bölgesinde yer alan 1. Halka konut dokusundan seçilen bir alanda koruma uygulamalarının etkinliği için bir araç olarak uygulanabilirliğini ortaya koymaktır. Çalışmanın metodunda anket ve derin mülakat gibi pek çok farklı teknikten yararlanılmıştır. Çalışmada varsayım / kıyaslama (*what – if*) yöntemi kullanılmıştır. Bu yöntem için “Çalışma alanı eğer herhangi bir koruma alanı statüsü içerisinde yer almasaydı nasıl bir gelişim gösterirdi?” sorusu sorulmuştur. “Agora-Kemeraltı bölgesi herhangi bir koruma statüsü altında bulunmasaydı yapılaşma düzeni 500 m yakınında yer alan Alsancak-Çankaya bölgesine benzerdi.” varsayımıyla iki bölge arasında konut piyasa değeri üzerinden kıyaslama gerçekleştirilip koruma kararı doğrultusunda kısıtlanan imar hakkı tespit edilmiştir. Devlet desteği ile koruma maliyetinin %48’i karşılanabilmektedir. Bu durumda mevcut koşullar altında bölgede korumanın sağlanabilmesi mümkün değildir. Tarihi Kemeraltı’nın korunmasında İHA modelinin uygulanması koruma açısından gelecekte olumlu sonuçlar ortaya koymakta ve etkin koruma uygulamaları için imkân sunmaktadır.

Keywords: Kültürel miras, koruma amaçlı imar planı, İmar Hakkı Aktarımı ve uygulanabilirliği.

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LIST OF ABBREVIATIONS

LPA: Land and Parcel Arrangement

TDR: Transfer of Development Rights

U.S.: United States

CHAPTER 1

INTRODUCTION

The preservation of the historical environment is aimed at preventing the disappearance of the social, economic and cultural values of society together with the unique physical structure which is under the heavy pressure of the day's constant social and economic conditions. This requires coherent economic and social development policies that take historic core areas into account at all planning levels (Valetta Principles, 2011). For the area, which is already in the process of economic decline, repression and loss of character despite all the conservation, revitalization and renovation efforts, there is a need to retain a viable economic function.

Conservation faces a wide range of complex problems in our country. These problems are based on rapid urbanization, metropolitanization and openness to the world, and efforts to articulate the global economy. In order to accelerate economic development and take shares from emerging rents, the most important issues these processes bring about are the protection of historical values. The key issues these processes bring about are their impact on accelerating economic development and gaining share from emerging rents (Bademli, 2006). On the other hand, there is a dual structure in the nation's land use planning system that generally encourages development, while conservation plans impose heavy restrictions and constraints upon development. Although the conservation plan is compulsory for the declared *site* areas, the nation's general planning philosophy in the historical course has always been in favour of the development, increasing and redistribution of development rights. Conservation is seen as an obstacle to the rapid process of economic growth and the sharing of urban rent or opportunities for natural resource economic development (Tekeli 1991: 97-98). The financial resources allocated by the local or central government are insufficient in response to restrictions on the development right of private property or local economic interests. In addition, the inhabitants of the historic core areas are generally low-income groups and generally have limited capacity. It is therefore a difficult task to safeguard the nation's rich cultural heritage and, if not intervened, it is clear that the rich natural and cultural values of the country will soon disappear. (Zeren, 1990; Bademli, 2006).

With the newly enacted Law (5226 / 2004), while the Ministry of Culture and Tourism provides new financial instruments such as grants, exchange and tax exemptions, people with cultural assets are experiencing major financial grievances due to restrictions on the development of their real estate due to protective decisions. The economic solutions of the safeguarding historic areas are inadequate, the contributions are not satisfactory and the bureaucratic procedures are very time consuming. The nation's economic hardship forces most people to maintain short-term economic opportunities instead of abstract public interest.

For this reason, preservation should be organized as an economic process to transform into a structure that strengthens its adaptability to change without losing its essence (Tekeli 1991: 96-97). Planners must develop and operate new intervention tools to balance protection and development costs (Bademli, 1991: 3). Economic solutions will be the most important factor in safeguarding historic environment and implementation. This study aims to meet the need to develop new tools to organize preservation as an economic process and to fill the gap in this area.

In this study, the aim is first to address the inadequacies of the existing standards and regulations and then develop a TDR model as an "effective implementing tool" that is actively used in the United States. Although, in Turkey it is organized within the legal framework, it is not yet enacted. The model will apply to the area selected from the 1st ring residential area of the historic *Kemeraltı* in Izmir.

1.1. Problem Definition

In many countries, property rights are limited because of conserving historical and natural values. In this context, the TDR is frequently resorted to in order to compensate for the grievance of owners who are completely prohibited or limited to the right of construction and to realize the principle of preservation with the revenue obtained from the sale of the right of development. For this reason, the need for the TDR of conservation and zoning is discussed in the study.

Despite regulating the conservation of cultural heritage in our country and transferring legislation to the next generations, there are great difficulties in implementing conservation decisions. The biggest challenge is that economic tools can not be sufficiently developed.

Despite the increase in grants with Law 5226 (2004), instruments such as exchange and tax exemptions are provided by the Ministry of Culture and Tourism, people living in the heritage areas are still suffering from access to all these grants as well as finding themselves in difficulty associated with the financial resources. Taking into account that the low level of income people live generally in the heritage areas make the situation worse. The restrictions of the development rights stemmed from conservation decisions have exacerbated their vulnerable financial position and their future prospects. Briefly it is considered that economic solutions are inadequate, contributions are not satisfactory, and bureaucratic procedures are very time-consuming in heritage conservation.

Results of all these hardships and conflicts, new financial tools are needed to conserving the area, and TDR, as a tool for planning and managing change, offers highly potential for conserving cultural assets.

1.2. Aim of Study and Contribution to the Literature

This study aims to address the inadequacies of the existing standards and regulations, then meet the need to develop effective new tools to organize conservation as an economic process and to fill the gap in this area. According to this aim several research questions are addressed:

- i)** If the case study area were not really under the status of conservation then how it would be developed in accord with the Development Plan's rights?
- ii)** Are the financial grants and contributions provided by the Ministry of Culture and Tourism, and aids provided by the Greater Area Municipality of Izmir adequate to carry out the sustainability of the conservation process and actions?
- iii)** Are the public contributions to cover the cost of conservation within the current Jurisdiction?
- iv)** Is TDR can be taken as an alternative solution to cover the cost of conservation? To what extend?
- v)** What is the role of TDR in enabling conservation actions (in the realization of active conservation TDR play in enabling conservation actions?)
- vi)** How can TDR be a part of the Planning System?

The model will apply to the area selected from the 1st ring residential area of the historic *Kemeraltı* in Izmir. The reasons for selecting this area on the basis of several factors such as the chosen area of study are strongly composed of residential units, most of the buildings are listed structure, juxtaposition of *Agora* and *Anafartalar* Street that could affect the market value, the continuity value of the 1.st ring residential area and it is in both conservation and renewal area.

1.3. Methodology

There is no single method of applying TDR so that it is completely context-dependent and differences arise from national and local characteristics and/or approaches. Therefore, a model proposal was introduced in the study taking into account the jurisdictions of the nation, the approach of the municipality of Izmir and the local characteristics of the area. Interviews were conducted between 01.02.2019 and 01.01.04.2019 with the Real Estate Appraisal Unit of Izmir Greater Area Municipality, Real Estate Appraisal Companies, Izmir Directorate of Historical Environmental Protection (*Izmir Tarihsel Çevre Koruma Müdürlüğü*) and with the Foundation of Appraisal Directorate (*Vakıflar Genel Müdürlüğü*) to create the data set used in the model. The method includes first household questionnaires conducted with households living in the area, and then extensive field studies were conducted for land-use analysis, ownership analysis, building heights, building quality in the title deed, building footprint/floor area ratio and conservation status. Following the first phase of the field study, the "marketing value of the property" was calculated in the second phase of the model. For calculation we used (1) market analysis; (2) comparison of previous sales and court decisions in surrounding regions; and (3) use of regional court decisions and related expert reports. We conducted (1) market analysis for calculation; (2) comparison of previous sales and court decisions in surrounding regions; and (3) use of regional court decisions and related expert reports.

The second step in the second phase of the model is socio-economic analysis of people living in urban conservation sites. The socio-economic conditions of the families living in the area, their ownership status, the bottlenecks they faced in the case of preservation, whether they have sufficient information about the credits and transfers from "conservation funds" and finally their general opinion on conservation issues was

asked in the questionnaires. The number of units subject to transferable development rights was also determined in this part (in total the 75 units were selected for the application of TDR). In the third step of the second phase of the model, the cost of simple or substantial maintenance or restoration of the registered building subject to TDR as well as its market research was examined.

In the last step of the second phase of the model, we made a comparative study based on a typical "what-if case" to calculate the real value of the market value of the TDR. The comparison is made between the study area under conservation restriction and the adjacent areas of *Alsancak-Cankaya*, 500 meters from the study area which is part of *Alsancak's* commercial and development zone. The idea stems from the research question that If the case study area were not really under the status of conservation then how it would be developed in accord with the Development Plan's rights? The answer to this question "how it would be developed" comes from the selected reciprocal *Alsancak-Cankaya* region and its market value.

Finally, in the third phase of the model, the calculation is based on the assumption that the value of the total development rights (TDR value) of the sending area derives from the difference between the average price per square meter of housing (remove restoration cost from this value) and the market value of the reciprocal *Alsancak-Cankaya* region. The value obtained from the comparison between the study area and the reciprocal *Alsancak-Cankaya* region is taken as the value of TDR to be sent to the receiving area.

1.4. Structure of Study

The study will be discussed in eight main chapters, including literature review and field research. National and international academic publications, scientific reports and other sources are evaluated as a whole in the first, second, third, fourth and fifth chapter.

Transfer of development rights model relies on the manipulation of bundle of rights on each property and it shifts the future development potential from one property to another by taking the difference between existing use of a parcel and its potential use. The model based on the unused development rights which have come out by restrictions

on the property, are transferred to another property. Therefore, sales of rights could compensate landowners for the loss of restrictions on development on their land.

For this aim, in the second chapter, the concept of conservation, the necessity of conservation, historical development of conservation practices in Turkey and main conservation problems of historical areas are given.

In the third chapter, the concept of property, development right, rent are given and the ground lot rent and formation process are revealed.

The fourth section discusses the planning applications to maintain the controlled legal framework in Turkey such as expropriation, trade, voluntary agreement, etc.

The fifth chapter, Transfer of Development Rights is offered as a tool to conserve cultural assets. Firstly, the concept of TDR are explained. Second, in order to clarify what TDR is, the characteristics of TDR Modal and actors of the model are explained. Besides, potentials and threats of TDR model are pointed out. Then, the TDR method and its applicability to Turkey in practices in different countries such as the United States and Canada, has been addressed with existing policies and legislation with similar and different aspects. These implementations are categorized and evaluated in detail for the conservation of historical fields. Then, the conservation policy of Turkey is compared with U.S and Canada to obtain legal, organizational and financial deficiencies of Turkey. The model implementation methods/procedures of the TDR model are several, even in intrastate, depending on the features and characteristic of the field area.

Last of this chapter, explains why Turkey requires a planning tool for conserving historical areas are explained and the applicability of TDR in Turkey is discussed. For this aim, the evolution of the TDR concept in Turkey is offered and legal support for the program are pointed out.

The sixth chapter includes field studies. For the field study, the region south of Anafartalar Street, located in the historic *Kemeraltı* 1st ring residential area in the province of Izmir, which is known to cause problems in the use of property rights with different protection status and zoning plan, was selected. To determine the current situation and use of the area, various scientific study reports were evaluated and an analysis study was conducted. Analysis studies (Land Use, Property Analysis, Floor Height, Condition of the Structures, Floor Area Ratio, Lot Coverage, Site Status and Conservation Status) have been prepared. Both study (*Agora-Kemeraltı*) and compared area (*Çankaya-Alsancak*) marketing value of the property calculated. The socio-economic conditions of the families living in the area, their ownership status, the bottlenecks they

faced in the case of conservation, whether they have sufficient information about the credits and transfers from "conservation funds" and finally their general opinion on conservation issues was asked in the questionnaires. The number of units subject to transferable development rights was also determined in this part (in total the 75 units were selected for the application of TDR). The cost of simple or substantial maintenance or restoration of the registered building subject to TDR as well as its market research was examined.

In the seventh chapter, the findings of the thesis are explained and discuss. The number of units subject to transferable development rights was also determined in this part (in total the 75 units were selected for the application of TDR). The cost of simple or substantial maintenance or restoration of the registered building subject to TDR as well as its market research was examined.

In the final chapter, it has been shown that TDR can be used as a compensation to the loss of development rights. TDR can be a solution in terms of conservation problems caused by financial deficiencies. Besides that, for the TDR implementation some principals are recommended.

Table 1.1. Socio-economical Survey Card (Page 1)

Sizi Gamze Güzle tarafından yürütülen " Etkin bir Kentsel Koruma Planlaması için Taşınmaz Haklarının Transferi :Tarihi Kemeraltı Bölgesi, 1.Halka Konut Dokusu, İzmir" başlıklı tez çalışması araştırmasına davet ediyoruz. Çalışmaya katılım tamamen gönüllülük esasına dayanmaktadır. Çalışmaya katılmama veya katıldıktan sonra herhangi bir anda çalışmadan çıkma hakkına sahipsiniz. Bu formlardan elde edilecek bilgiler gizli tutulacak ve yalnızca araştırma amacıyla kullanılacaktır.																	
			İZMİR YÜKSEK TEKNOLOJİ ENSTİTÜSÜ MİMARLIK FAKÜLTESİ MÜHENDİSLİK VE FEN BİLİMLERİ ENSTİTÜSÜ ŞEHİR PLANLAMA BÖLÜMÜ														
Etkin bir Kentsel Koruma Planlaması için Taşınmaz Haklarının Transferi :Tarihi Kemeraltı Bölgesi, 1.Halka Konut Dokusu, İzmir						Mahalle: Ada/Parsel:			Tarih:								
Sizde dahil olmak üzere bu hanede kaç kişi yaşıyor? Şu anda hastane veya tatil gibi nedenlerle burada olmayan ama normalde bu evde yaşayan herkesi kastediyoruz.																	
Evinizi başka biriyle paylaşıyor musunuz? Evin odalarını kiralyor musunuz?																	
0-Hanehalkı reisi 1-Eşi 2-Oğlu/Kızı 3-Babası/Annesi 4-Kardeşi 5-Kayınpederi/Kayınvalidesi 6-Damat/Gelin 7-Torun 8-Diğer akraba 9-Akraba olmayan																	
HANE BİREYLERİ	CİNSİYET		DOĞUM YILI	EĞİTİM DURUMU**					İŞİ/MESLEĞİ:				AYLIK GELİR	SOSYAL GÜVENCE			
	E	K		ilkokul	orta	lise	üni	Okuyor*	Tam zamanlı	Yarı zamanlı	Düzenli çalışmıyor	İşsiz ***					
*Okuyor	1-İlköğretim		2-Genel lise	3-Mesleki veya Teknik Lise		4-Fakülte veya Yüksek Okul			5-Üniversite			6-Yüksek Lisans/Doktora					
**Eğitim Durumu (En son bitirdiği okul)	0-Okur-yazar olmayan		1-Okur-yazar olup, bir okul bitirmeyen	2-İlkokul		3-Ortaokul			4-Genel lise	5-Mesleki veya Teknik Lise		6-Fakülte veya Yüksek Okul					
***İşsiz	1-İş arıyor		2-Emekli	3-Ev işleri ile uğraşiyor		4-Yaşlı, engelli çalışamaz halde		5-Diğer	6-Öğrenimine devam ettiği için			7- Çalışmak istemiyor					
	Nereden Nereye	Ne zaman	Konutun yapıldığı yıl :				Büyüklüğü :				Oda sayısı :		Teras:				
			Konutun fiziksel koşulları	Doğalgaz	Kanalizasyon	İnternet	Su	Isıtma				Konut içinde	Mutfak	Banyo / duş	Tuvalet	Bahçe	Balkon
Kemeraltı'na gelişiniz																	
Bu mahallede gelişiniz			var														
Taşınmak istiyor musunuz ?			yok														
Kiralık daire			Çevreye ve Konuta İlişkin Sorular														
Kiralık (müstakil) ev						Bu mahallede oturma nedeniniz?											
Kendinize/Ailenize ait müstakil ev						Bu mahallenin sorunları nelerdir?											
Kendinize/Ailenize ait daire						Bu mahallenin olumlu yanları nelerdir?											
Mülk Sahibi İse Sorulacak Sorular						Kiracı İse Sorulacak Sorular											
Bu ev kaç yıldır size ait?						Kaç yıldır bu evde oturuyorsunuz?											
Evin elde edilmiş yöntemi?			satın alındı			Kontratınız var mı?											
			kendi yaptırdı			Kendi eviniz var mı?											
			miras			Bu konutu tercih etmenizdeki sebep?											

Table 1.2. Socio-economical Survey Card (Page 2)

Sorular	Hiç memnun değilim 0	1	2	3	4	5 Tamamen memnun
Evin fiziksel durumundan memnuniyet düzeyiniz nedir? (Dış görünüş)						
Yaşadığınız evden genel olarak memnuniyet düzeyiniz?						
Yaşadığınız çevredeki insanlardan ne kadar memnunsunuz?						
Gece vakti yürürken kendinizi ne kadar güvende hissediyorsunuz?						
Eviniz için finansal bir destek almak istiyor musunuz? (Kredi veya Yardım)	a) Evet b)Hayır					
Eğer finansal destek alırsanız bunu nerede kullanırsınız?	a) Yaşadığınız binanın bakım ve onarım masraflarında b) Yeni bir binaya taşınma masrafları için c) Diğer					
Başka bir binaya taşınmayı hiç düşündünüz mü?	a) Evet b) Hayır					
Sizce yaşadığınız binanın eksikleri nelerdir? Aşağıdaki öncelik sırasına göre cevapları numaralandırınız. Hiç Önemli değil 0 1 2 3 4 5 En önemli eksiklik	a) Oda sayısının yetersiz olması					
	b) Tuvalet, banyo veya duş olmaması					
	c) Bahçe, balkon veya teras olmaması					
	d) Isıtma yok d1)Merkezi ısıtma d2)Kombi d3)Klima					
	e) Doğalgaz yok					
	f) Kanalizasyon					
	g) Yaşadığım bina çok eski					
	h) Yaşadığım mahalle güvenli değil					
	i) Yaşadığım bina sağlam değil					
	j) Binanın tadilatı/bakımı/onarımı çok masraflı ve zaman alıyor					
Taşınacaksınız taşınacağınız yerden beklentileriniz neler? Aşağıdaki öncelik sırasına göre cevapları numaralandırınız. Hiç Önemli değil 0 1 2 3 4 5 En önemli	k)Diğer					
	a) Hanedeki her ferdin odasının olduğu bir ev.					
	b) Evde tuvalet ve banyo veya duş					
	c) Bahçe, balkon veya teras					
	d)Müstakil / Apartman En az en fazla katlı					
	e) Daha geniş, büyük bir ev/daire					
	f) Samimi komşuluk ilişkileri					
	g) Otobüs, metro, tramvay gibi ulaşım araçlarına yakınlığı					
	h) Şehir merkezine yakın / Şehir merkezinden uzak olması					
	i) Yeni bina olması					
Evinizin başka bir konutla takas edilmesini ister misiniz?	a) Evet b) Hayır					
Yaşadığınız bölgenin koruma alanı içerisinde yer aldığını biliyor musunuz?	a) Evet a1) Arkeolojik Sit a2) Kentsel Sit a3) Her ikisinde b) Hayır					
Sit alanında yer alan bölgelerde ne gibi faaliyetler yapamazsınız?	a) Binayı yıkıp daha büyük yeni bina yapamam/yaptıramam. b) Sondaj yaptıramam c) Kazı yapamam					

Table 1.3. Socio-economical Survey Card (Page 3)

Şimdiye kadar binanızda onarım yaptınız mı? Nerelerde?	<ul style="list-style-type: none"> a) Mutfak b) Banyo, Tuvalet c) Çatı d) Duvarlarda e) Balkon/Teras/Cumba f) Dış cephede g) Zeminde h) Kapı/Pencereler i) Diğer
Nerede ve nasıl onarım yapmayı düşünüyorsunuz?	<ul style="list-style-type: none"> a) Mutfak b) Banyo, Tuvalet c) Çatı d) Duvarlarda e) Balkon/Teras/Cumba f) Dış cephede g) Zeminde h) Kapı/Pencereler i) Diğer
Şimdiye kadar binanızda restorasyon çalışmaları yaptırdınız mı?	<ul style="list-style-type: none"> a) Evet b) Hayır
Onarım/tadilat/restorasyon işlemlerini yaptırırken maddi açıdan zorlanıyor musunuz? Yandaki ölçüğe göre numaralandırınız.	Hiç zorlanmıyorum 0 1 2 3 4 5 Çok zorlanıyorum
Onarım/tadilat/restorasyon için herhangi bir yardım/destek aldınız mı?	<ul style="list-style-type: none"> a) Evet b) Hayır
Onarım için hangi kurumlar destek veriyor?	<ul style="list-style-type: none"> a) Belediyeler b) Çevre ve Şehircilik Bakanlığı c) TOKİ d) Kültür ve Turizm Bakanlığı e) Maliye Bakanlığı f) Vakıflar Genel Müdürlüğü
Yardım almak için başvurunun nereye ve nasıl yapılacağını biliyor musunuz?	<ul style="list-style-type: none"> a) Evet b) Hayır
Tescilli Taşınmaz Kültür Varlıklarının restorasyonu amacıyla verilen Toplu Konut Kredileri'nden haberiniz var mı?	<ul style="list-style-type: none"> a) Evet a1)Bakım b1)Onarım c1)Restorasyon d1)Yeni bir konut b) Hayır
Konutların onarımı için neler yapılabilir? Siz katılmak ister misiniz?	<ul style="list-style-type: none"> a) Evet b) Hayır
Size konutunuzun değeri nedir?	

CHAPTER 2

THEORETICAL FRAMEWORK

The concept of conservation, the necessity of conservation, historical development of conservation practices in Turkey and main conservation problems of historical areas are explained. This theoretical framework is essential to demonstrate how conservation procedures are being implemented and to what extent problems are being addressed in accordance with these terms.

2.1. The Concept of Conservation

Cities are the first areas to be affected in the direction of socio-cultural, economic, physical, technological and political changes. Our immediate environment is the places we perceive with awareness of these changes. Historical areas are settlements in which the experiences, feelings, thoughts, education, life experiences are explained in a common language. In other words, the historical environment is not a monument in itself, but a combination of all the elements that create the unique characters of cities and towns with historical, traditional and visual values (Mazı, 2009).

Although the process of change that begins with the industrial revolution and its effects is different in every country, the abandonment of historical urban core areas by the middle and upper income groups, the process of decentralization, globalization, the migration from rural to urban areas and the migration of refugees have led to a constant change in the users of these areas and triggered the process of natural-cultural oppression and deterioration. Unfortunately, conservation policies and regulations that cannot be applied effectively in our country and they have not been sufficient to preserve the natural and historical environment, in the direction of these changes historical areas have become increasingly depressed, and economically declining areas. As a result of the rapid and negative changes in the historical areas and their disappearance, their perceptions become more difficult in a whole. Cultural assets adversely affected by all of these processes; people and living creatures are indirectly affected. However, these areas are places that establish a bridge between the past and the future, and in addition to their conservation, it is also important that they maintain their continuity (Mazı, 2009).The disappearance or

damage of these assets leads to a weakening of the intergenerational communication and the sense of dissonance. The historical and natural environment elements in which we live are unique, non-renewable and irreplaceable. Therefore, conservation strategies need to be strengthened and awareness on this problem needs to be enhanced.

In literature, the term conservation has the meaning of “maintaining, protecting, showing attention and care to prevent wear off and getting old.” This means, in other words, ensuring a presence against danger and external influences ¹.

Conservation can be defined as “Keeping a person or something away from external influences, from danger, from a difficult situation, preserving, protecting, guarding” (TDK, 2019). In the Glossary of Urban Science, “The historical and architectural values in some parts of the cities have been defined as the assurance of monuments and natural beauty against all kinds of destructive, aggressive and harmful actions for the benefit of the city” (Keleş, 1998).

In general, the meaning of conservation is described as protecting and preserving the environment (Essential English Directory, 1988:161). The term defined in two senses in the Urban Planning encyclopedia: in a broad sense, managing natural and man-made resources by planning decisions to reach our future needs. It refers in a narrow sense to the conservation of buildings and their surroundings, which in this sense means preservation and improvement (Encyclopedia of Urban Planning, 1974:294).

The concept of conservation imposes an obligation to transfer the cultural assets from the previous generations to the next generations. The decisions we make today to transfer values from previous generations to the future play a critical role in line with the objectives and criteria to be determined. For this reason, it will be more accurate, instead of thinking about the concept of conservation in a single time dimension, to determine the criteria in a detailed and planned way by thinking deeply into the past, present and future. Conservation can be defined as the set of policies and practices to be implemented in order to transmit the values of immovable cultural assets to future generations properly.

In order to benefit from all segments of society and ensure socio-cultural continuity, the transfer of cultural assets to future generations should be carried out on behalf of the public interest by preserving them with appropriate conservation policies (Merryman, 1989) while at the same time generating public value (Keskinok, 2006: 234).

¹http://www.tdk.gov.tr/index.php?option=com_gts&arama=gts&guid=TDK.GTS.5b4f45400a3cb3.67743713

Conservation is a concept centered on the community based on the values it maintains. For this reason, in conservation policies and practices, the concept of public interest is at the forefront. For example, if necessary expropriation may limit or eliminate the rights of the person (Tuna, 2007). It is argued that cultural assets should be considered as objects independent of national judgements and property rights because they are accepted as the common heritage of humanity by international agreements (Göğebakan, 2009). This situation shows that, beyond society and public good, the act of conservation includes a universal benefit.

Bademli stated that “Our cultural heritage is non-renewable, and cultural assets that have been destroyed or exterminated can not be brought back or reproduced. The values contained in cultural assets are the values that should be transferred by appropriate conservation studies to future generations, and this set of values provides a public meaning to cultural heritage. Therefore, preservation is a necessity and its interventions is a social responsibility.” (2005:1).

Urban conservation is defined as preventing the disappearance of physical structures that represent society's social, economic and cultural values in changing social and economic conditions and providing for living through the integration of traditional urban texture with contemporary developments. In order to conserve the traditional structure, it is necessary to blend it with today's modern life instead of becoming a museum city (Gülersoy, 1977). Conservation is defined as the historical, architectural value of buildings, monuments, natural beauty to be transferred to future generations in the best possible way to be protected from all kinds of destructive, aggressive and harmful actions (Keleş & Hamamcı, 1997:120). Urban conservation, which is a kind of conservation, prevents buildings consisting mainly of historical and architectural buildings, structures, monuments and buildings created by these architectural buildings and the declining natural environment (Şendur, 1996: 1). The main purpose of historical conservation is to conserve the historical settlement from extinction and integrate the cultural heritage with the today's life (Ahunbay 1999:27).

Özden and Görgülü (2006) stated that the historical environment is an integral part of the city culture and identity, conservation responsibility can be fulfilled if it depends on a global language and standards. In this regard, the need for the legal system for conservation has been accepted, and the concept of conservation that individual efforts and initiatives have tried to realize has changed over time and has become a responsibility that has gained national and international awareness for each country.

The Necessity of Conservation

Cultural assets, defined as the values that make up the bond between the past and the future, are an important tool for cultural continuity to be achieved. Culture is a mechanism that constantly changes, adapting them to the necessary changes that transcend people and society (Kuban 2000: 54).

Civil or monumental historical buildings are the structures that represent the social, economic and technical characteristics of a society and concretely represent the most precise information from these parts. The historic city center represents a unique historical link with the past, a physical manifestation of the social and cultural traditions which have developed to give the modern city and society its meaning and character (Steinberg, 1996:464).

The conservation of cultural areas that carry the aesthetic component of culture is a mechanism that provides the continuity of social symbols and the cultural continuity of society (Kuban 2000: 54).

Today, historical conservation is an effective tool of social development and it is implemented as one of the economic development strategies. Conservation in historical and natural environments brings a new economic vitality to the city when properly evaluated. It will increase job opportunities, create new business lines, revitalize the local economy.

With the conservation practices, employment is created in these regions; improved, renovated original spaces can be offered for office, trade, housing, and recreation.

Kiper (2004:20) is said that, the conservation implementations and practices in historical areas;

- It is possible to identify and recognize cultural diversity in society,
- Local characters and properties can be protected and recognized,
- A sense of belonging to a place whether local, regional, national sense of identity can be developed
- The social image will be raised for the inhabitants and tourists of the region, material and moral benefits will be provided
- The local economy is revived, revenues can be increased in the region,
- Existing local structures can be brought to a healthy state and they can be regained,

- Local values that extended to our past, present and future will be alive and keep forward for the next generations,
- Thus, social awareness can be increased (2004:20).

The immovable cultural assets are among the most important elements of the physical environment in which we live and which must be conserved, regardless of their location and characteristics. Our country is undergoing rapid urbanization, metropolization, however, evolving the process of economic growth and opening up to the world. In the process of rapid urbanization and transformation in parallel with processes of globalization, the zoning phenomenon has come to the fore instead of conservation.

In order to accelerate economic growth in the process and obtain a share of the rent; coupled with factors such as lack of financial resources, unconsciousness and apathy in the context of the conservation of natural and cultural values; natural and historical values are desired to be used sloppily and uncontrolled or are attempted to be destroyed by damaging them to create new building areas (Bademli, 2006: 1). Since there is no reproduction of the natural and cultural heritage that is tried to be eliminated, it is necessary to conserve all these values, and any intervention to protect them is our social duty (Erder, 1971:1-10). Despite this importance, conservation can not yet become a goal, policy or concern in society. Central and local governments, relevant public institutions and organizations, professional chambers and non-governmental organizations are considered necessary to conservation of natural and cultural values, and concerns about conservation are reflected in the policies of central and local government.

However, conservation does not seem to be the primary stage of a project or a project in itself (Erder, 1975:243-250). Furthermore; separating possibilities and resources for the economic development of the town, engaging in fast economic growth and the share of urban rent for the sake of personal and financial interests (limitation of private ownership), opinions and anti-conservation political / social pressures can be experienced. Although the problem is the basis of cultural issues, such as unconsciousness, ignorance, and lack of understanding among institutions, a problem solution is thought to be economic. Systems where central and local governments are able to balance the costs of conservation and attracting development areas can solve the problems (Bademli, 2006: 3).

Conservation work to be carried out will address the problem in all its depth, holistic and extensive approach should be pursued. Conservation reasons should be focused on multi-dimensional targets in a comprehensive and holistic approach to conservation rather than for the purpose of developing a single target. Multiple factors should be taken into account, such as historical, cultural, artistic, esthetic and use value (Madran, Özgönül, 2005: 17).

2.2. Historical Development of Conservation Practices in Turkey

The development of conservation policies can be split into three periods. These are the pre-republic period, post-Republic and post-1980 period in our country, especially when neoliberal policies started to be clearly implemented.

2.2.1. Pre-Republic Period

During the period of the Ottoman Empire, the value of usage buildings exceeded the ideological and ethical value. Due to the restricted budget for conservation and maintenance activities, mosques, madrasas, khans, etc. structures were limited (Madran, 2002: 9). In the Ottoman period, rather than the existence of conservation policies conducted with a certain class or social consciousness, the efforts of the historical and cultural artifacts to be transported by Western civilizations to foreign countries have been supported by the Sultan's edicts. For example, III. During Selim's reign, the British Ambassador applied to the Grand Vizier; "... In England, porphyroid stone is desirable and acknowledged..." In response to the Ottoman Empire's debt at the request porphyry architectural works in *Istanbul*, a sultan's edict could be taken to give England some pieces. Although there was no direct coverage of the conservation, restoration and new building areas of cultural assets in the Ottoman period until the 19th century, the provisions concerning the conservation and maintenance of monumental structures and surroundings, the establishment of new settlements were given by the Sultan's edicts (Madran, 2002: 1).

With the effect of Westernization tendencies that came with the *Tanzimat* Period, changes have been made in the fields of administration, education, health, science, literature, architecture, etc., while attempts have been made to bring Western developments in the field of conservation to Anatolia and the importance given to cultural

assets has increased and the rejection and neglect of cultural heritage has been triggered by the effect of modernisation. As a result of the fires in *Istanbul*, instead of using wood materials in architecture, the masonry material has become widespread and the urban texture that evokes the European cities has been tried to be created. After the 19th century, the conservation implementations spread. The first attempt to conservation of the antiques took place in 1846 when Istanbul, Hagia Irene Church turned into a museum. This structure was the first museum opened in the Ottoman period. *İzmir* Library and Museum Society, founded in 1878, is the first voluntary organization to be set up for conservation purposes (Madran, 2002: 79). During the 60-year period between 1848-1917, there were 42 legal and administrative regulations on conservation issues (Madran, 2002: 15).

In 1858, the first legal decision on conservation was arranged with the Penal Act (*Ceza Yasası*). According to Article 133 of this Act, those who damage the divine and monumental structure were sentenced to fine and imprisonment. The first legal decision on historic conservation in 1869 was the First Act for Antiquities (*1.Asar-ı Atika Nizamnamesi*). The Act related to movable antiquities from ancient times. The regulation consists of 8 items, those who want to search for the old work in the first article can not carry out these operations without permission, and the second article states that old artifacts cannot be taken abroad. With regulation, the aim is to supervise the work of foreign teams engaged in excavation and research (Akat, 1990: 14).

In 1874, The Second Act for Antiquities (*2.Asar-ı Atika Nizamnamesi*) came into force. The idea of conservation items was reached in order to compromise all man-made items that had been acquired from the past periods and considered as ancient monuments and State Property (Zeren, 1990: 1).

In 1884, The Third Act for Antiquities (*3.Asar-ı Atika Nizamnamesi*) expanded the definition of antiquities and forbidden antiquities to smuggle from Turkey to abroad. In addition to the prohibition of the exhumation of old artifacts, the establishment of new museums, the use of scientific exhibition methods, the excavation of the Turkish boards, the publication of museums and the establishment of provincial museums have been experienced (Madran, 2002: 48).

As a know most widely known Act for Antiquities The Forth Act for Antiquities (*4.Asar-ı Atika Nizamnamesi*) remains in force between 1906 and 1973. By this Act, all heritage (movable and immovable) was defined as the State Poverty and thus broadening the definition of antiquities. The regulation has evaluated the values of all cultures within the context of the historical work and the concept of universal culture (Madran, 2002:

48). During the Ottoman period, the conservation and continuous maintenance of the immovable cultural assets was carried out mostly by means of the Foundation revenues provided through foundation institutions. Conservation and the restoration of monuments, in particular, was seen as a public duty. But; in some cases, the tender method is also known to be used.

2.2.2. Republic Period

In 1912, The Act for the Protection of Monuments (*Muhafaza-i Abidat Nizamnamesi*) was enacted. This Act gave municipalities permission to destroy of monumental buildings that had to be pulled down for several reasons only after their decorations etc., had been recorded and reported by Committee for the Protection of Antiquities (*Muhafaza-i Asar-ı Atika Encümeni*) (Zeren, 1990: 7).

In 1917, the Committee for the Protection of Antiquities (*Muhafaza-i Asar-ı Atika Encümeni*) was established in Istanbul to carry out studies on antiques to keep the documents in archives. In the 1930s, besides the restoration, maintenance and repair works of historical monuments, a monumental building inventory was prepared. Documentation studies started in 1922 and in 1933, 3500 monumental structures were documented (Madran, 2002:116-118).

The Commission for the Protection of Monuments was established in 1933. The commission has prepared programs for the protection process starting from the documentation to the relays and the restoration of monuments (Madran, 2002: 109).

In 1951, the Superior Council of Immovable Antiquities and Monuments (SCIAM) (*Gayrimenkul Eski Eserler ve Anıtlar Yüksek Kurulu*) was founded to take conservation decisions, to detect major criteria and works interested in conservation, restoration, repair and maintenance of monuments and antiques. The conservation work carried out by the Board on a single building scale was designed to include the surrounding area. However, the implementation of the Board's decisions was limited as a result of the development policies for development rather than conservation (Madran, 2002: 118).

In 1973, 1710 Antiquities Act (*Eski Eserler Kanunu*) was put into force to replace the Forth Act for Antiquities. The act introduced the concept of conservation areas such as historical, natural or archeological value. In addition to single structures for the protection of immovable cultural assets, this law also brought to the agenda the

preservation of the environment as a whole and the consolidation of the structures they constituted. According to this law, the relics are historical and historical periods before the date and are located on the ground, under or in water, related to science, culture, religion or fine arts (Madran, 2002: 118).

2.2.3. Post-1980 Period

In 1983, Conservation of Cultural and Natural Property Act (*2863 Sayılı Kültür ve Tabiat Varlıklarını Koruma Kanunu*), came into force to replace previous acts, 1710 Antiquities Act and 5805 Superior Council of Immovable Antiquities and Monuments (Zeren, 1990).

In 1987, some articles of the 2863 were changed and regulated by the 3386 Conservation of Cultural and Natural Property Act (*3386 Sayılı 2863 Sayılı Kültür ve Tabiat Varlıklarını Koruma Kanununun Bazı Maddelerinin Değiştirilmesi ve Bu Kanuna Bazı Maddeler Eklenmesi Hakkında Kanun*).

The Conservation of Cultural and Natural Property Act (*2863 Sayılı Kültür ve Tabiat Varlıklarını Koruma Kanunu*) High Council of Immovable Cultural and Natural Property and its regional sub-councils i.e the Regional Councils of Immovable Cultural and Natural Property (*Kültür ve Tabiat Varlıklarını Koruma Kurulları*) established. The term of site has been redefined and classified as urban, archeological, natural and historical. The aim of Contribution Fund for the Repair of Immovable Cultural Property to be Conserved Owned by Individuals or Corporate Bodies (*Özel Hukuka Tabii Gerçek ve Tüzel Kişilerin Mülkiyetinde Bulunan Korunması Gerekli Taşınmaz Kültür Varlıklarının Onarımına Katkı Fonu*) is to provide fund to contribute to the restoration of listed monuments (Şendur, 1996:9).

Since the past, public resources allocated to the protection of historical values have been known to be inadequate. The fund, which is allocated by the State for the Protection of Cultural and Natural Assets as an economic resource, can not be operated effectively. In the past, the maintenance and restoration of monumental historical monuments was evaluated as a public duty in order to be transferred to future generations. The private sector considers these values as a source of rent (Akat, 1990).

It took three years for the new law to be enacted after the elimination of the Supreme Board of Real Estate and Monuments, which was established in 1951, was taken into account for a new institutional structure. In 1983, in the center and regions, the

Cultural and Natural Heritage Protection Law and the Ministry of Culture set up protection boards. The law established regional committees and distributed powers to these regions. The decision to determine and register the assets worth protecting is made by the Ministry of Culture and Tourism Protection Councils. According to applicable laws, there are many institutions responsible for the protection of natural and historical values along with the Ministry of Culture and Tourism. These institutions include central and local governments, governorships, ministries, etc. public institutions, voluntary organizations, natural and legal persons. The effects of the globalization process were felt more intensely in the legal regulations prepared after the 1990s; policies such as liberalization, privatization, and promotion of foreign capital were given importance (Zeren, 1990).

2.3. The Conservation Problems of Turkey's Historical Areas

In this title the conservation problems of historical area in Turkey have been discussed in several dimensions which are the destruction by rapid urbanization, problems linked to fiscal, structure and function of historical areas, misuse and misunderstanding of the concept and definition, communication problems between institutions and the inadequacies of planning tools for conservation purposes.

2.3.1. The Destruction by Rapid Urbanization

Since the 1950s, Turkey has been under the impact of the fast urbanization process so that many individuals have moved to towns for distinct reasons to find a job, to teach, or to achieve better living standards. According to this, the land values rose day by day, and city lands became a huge profit through speculation. Increasing demand for land located in the center of the city, where historical buildings are generally located, has led to a rapid rise in prices. Historically examined in terms of socially, it is seen that the landowner percentage of the historical areas is low as opposed to the rate of tenant is high. Mostly, dwellers of historical areas are settled for low rent and these areas are become an alternative to squatter settlements (Tankut, 1990).

In this case, there is a strong demand for the city center and historical buildings are under the strong pressure to develop. Therefore, the historical regions located in the city centers, together with the high land price and zoning rent raid, as well as the low

economic income of people living in this region, accelerate the destruction process in these areas (Steinberg, 1996:464).

2.3.2. Fiscal Problems

Generally, historical buildings are in bad conditions because, since neither their owners nor municipalities have a limited fund to spend on the maintenance and repair of these areas, if not to develop any idea to solve the problems, the problems of the buildings continue to rise (Steinberg, 1996: 464).

Mostly, historical building owners prefer to move new residential areas to obtain modern living standards. Thus, the buildings are either purchased or rented by low-income groups that are mostly newcomers to the city. These cause an increase in the deterioration of historical buildings because building owners or tenants may not be aware of conserving historical areas and may not be able to afford maintenance costs.

Commonly, the amount of tenants is more than the amount of house owners in historical sites and tenants who are unwilling to spend any money on their buildings to maintain and repair them.

2.3.3. Structural Problems

Structural deformation and material deterioration are the underlying reasons for structural problems. The reasons the dwellers do not regularly maintain and repair their house as well as some historical buildings are not used this causes a rapid deterioration of the buildings (Steinberg, 1996: 464). Buildings are commonly used over their capacity and there has been alteration in order to acquire more residential units. These applications cause damage on buildings as aesthetical, architectural and historical characteristics (Şendur, 1996:7).

2.3.4. Functional Problems

Historical sites, infrastructural services such as sewage systems, roads, public spaces are generally inadequate for rapid population growth because historical buildings have been designated to meet the needs of older users in the past. However, as a result of the changes in the dwellers social and economic structure and their needs and thoughts,

historical buildings have lost their efficiency and forced to change. Generally, the original functions of the historic buildings have been converted from residence to storage or commercial sites.

Changing the original function of historical buildings causes several functional problems. Historical buildings were generally designed for extended families, but nowadays they have been used by nuclear families. Moreover, mostly historical buildings were divided either vertically or horizontally by building owners in order to increase their rent income (Şendur, 1996:7).

2.3.5. Misuse and Misunderstanding of Concept and Definition

Conservation concepts and definitions are not expressed explicitly by language and meaning, translated from international sources (contracts), and this confusion is caused by the deficiencies in the legal and managerial framework. The repetition of the conservation legislation, the acceptance of international conventions, the contradiction of the concepts, definitions, rules and requirements included in the conservation law with the current legislation trigger confusion of authority (Bademli, 2006:7). For this reason, the current law should be regulated as easier to understand, using a clear language, the duties and authorities of institutions / organizations are clearly stated, the definitions and concepts transferred from international sources are associated with the current legislation, the technical and a participatory platform should be created for the bureaucratic team involved in the legislative work as well as the content and use of the law.

2.3.6. Communication Problems Between Institutions

The complexity and lack of communication between the different institutions and organizations and the deficiencies in the legal and administrative framework deepen the problem. Different organizations for different reasons have different definitions, methods and determinations, and even hesitate to share the necessary inventories with each other. To solve the communication problems between academic, technical, political and bureaucratic circles, a common platform should be established. By respecting the copyright of the institutions that make up the inventories, all resources should be made available electronically and the National Natural and Historical Values inventory should be open access. It is not always clear that natural and historical values need to be

registered to conserve them, but are carried out for arbitrary or political reasons. The need for conservation should be decided on the basis of common ground among organizations in conservation decision-making. In this way, the discrepancy, disconnection and quality difference between the decisions taken by different institutions will be minimized (Bademli, 2006:7). Furthermore, the conservation decisions taken by different institutions are not announced to the relevant organizations and persons, including the owner, whereas the necessary information can not be obtained by the relevant persons during the bureaucratic correspondence or the differences or overlap of the different decisions taken by different institutions can not be evaluated in detail.

2.3.7. The Inadequacies of Planning Tools for Conservation Purposes

It is observed that conservation decisions are not difficult to implement in cases where compensation for restricted or restricted property rights can not be accomplished in line with legislative and plan decisions and therefore an efficient conservation objective has not been achieved. Moreover, it was considered that conservation and property relationship should be reconsidered within the framework of relevant legislation and practices. It is considered that the economic means of compensation for the grievances arising from restricting the right to property on behalf of the public interest should be diversified. Zoning, clustering, easement rights, barter / trade and density transfer fees (density transfer fees) tools are used to solve the issues experienced by restricting property rights in the world. However, due to financial inadequacies and political pressures, these means of implementation are not being implemented sufficiently. Land ownership in urban areas belongs to either public or real persons or private legal entities. When more than one organization assumes accountability a lot of ownership situation can be observed confusion arising from multi-ownership.

CHAPTER 3

THE THEORETICAL BASIS OF PROPERTY AND RENT

3.1. The Concept of Property

According to Günay (1995: 65), the property is subject to ownership, use and management or ownership rights. He further argues that property relations are defined as the dominance of property subjects (owners) over proprietary objects (things and goods) by means of a set of rights under state control. In other words, ownership; it is called the absolute concept of the property and the right owner (Kılıç, 1993: 40). The concept of property has been shaped throughout history by the right of use, the right to profit and the right to consume up to the end. However, the discussions on this concept focus on the right of possession of an object and the right to benefit from the income of that object (Günay, 1995: 65).

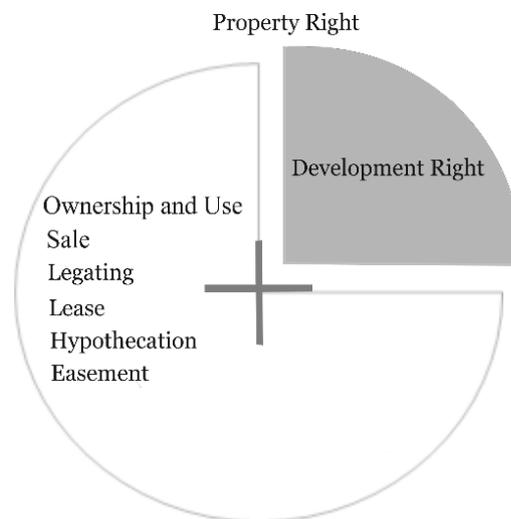


Figure 3.1. Divisible Elements of Property Rights

In areas where natural areas, agricultural areas and historical buildings are located, there may be restrictions on the public property or use of property rights on the part of the public interest.

Private ownership is more effective in offering private goods in competitive markets in terms of the right to property. The same applies to public ownership. The

borders of private property (definition and rights) can be limited by public interest that must be defined by a special legislation. These restrictions on private property rights are positioned by the countries (including the use rights and transfer rights held by the owners) through the privatization process and it can be listed as owners' classes, restrictions on acceptable use and transaction costs (Stanfield, 2001:6).

According to Turkey's European Convention on Human Rights which was approved in 1954, the Annex Article 1 of Protocol No. 1 "Every natural or legal person has the right to respect for the immunity of property. No one shall be deprived of his/her possessions except in the public interest and subject to the conditions laid down by law and by the general principles of international law." has legally protected the right to property.

The right to property, which is one of the fundamental rights and freedoms of human beings and which must be respected by other individuals and institutions, is clearly defined as a right that cannot be expired (Tuna 2012).

In Article 35 of the 1982 Constitution, the right to property is arranged in the form: "Everyone has the right to property and inheritance. These rights can only be restricted for the benefit of the public benefit by law. Using the right to property can not be contrary to public interest."

In its decision of 21.06.1990, the Constitutional Court did not recognize the property as an unlimited right and the right to own property can be exercised in the manner in which the individual wishes, the right to have unlimited freedom, have disappeared at this point. The understanding of property developed in such a way that this right was a right in the social structure and this right was adopted as the principle that the public interest can be limited like many rights. The concept of public interest is in the foreground in property interventions on behalf of the benefit of society. Protecting private property rights arising from natural and historical values between intervening on behalf of the public interest frequently observed in Turkey and abroad is restricted by law (Kaman, 2016). Legal arrangements prepared to ensure the balance between the use of the right to protection and property, instead of encouraging conservation, it is known that the owner considers the conservation and registry decisions as punishment / burden with the provisions of the restriction and prohibition, there is a violation of rights on the right to property, the ways of compensation for the grievances are not effective and the administrative and judicial process lasts longer than necessary (Topçu 2011).

3.1.1. Public and Private Property

In this title the property ownership types which are public property, private property, state property and common/collective(social) property are explained.

Private Property

The concept of private property in the triangle of the person-item-society is one of unlimited, sacred and untouchable rights and provides a single and unlimited dominance over the goods to its owner. The concept includes only localities and does not require property assignments or responsibilities (Tekeli, 1991:30). On the other hand, Marxism mentions that it is socialized by narrowing the boundaries of private property and often consists of homework (Gürsoy et al., 1984:332). Instead of these approaches, an approach based on an equilibrium between the person-article-society has now been introduced that accepts the existence of private property but limits the use of this right to the public interest (Coşar, 1985: 504).

Public Property

Public property is the property that should be used for the public interest and regulatory measures should be intended for its control. Private property of public things and goods are used for public or social interest indirectly. Public property can be developed in several respects; purchasing, granting, expropriating, nationalizing or dismantling the public service character of public property (Savran, 1997: 24).

Günay (1995) adds that space evolves with relationships of production. Public or common property of the means of production can not be regarded an alternative to state property or a more advanced type of state property. Whereas the use of means of production must be for the common advantage and through all social aspects. The state is for the society in international relations and through agencies rules binding the overall internally are made and controlled. The public sector consists of these agencies administered or established as part of the state and organizations, owned by it or in partnership (state enterprises, independent public authorities) (Gülçen Eren, 2007: 45).

Public property has immovable character (land, parcels, buildings, etc.) and movable character (assets, commodities, etc.). The typology of ownership types is detailed below:

State Property

State property is the basis of common property if the state regulates and administers a state. In other words, state property is managed and owned through the logic of capitalism: Urban space should be (re) produced for the capital (Gülçen Eren, 2007: 45).

Common/Collective (Social) Property

Common/Collective (social) property means decisions for this property are defined through the interests of the whole society, so producers could have domination over the means of production. It gives all individuals the right to decide over societal production. Common property is a condition to have interest of the society with free will and nontrusteeship from the means of production belonging to the state. This refers to the mobilization and use of means of production for the benefit of the society as a whole rather than calling for any alternative form of ownership (Gülçen Eren, 2007:45).

3.1.2. Public Interest and Conservation Values

Public interest is also referred to as concepts of public benefit, public interest, and public good. Although not intended to be personal, it aims at conserving and maintaining the order of the existing society that these people live together (Tekeli, 1991:125). The concepts of public interest and social benefit are used in different meanings in some sources. Doğanay identifies the public interest in protecting the established order and defines the public benefit as the common interest of all people living in the country (Doğanay, 1974:5).

On the other hand, Keleş imposes two distinct meanings: the concept of public interest, its narrow legal and technical dimension, its broad meaning to the political and ideological dimension associated with the social good. Public interest is the limitation of fundamental property and property rights and is a justification for limiting rent (1993:95). The concept of public interest is at the heart of conservation practices and policies.

Conservation is an action in the legal framework for the benefit of the public and at the same time it considers the public interest with its political, cultural and social dimensions. The conservation of cultural heritage, accepted as a common cultural heritage by international treaties, has a universal benefit beyond public and social interests (Göğebakan, 2009).

It is an action that must be carried out on behalf of the public interest to transfer it to future generations and to protect cultural assets with appropriate protection policies in order to benefit all segments of society (Merryman, 1989: 339-364). Protection acts in the name of the public interest, together with the responsibility of transferring our cultural heritage to future generations, also becomes an action that generates public value (Keskinok, 2006: 234). The principle of public interest is to maintain the existence of the society formed by individuals, to protect the order and welfare of the society, to regulate the relationship between human beings and environment (Tekeli, 1991: 125; Keles, 2000; Kurucu, 2008).

In our country's current legal system, cultural assets are state property and the state is responsible for the protection of cultural assets. Article 63 of the Republic of Turkey's Constitution; "The State shall ensure the protection of historical, cultural and natural assets and values and shall take supportive and encouraging measures for this purpose. The restrictions to be granted to those who are subject to private property from these assets and values and therefore the benefits to be granted to the right holders and the exemptions to be granted are regulated by law." (Turkish Constitution, 1982: Article 63)

The concepts of public interest and the benefit of society have been included in Article 35 of the Turkish Constitution, the public interest has been used as a measure in the limitation of the property and the benefit of the community has been considered as the common interest of the people. Restrictions have been imposed on the right to property in terms of public interest in order to protect cultural assets and transfer them to future generations in the protection measures laid down in the Constitution and legislation (Akdeniz, 2001:60-65, Kurucu, 2008). These restrictions impose responsibilities on the owners to protect their structures, to be responsible to maintenance and repair, to obtain permission from the competent institutions and organizations to carry out any intervention, to avoid any changes that will disrupt or damage the existing structure. After the identification and registration of the immovable cultural assets to be protected and the process of preparing the protection plan, the property owner's limitations and duties and

responsibilities are determined within the framework of the legislation (Levent, 2011:115-132).

The restrictions on the immovable property cause a decrease in the value of the property for the purpose of conservation. Arrangements have been made in the legislation to ensure that the costs incurred as a result of the conservation decision taken in the name of the public interest are taken over by public institutions and in cases where the costs can not be assumed. Holders of immovable property were exempted from certain duties and taxes, funds were created for use in protection practices (from real estate taxes), and authority was given to provide financial and technical assistance to related public institutions and to carry out expropriation and barter/trade transactions. Although there are mechanisms for sharing costs arising from conservation practices carried out on behalf of the public interest in accordance with the legislation, conservation works ; it is seen as a participatory and inelastic approach to conservation in which the process progresses slowly (Aktüre, 2003:84; Keskinok, 2006). In the absence of involvement in the process of the process owners and the advancement of the process, etc., the lack of efficient use of the settlement system causes the owners to prejudice the process and even to generate adverse choices and circumstances such as disruption of the process or interruption of the process leads to the protection of public interest policies and practices in the form (Aktüre, 2003:84). This situation makes it difficult to achieve the public interest goal of conservation practices (Ersoy, 1995: 49-50).

In order to ensure the effective implementation of the principle of public benefit, conservation policies should be developed in which the duties and responsibilities of the competent authorities are clearly defined and reorganized, the audits are carried out actively, the process of reconciliation is realized and the management of the cost of conservation is well established, by creating a transparent participation process in which the owners and related actors are informed (Bademli, 2007:54-56).

3.2. The Concept of Development Right

The concept of development right can be explained by the fact that one of a bundle of rights. Moskowitz and Lindbloom (1993) define the concept of development right simply as the right to develop their property, while Random House (2010) defines the right to use the property differently from its current use, in other words, the right to change

the current use of the land to another use (Nelson et al., 2012) Development rights, which is a separate part of private property, can be transferred to another area and can gain economic value (Lawrence, 1998). Thus, development rights are assumed to be part of the conversion right that can be sold and used in another parcel (Tavares, 2003). A development right is defined as the difference between the existing use of the parcel and its potential use as permitted by existing legislation. In other words, a development right is equal to the unused development potential of a parcel of land (Pizor, 1986: 203). In another explanation, development rights are the land-related rights and the value of the land / parcel that can be restricted in accordance with these decisions, provided as a result of the zoning legislation and planning decisions. Therefore, the value of parcels is also high in parcels where zoning rights are intense.

When considering the urban area, it is seen that the immovable properties in the city centers have significant advantages in terms of the right of development. It is seen that the immovable properties in areas where construction prohibited areas have no similar advantages due to historical and natural reasons (Türk, 2003; Balamir, 1993; Tekeli, 1992; Akdeniz, 2001).

According to the planning decisions, high zoning rights can be recognized in some areas or in some areas there is a restriction of zoning rights and even a prohibition of construction. Therefore, it is not obligatory to grant the right of zoning to all parcels in the settlement area. It is known that the state does not have to grant zoning rights for each cadastral parcel (Lawrence, 1998; Lee, 1998; Colas, 1999; Walls & McConneell, 2007; Aken et al., 2008).

3.3. The Concept of Rent

The concept of rent is one of the most important concepts faced by rapid urbanization and consequently the rapidly developing city economy. The word Rent has different meanings. It is stated that the word derives from the word *reddita*, which means money paid in Latin, and is used for money paid in return for temporary ownership or use of the house, land or any other property.

Word economically;

1) The income from immovable ownership; minus the cost of production from the soil in case it is operated with cost of production,

2) The profit or non-profit resulting from the difference in production, such as the difference between the product of relatively fertile soil and the most inefficient soil, where agriculture is carried out under similar conditions,

3) It is defined as the difference between the income of the production factor and the actual supply price or cost.

The concept of rent, which is frequently used nowadays, is perceived as the gain achieved by increasing the value of the property without any effort on it, without adding any positive value to the property. It is stated that the reason for the rent emergence is that the soil is a limited and scarce resource. Rent is expressed as a value obtained as a result of scarce land and rising prices (Aktan, 1993:119-136).

The concept of rent in the Turkish Language Association's Big Turkish Dictionary², the share of nature, which is one of the production factors, is defined as rent. In other words, the concept of rent is defined as the increase of immovable values without labor (Ökmen & Yurtsever, 2010: 59). The concept of rent among the people in society is used as earn money for speculative purposes (Saraçoğlu et al., 2015: 85).

Rent is based on the restrictions imposed on the provision of social benefits to property in order to balance society and protection by defining the individual rights (Keleş et al., 1999: 32). Rent is defined in the form of capitalist production as the economic form of land ownership (Keskinok, 1995: 205). In urban areas, the capitalist surplus is achieved through rent acquisition through real estate activities. The provision of rent is therefore possible with the transfer of ownership of the property. (Eren, 2007: 129).

3.4. The Ground Lot Rent and Formation Process

Urban soil; it is a source or property that can not be physically produced or produced in a limited manner. Soil when it comes to classification by intended use; agricultural land and urban land (Keleş, 1997). While soil production can not be realized, urban land production can be realized as a commodity. This production takes place through the transformation of rural land into urban soil. There are three main types of rent emerging in the capital production style (Harvey, 2003:165). These three types of rent can be used to explain the types and sources of urban land rent. (Tekeli, 1991:136-137).

²http://tdk.gov.tr/index.php?option=com_bts&arama=kelime&guid=TDK.GTS.587175a37ecc06.029363 (Access: 14.03.2019)

Monopoly rent: According to Marx, monopoly rent is formed independently of the general costs of production and the price of product value. It is possible that a monopolistic price is determined by the buyer's desire to buy and payment possibilities (Harvey, 2003:165). Tekeli argues that monopolistic rent has occurred because the land has a certain position. Monopoly rent will provide the user with an above-average return due to the location characteristic of the land in a certain position that can not be increased and that surplus will be collected by the landowner as a monopoly rent (1991: 119).

Differential rent: According to Marx, the difference stems from the differences in productivity resulting from the returns of labor and capital inputs. Different rent trends exist when different soils of different locations and characteristics are processed by different capital groups (Harvey, 2003:167). The rent that the urban land will bring is directly related to the distance from the land to the center of the city. While the city lands in the regions close to the center are more valuable, this situation is reversed as they are far from the center (Keleş, 1993:38).

Absolute rent: According to Tekeli, the restrictions imposed on the supply of land by private rent owners, the lack of access to restricted land in public ownership and the lack of planning in these areas result from social stratification in urban space. These situations create scarcity by creating more pressure on already limited urban land. The resulting scarcity increases the value of urban soil (1991: 119). Keleş states that, due to the characteristics of the soil, it is difficult to prevent monopoly rent and differential rent, absolute rent is possible and necessary to avoid prevention. Urban life becomes expensive and the whole society is harmed due to the absolute rent generated by the abuse of property rights (1993:40). Urban rent is required to obtain rent income due to the development of the landowner without the need for labor and without the risk of land alone (Tekeli, 2009: 26). Urban land rent is based on the characteristics of the urban land, the decisions taken on the land and its environment by individuals and institutions, and the actions they will take. These features include the location of the land, transport facilities, topography, proximity to urban services, the quality it undertakes in conjunction with the zoning plan, the effects of its surroundings and the effects of the developer on the land etc.

Providing a risk-free income gain and having many functions in terms of its characteristics increased demand for urban soil, leading to an increase in the value of urban soil. Preventing land use for speculative purposes is the necessity of planning the urban economy (Rasmussen, 1997:44-45). At this point, the planning tries to balance the

distribution of rent on urban space with the limitations it imposes on the specific demands on concepts of property (Eren, 2007:129). In addition, local and central government regulatory activities are also an important factor in the formation of urban rent. However, there is no solution to save market economy planning activities or regulatory state interventions from being an instrument of urban rent formation (Keskinok, 1995, 2005).

The process of renting urban land begins with the inclusion of a land in the urban area. This situation requires the city's development in the direction of land. While industrialization and rapid population growth are among the factors leading to urban rent, tourism, urban transformation projects, foreign investment, speculators, construction, proximity to the centre, public applications are factors affecting urban rent (Kaya, 2011: 86-87). Zoning plan decisions and infrastructure works determine the density and conditions of land use. Plot and land speculation are one of the most important issues in urban rent. People who seek return on rent buy land with the use of the present value for speculative purposes and realize the sale of the land over the value generated after the conversion of this land to the plot. In fact, the city's development direction is not based on the decision on the zoning plan, but it develops in the direction of the land that may be subject to speculation (Çelik, 2007: 1).

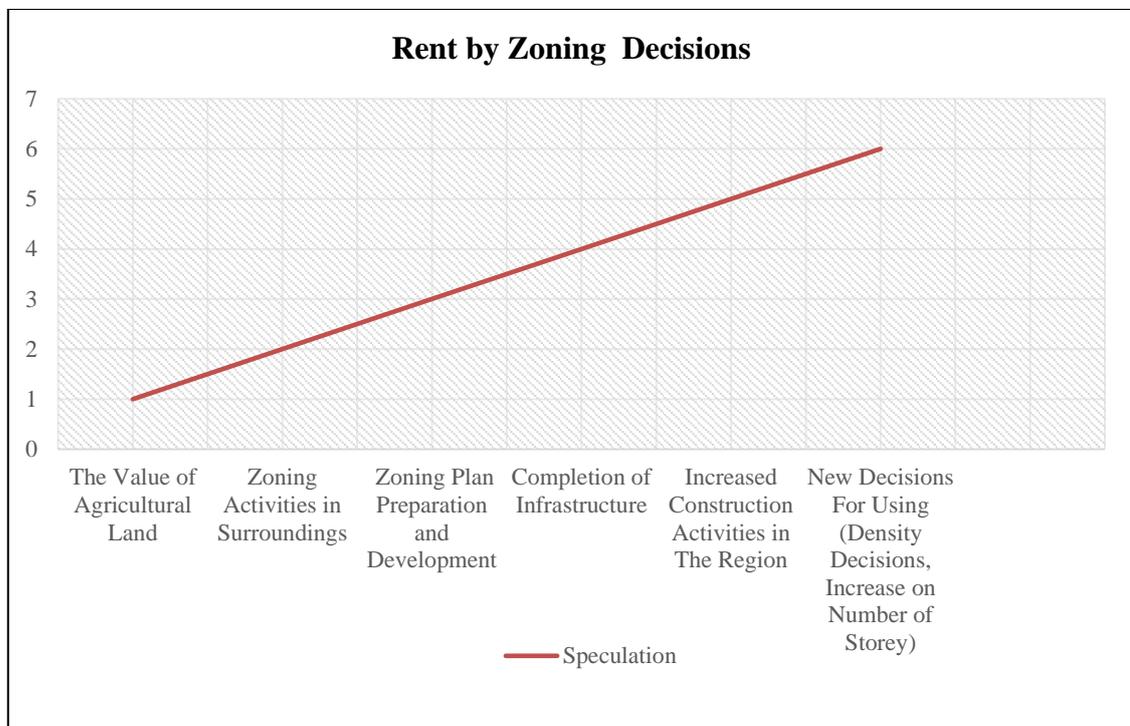


Figure 3.2. The Process of Transforming a Land into an Urban Land
 (Source: Compiled with (Türkoğlu, 1988) and (Ertürk and Sam, 2011:160))

According to the graph, the value of agricultural land 0-1, together with the surrounding zoning movements of the value rises to 0-2, with the opening of agricultural land to the value of 0-3, with the creation of infrastructure systems in urban soil with the value of 0-4 to rise, construction activities in the region with the increase in value rises to 0-5. With the rapid growth in the city, the position of the land will change and the value will be subject to speculation when it reaches 0-6 by increasing its value with the increase in floors and new usage decisions (Ertürk and Sam, 2011: 160-161).

Speculation, which is defined as waiting for the realization of real estate purchased without any activity / use, has many negative aspects of society (Ertürk and Sam, 2011: 162-166).

- Polarization of spatially observable income distribution
- Reduction of development / development by reducing regional prosperity
- Improvement of irregular urbanization that disrupts low-income distribution
- Activation of gentrification activities
- Social exclusion, spatialization
- Poverty and worsening living standards
- Abandonment of the area, leaving the metruh
- Increasing social and cultural differences among people living in the area

Immovables stay under the impact of speculation and urban lease with conservation decisions. According to the conservation decision, the threat presented by the conservation decision, which threatens the historical and natural structure, is the existence of speculation. Therefore, the magnitude of speculation has a direct effect on conservation initiatives. The more speculation, the more challenging it will be to create conservation attempts in the sector. In this situation, speculation is an issue in terms of the potential it offers for protection as it generates problems in carrying out conservation attempts. We can obviously illustrate this scenario by using speculation to boost or generate the value gains generated by speculation while removing speculation from natural and historical resources in urban regions where speculation is intense. However, given the positive-negative returns resulting from the speculation, the negative sides outweigh the speculation and the speculation can not be directed. The failure to direct urban development, the non-taxation of rent for urban development, the non-socialization of restricted rights (the burden of protection) are among the negative problems created by conservation speculation.

CHAPTER 4

PLANNING REGULATION TOOLS RELATED WITH CONSERVATION PRACTICES IN TURKEY

In this section, planning tools implemented in planning legislation such as expropriation, zoning, land and parcel arrangement, barter, easement right, voluntary arrangement are described. The purposes of implementing the tools, the reasons for their preference, the difficulties they face are explained.

4.1. Expropriation

Expropriation by the Turkish Language Association, an immovable is defined as being taken from individuals by public legal entities in accordance with a certain fair value and transferred to public ownership for the purposes of carrying out an activity in the public interest. In order to provide public services, the acquisition of public property is called expropriation without the permission of the owner of the property, provided that the price of private property is given in advance. In this regard, expropriation is a process that restricts or eliminates the right to property and the public interest is in front of the individual benefit (Türk, 2004). The amount of compensation to be paid to the landowner is calculated by two criteria. The first criterion is objective or legal cost measurement. The amount of the provision is therefore determined by law, in the public interest, and by the level of public authority. The criterion of subjective price requires full payment to the owner of the current market price. This criterion, called the market price (*rayiç bedel*), places the public institutions under a heavy burden and, due to financial insufficiency, makes it difficult to implement urban plans.

Therefore, it is not preferred due to lack of financial resources. With the expert body and the court formed in determining the market price, the price shall be determined by taking into account the type, surface, etc. of the property, which is based on determining the price of the property and is presented as a report (Akçeşme, 2006).

The contract administration and the property owner agree on the price when determining the value. In the process of expropriation, the property can be judged by the

fact that the property is not treated with the consent of the property owner, and it is sometimes judged that a lower price is determined according to market conditions. It may therefore take quite a long time to fulfill the purpose of conservation.

4.2. Zoning

Zoning is the grouping of land-use decisions based on their functions (industry, housing, public, economic aspects etc.). From the Republic Period until the 1990s, the concept of zoning tool, which was used effectively in Europe and the United States during the 20th century, was adopted in our country (Gökgür, 2005; Aras, 2015).

In our country, applications for zoning planning tool come up with master plans and development plans. Today, zoning is used to ensure the fulfillment of the master zoning plan decisions and to ensure the most efficient use of the land (Dündar, 2010, p. 97). Zoning is criticized because it only takes land use decisions into consideration and assumes that settlements have one function.

4.3. Land and Parcel Arrangement

In the international sense, the first implementations on land and parcel arrangement were carried out to combine small pieces of land that are not suitable for agricultural production. Since city planning on a legal basis, the LPA has been used as a tool for urban planning since the 1800s. The Zoning Law no. 3194 defines it as the process of redistributing zoning areas to immovable owners after determining the areas to be allocated to the public in the zoning plan by combining zoning or non-reconstructed areas without considering ownership status. Under Article 18 of the Zoning Law No: 3194 and Article 7 of the Implementing Regulation, up to 40 percent of the land and lot regulations can be obtained free of charge (For use in roads, squares, parks, green areas, mosques, police stations where a zoning plan is needed). Unlike expropriation, the rights of immovable owners continue on the property. The application of the method can be summarized as the distribution of the remaining area to the immovable owners after leaving the common areas for the public use areas from the sum of the areas of the parcels entering the regulatory area (Dündar, 2010: 101).

It is an alternative to expropriation because it is a technique of self-financing to establish urban lands and meet the infrastructure requirements, allow changes to irregularly shape and fragmented cadastral structures, the ability to organize and consolidate areas are the positive characteristics of the tool. In addition to the tool's positive characteristics, it is preferred to be an alternative to municipal expropriation. Restriction of the right of ownership on behalf of the public interest.

4.4. Barter/Trade

It means that property and responsibility are transferred through change from private property to public property and liability. Exchange is replacing a certain property with ownership of another property instead of money. Thus, the immovable owner's ownership continues on another immovable property that does not have a restriction on property rights. The landlord in another region is recommended to the landlord whose property is needed. The current purchase and sale prices of the immovable properties are determined and the difference matches with the money. This difference, which is determined in monetary terms, is provided by a document corresponding to this price (official bond, etc.) to the property owner. Since 1990, barter has been used within the 1st and 2nd Degree Archeological Sites and 1st Degree Natural Protected Areas for private property-owned immovables, which have restricted the right to construction (Mengilli-Işıldak, 2012). It is a planning tool that provides protection by economically restoring the restricted rights.

A trade is replacing a good with another property. This change is based not on a monetary price, but on the ownership of another property. The change is made by the exchange of ownership of the goods in question (Kaman, 2016: 76).

Barter can not be applied sufficiently due to the lack of sufficient and equal land.

4.5. Right of Easement

It allows another user to exercise this right by limiting the proprietor's ownership right. Another definition is that the article's owner allows someone else to use their article. Health, education, tourism, public interest, investment and incentives are given priority (Dündar, 2010: 105).

4.6. Voluntary Arrangement

It is the transformation of cadastral parcels into urban parcels without public land arrangements for the public interest. These areas are divided into areas of public service such as park, parking, playground, green area, road, school area (Türk, 2005).

Due to the realization of the land owner's request and quick results, it is preferred more than the land and parcel arrangement technique.

4.7. Transfer of Development Rights

The TDR model, which has been implemented for many years under the name of transferring development rights in the United States of America to preserve landmarks and historical areas, open space and farmlands and ecological fragile areas.

TDR is a planning tool that shows how to accommodate growth and development pressures while at the same time preserving heritages such as historical buildings and monuments.

Land-use planning is the process of regulating development rights in cases where rights are promoted, distributed and in some cases restricted. The right to develop is the one directly defined in relation to the building block's overall size. Building lot values in urban areas is directly proportional to the land zoning development rights. This means that in areas where the development density and development rights are high, the property values of the building lots are also high.

In this situation, TDR provides equilibrium in rent between areas of development and areas of conservation. In chapter five TDR discussed in detail.

CHAPTER 5

TRANSFER OF DEVELOPMENT RIGHTS

The TDR model, which has been implemented for many years under the name of transferring development rights in the United States of America to preserve landmarks and historical areas, open space and farmlands and ecological fragile areas. The Model has been demonstrated in this section with the definition of actors, historical backgrounds, application areas, both positive and negative aspects, practices in the United States and Canada, the legal framework of the model of Turkey.

5.1. The Concept of TDR

For several years now, urban economists and planners have been discussing the option of using innovative techniques and instruments to manage urban plans to improve their efficiency (Micelli, 2002:141). As a result, a positive land use conservation control mechanism called TDR emerged as an alternative planning tool (Hin Li, L., & Gan, L., 2013:19)

According to Balamir, he defines the right of development of an immovable property as a permit to be used on another real estate (1993: 177). Ersoy advocates that both the protection areas can be established and the principle of social justice can be implemented through the transfer of the right of development (Ersoy, 2005: 8). Professor James Nicholas defined the transfer of development rights as a kind of compensation paid to the property owners who lost their rights. (Colas, 1999). The owners of the restricted area in terms of development with the application of transfer of development rights; they can also compensate the damage suffered (Costonis, 1973). Transfer of development rights is an incentive tool that changes the direction of development with the proposed receiving area for the protection of historical and natural areas and provides more density for receiving areas. In other words, transfer of development right is used for preservation purposes, in order to compensate the loss of rights of property owners and to guide development (Curtis et al., 2008).

TDR can be defined as a type of transfer and purchase of development rights from areas where urban development is restricted for specific reasons such as urban

conservation sites, natural areas or historical areas to areas with high development rights as a result of land-use planning. Thus TDR is a planning tool, management model and market-based management procedure for transferring development rights from protected areas to development areas. TDR is a very useful and effective measure to facilitate the implementation of urban development policies and it promotes the development of areas designated as new growth zones (McConnell et.al., 2007; Aken et.al., 2008). TDR enables wider and more effective protection and reduces speculative pressure to guide urban development from protected areas to development zones. TDR also makes it possible to fulfil the principle of social justice by compensating for the restricted development rights of immovable property (Mengilli Isildak, 2012). Pruetz describes that, TDR is an application tool that encourages the voluntary transfer of development rights (2006:2).

According to Pizor “TDR is premised on the idea that ownership of land entails, ownership of bundle of rights, including right to access (easements), mineral rights, and undeveloped space above the parcel (air rights)” (1986:203).

The TDR is very effective in protecting environmentally sensitive areas, forest, agricultural land, open areas and cultural heritage areas. It is an active application tool that transfers development rights to the receiving area, i.e. growth area, to reduce development pressure on disaster risk areas or protected areas. The most important feature of the model is that it is an alternative if there is lack of fiscal resources in expropriation and equal treasure land in trade/barter, etc. TDR provides great convenience in situations where public resources are insufficient to meet the safeguard constraints or where the expense of protection is only imposed on the owner of the property, thus ensuring the continuity and efficiency of safeguarding by balancing gains and losses.



Figure 5.1. Transfer of Development Right (TDR), Source: Chan &, Hou, (2014)

At the intersection of safeguarding, ownership and urban development, TDR differentiates between property and conservation (Figure 5.1.). When the concept is examined in terms of ownership rights, it provides compensation for the right to develop immovable property that is under-restricted while at the same time helping to remove the growth pressure from the areas to be protected. If we look at the concept in terms of protection, it ensures the continuity of conservation by directing the development pressure in other areas that need to be developed.

5.2. The TDR Model

The aim of the model is to ensure that all or part of the development right is transferred to another area by means of a securitization tool in the event of a complete or partial prohibition of development rights in protected cultural heritage areas, nature protection areas and disaster-risk areas or, in some instances, simply the owner of the parcels. In TDR programs, central or local authorities intending to exercise protective measures in areas or settlements that cannot be opened up to development or have lower zoning rights can do so without any necessary payment.

Table 5.1. Opportunities offered TDR (Source: Adapted from Göksu,2000: 4)

Sending region	<ul style="list-style-type: none"> • Continuation of the agricultural activity • The owner of the registered building can continue to live in his / her house • Revenue from the transfer of development rights
Receiving region	<ul style="list-style-type: none"> • More development rights mean an increase in the total construction density • Increased density can be matched with more profit
Public	<ul style="list-style-type: none"> • Preservation of agricultural land • Conserving cultural heritage value • Natural resource protection

The critical point in the TDR is that urban land is not subject to any sale with the model, only the development right of the property can be transferred or purchased. The urban landowner may continue to use their property after selling their development rights (Figure 5.4). For example, after the development rights in a listed building or agricultural land have been sold, the landowner remains in or continues to make use of his / her building or continues to use land-based agriculture (Akcesme, 2006).

Any property owner has rights that give direct sovereignty to his/her owner over his/her immovable property. TDR allows property owners to waive their property rights (construction, purchase or rent, use or restriction of other land use) in whole or in part and to receive payment as reciprocity for this procedure by transferring their rights to the receiving areas (Göksu, 2000; Platt, 1996).

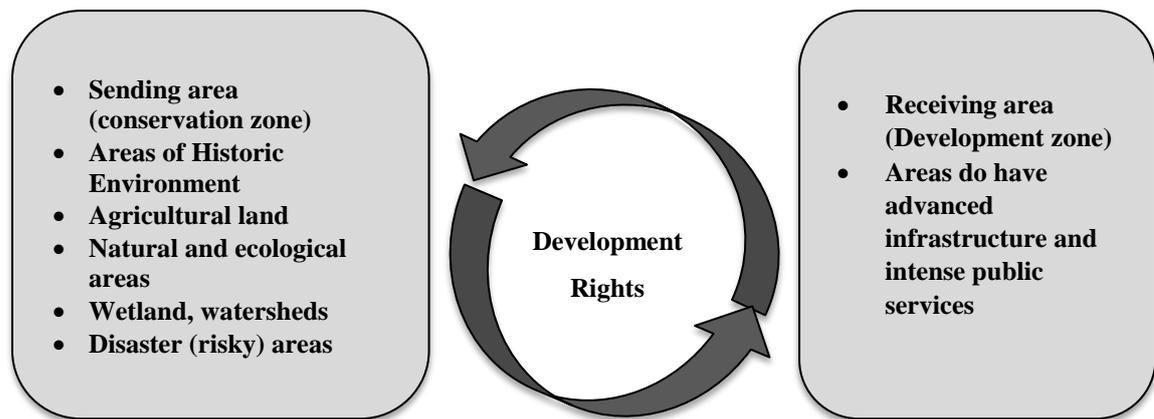


Figure 5.2. Transfer of Development Right Components (Source: Chan &, Hou, 2014)

The components of TDR programs are linked by the procedures taken to transfer TDR from sending area landowners receiving area landowners. The first is the areas where the immovable is to be protected (*sending area*) and the second is the areas to be developed (*receiving area*).

Sending areas are areas of cultural heritage, urban-rural conservation site, archaeological sites, natural areas, wetlands and watersheds, natural habitats or urban areas intended to be rescued from the pressure of growth and development and desired to be permanently protected. The areas where development rights are to be used, where those rights are to be increased and intensified are the areas where urban development is to be directed, in other words, *new development* and *construction areas*. These areas are recognized as the receiving area (transfer area). These areas are those regions designated for more intensive growth and development. TDR usually allows the development of a particular type and density beyond those permitted under the standard (base) zoning and regulation of the receiving area. For example, the use of TDR may allow increases in the number of dwelling units per unit area and increases in floor area ratios.

According to the working principle of the model, the transfer of development rights can be carried out in four different ways, with partial or total separation of rights from the area where the rights are to be safeguarded, directed and intensified:

1. In between neighboring parcels
2. within a specified district
3. Between non-urban (rural) and urban areas
4. Between settlements, cities, etc. (Kaplowitz, M.D.& Machemer, P., 2002 :775)

With the implementation of a successful TDR program, the sustainability of cultural and natural values in the protected area (sending zone) is maintained, agricultural activity continues, income from the sale of the transfer is obtained and tax debts are reduced. In the area of development which is the receiving area, more building rights and housing units can be obtained and therefore income is provided (Göksu, 2000: 4). At the same time, the zoning rights transferred to the urban area, which is to be developed from the area to be protected, return to the conservation area as an economic return. Property owners can use the revenue from the sale of zoning rights for the restoration, renovation, maintenance and repair of immovable properties in the area to be protected. In this case, the economic capital received from zoning rights will be used directly in the field of safeguarding cultural heritage and sustainability (Mengilli Isıldak, 2012: 37).



Figure 5.3. Use of TDR for compensation of restricted development right due to height limitation for preservation purposes

5.3. Actors of TDR Model

As stated in the Valetta Principles 2011, planning in historic urban areas should be participatory and new democratic institutions in line with the broad orchestration of all stakeholders in the planning process. Similarly, safeguarding needs to compensate for effective financial measures to facilitate partnership with actors ranging from elected governments, agencies, private sectors, voluntary bodies to residents at all.

In accordance with the TDR implementations in United States and other countries, and Conservation Law of 2863, Article 17/c identifies the stakeholders in the Turkish case as follows:

- Izmir Greater Area of Municipality and District Municipality of *Konak*
- Ministry of Tourism and Culture
- Ministry of Environment and Urbanism
- Izmir 1st Regional Conservation Committee
- Conservation, Implementation and Supervision Bureau of the Izmir Greater Area of Municipality
- Ministry's office for the assessment of real estate development
- Private Real Estate Agencies
- Building constructors, investors
- Property owners (land and immovable properties)
- Residents
- Institutions for Real Estate Certificates Bank of Transfer (*İlbank A.Ş*)

While TDR is intended for protection purposes, it means different goals for different actors. For example, immovable property owners can earn revenue by selling their rights while at the same time selling or transferring their rights to another buyer on the market (Figure 5.4). On the other hand, constructors can buy more immovable rights and benefit from the plan's increase in density. As a major actor, the planning offices also gained multiple benefits through the application of TDR. Local authorities can direct urban development to the regions where they want to develop, while reducing the development pressure on the conservation site by introducing buffer zones or reducing development densities. The transfer process should however be based on voluntary involvement and active participation.

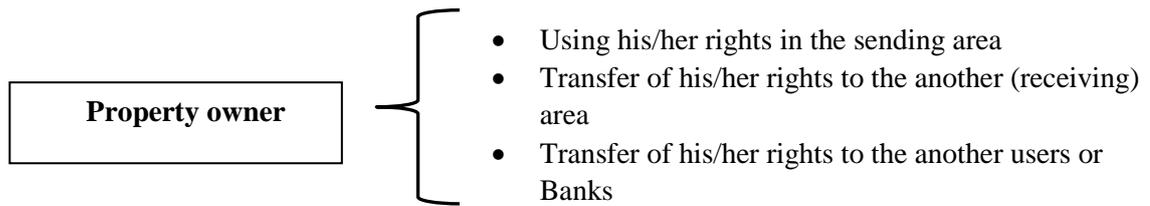


Figure 5.4. TDR and its potential offer the property owner as alternatives in America

5.4. Historical Background of TDR

There are different opinions about the model's historical development when it first began to be applied. One group claims that the TDR's first implementation is based on the 1916's (Giordano, 1987). In 1916, first in New York City, due to extensive urban planning, skyscrapers prevented the use of the sky by the surrounding properties, thereby limiting the height and prohibiting the construction of workplace manufacturing and housing units (Hanly-Forde, 1994). In this way, property owners who have not yet reached the height limit in the adjacent parcel were allowed to sell those rights to be used in other parcels. However, in 1960's-1970's TDR was comprehensively codified (Llyod, 1961; Kaplowitz et al., 2008). In the United States, the TDR concept was first introduced by Gerald Lloyd (1961) who wrote an article for the Urban Land Institute proposing this new method, which would allow developers to focus growth on other properties better adapted to accommodate extra growth. On the other hand, the second group claims that the model appeared again in New York City, starting with the 1968 Cultural Property Protection Act (Yamak, 2006). With the enactment of the 1968 Law, it allowed the transfer of property owners' development rights not on the basis of the lot or the adjacent parcel, but throughout the region. The TDR was then intensively spread in the United States in the 1980s.

The TDR model has been used around the world for several decades. In 1960's-1970's first generation of TDR programs were implemented in U.S (Kaplowitz et al., 2008; Walls and McConnell, 2007). Some of these first generation programs were in such places New York City, Collier County, Florida and Calvert County, Maryland. The principal of the TDR model between neighboring parcels and within a specified district were prevalent during the first wave of TDR programmes in the late 1960s and 1970s. Transfers within a local jurisdiction between rural (non-urban) and urban areas gained

strength with second-generation programmes during the 1980s. These second-generation TDR programs were in Montgomery County, Maryland, the New Jersey Pinelands, Boulder County, Colorado, San Luis Obispo County, California, Tahoe Regional Planning Agency, California/Nevada, Denver, Colorado, Seattle, Washington and San Francisco, California. These programs sought the conservation of environmental and agricultural property (e.g. Dade County, FL, and Montgomery County, MD). Lately, third-generation of TDR programs includes both revised earlier TDR programs (e.g. Chesterfield Township, New Jersey) and completely new TDR programs (e.g. Thurston County, Washington) (Kaplowitz et al., 2008).

5.5. Potentials and Threats of TDR

In this part of the study, in accordance with the implementation of TDR in America and Canada and Turkish condition, TDR potentials and threats are revealed.

5.5.1. Potentials of TDR

In this title the potentials of TDR models explained in several dimensions which are providing financial incentives for sending and receiving areas, strengthens the relationship between real estate and finance sector, based on volunteering, prevent uncontrolled growth and sprawl, increased employment opportunities, ensured sustainability, reduced expropriation costs, possibility immediate intervention, the existence of a strong managerial, technical and administrative capacity to design and implement the model, eliminating the victimization of aggrieved citizen, improved quality of construction and eliminated risk of a disaster, eliminating building pressure on protected areas, improved infrastructure facilities and private-public services, encouragement of conservation.

5.5.1.1. Providing Financial Incentives For Sending and Receiving Areas

While implementing the transfer of development right model, the state does not make a financial investment to transfer the right of development. Implementation of the

process within the market mechanism is ensured. In this way, by financing itself, the program does not require any extra financial grants from institutes or establishments.

In the areas that need to be conserved, the financial resources are provided by contractors, real estate apparatuses and the people who will own the property in the receiving area. The receiving areas are encouraged with special tax incentives by the state. Both the sending and receiving areas are economically and socially imagined to the desired level (Mengilli, Işıldak, 2012:82). The environmental problems encountered in the Sending areas can be resolved significantly by the decision to limit zoning after the transfer of development rights from these areas to the Receiving Areas.

Costly expenditures to conserve these regions that need protection can be used to realize large-scale reconstruction and infrastructure investments targeting high profits in the receiving regions. Infrastructure investments, known as highly costs, can be realized in much easier and convenient conditions with the planning works in the new area (Dündar, 2010:48).

5.5.1.2. Strengthens The Relationship Between Real Estate and Finance Sector

TDR programs use market mechanisms to implement and finance the redistribution of development rights in ways that can not be planned and zoned. It promotes development investors and guarantees the completion of expensive infrastructure. In finance sector Iller Bank has been authorized to print and store documents relating to certificates of rights defined as securities, the process of validating the change in transfer, and the establishment and control of information data in this process. The fair value balancing by the Real Estate Appraisal Companies approved by the Capital Markets Boards indicates the value of the economic change determined on the certificate.

5.5.1.3. Model Based on Volunteering

Although there are many different alternatives in implementing the Transfer of Development Right model, the model is based on a voluntary and mandatory basis. In

voluntary basis model implementation is not done without permission from the owner of immovable property.

According to the model, the owner of the immovable property is offered the option to use his / her right in predetermined (receiving) areas, transfer the development right to another area or transfer / sell the right to another buyer or transfer banks. The owner's of the property can choose from the options offered. The transfer of development rights to immovable property can carried out in a single transaction, it is not possible to return after realization (Pruetz et al., 2013).

5.5.1.4. Prevent Uncontrolled Growth and Sprawl

TDR, providing development according to planned and zoning rules and thus preventing uncontrolled growth and spreading. The model also used as Smart Growth Tool. Within the designation of sending and receiving areas or priority areas to be conserved or developed, choices are certainly restricted by planning decisions and zoning plans decisions.

5.5.1.5. Increased Employment Opportunities

In Receiving Areas, to be opened for new zoning, TDR provides the development of new business sectors and employment areas by creating different economic activity (Dündar, 2010:48).

5.5.1.6. Ensured The Sustainability

The program ensures the conserved of natural and cultural environmental values that need to be conserved in the sending area, such as agricultural areas, rural areas, under disaster-risky areas.

It allows agricultural landowners in the protected areas (Sending Area) to continue their agricultural activities that are carried out without development. In this way, it does not allow for development in this region and ensures the sustainability of these areas and the continuation of business areas such as the agricultural sector.

5.5.1.7. Reduced Expropriation Costs

It is believed that TDR provides protection in areas that are left unresolved or can not be implemented for financial reasons due to the self-financing feature and work balance with other planning tools. As an alternative to the expropriation practices applied as a last resort, it will provide solutions as a result of financial insufficiencies that can not be realized due to the lack of sufficient treasury land and trade/barter applications (Dündar, 2010:48). Besides that the cost of the infrastructure works of the new settlements will be raised by local governments and metropolitan municipalities through investors.

5.5.1.8. Possibility of Immediate Intervention

The program will be monitored by public institutions such as the municipalities, the Ministry of Environment and Urbanization, Ministry of Culture and Tourism and the İlbank. It will be easier to intervene in situations where the process is negatively affected.

5.5.1.9. The Existence Of a Strong Managerial, Technical and Administrative Capacity to Design and Implement The Model

Implementing the transfer of development rights model is more complex than the current planning tools and requires regular job monitoring. Local authorities / Metropolitan Municipalities should communicate with relevant actors and follow up on the process. Land / Real Estate Owners, Real Estate Appraisal and Real Estate Development Agencies, Contractors, Investors, Transfer Banks (*İlbank A.Ş.*) require a strong administrative staff (Dündar, 2010:48).

5.5.1.10. Eliminating the Victimization of Aggrieved Citizen

It is intended to eliminate the grievance of the immovable owner in cases where the lawsuits filed in the state can not be resolved due to lack of appropriation and land shortage. With the model implementation the property owners have obtained some alternatives after sell their development right which these alternatives are using his/her

rights in the sending area, transfer of his/her rights to the another (receiving) area or transfer of his/her rights to the another users or Banks (Mengilli, Işıldak, 2012:82).

5.5.1.11. Improved Quality of Construction and Eliminated The Risk of a Disaster

TDR allows property owners who have transferred development rights to the receiving area (located in the urban development zone) to take advantage of the planned and developed structures and infrastructure facilities for protection purposes. With the TDR applications to be carried out in disaster-threatening areas, the safety of the area and the people living in the area will be ensured (Aliefendioğlu, 2017).

5.5.1.12. Eliminating Building Pressure on Protected Areas

Urban rent causes intense building pressure in protected areas where development rights are limited due to protective restrictions. By transferring the zoning rights to the development area of the city, this edition on the protected area will be balanced with the TDR program. The fact that the receiving area to be transferred is located in the urban development zone, allows for more intensive construction and provides improved structure and infrastructure systems will create attraction for these regions and will be lifeguards for protected areas (Dündar, 2010:48).

5.5.1.13. Improved Infrastructure Facilities and Private-Public Services

Historical settlements are underestimated by the fact that they lost their old qualities and were unable to adapt to the current construction density. As a result, the settlements have entered the economic and physical decline process. Although the problems experienced in historical settlements have lost their old functions, vitality and central functions, they will allow users of the receiving regions in developing regions to have better infrastructure, private and public services (Dündar, 2010:48).

5.5.1.14. Encouragement of Conservation

The receiving area is also encouraged by actors, construction companies, etc. to participate in TDR applications by providing more intensive construction. Building pressure is removed from these areas by ensuring the transfer of rights in the area to be protected, and the receiving area creates an incentive for people living in the area to be protected (Mengilli, Işıldak, 2012:82).

5.5.2. Threats of TDR

In this title the threats of the TDR model are explained in several dimensions that required more expert team and effort in the implementation and management of other planning tools, the risk of environmental problems and disruption of municipal services, the same success can not be achieved in every TDR program, it's a long term process and the treat of rental tendencies.

5.5.2.1. Required More Expert Team And Effort In The Implementation and Management Of Other Planning Tools

Implementing the model does not reduce the need for planning, but requires a more comprehensive planning process during the design-implementation phase and in managing regional development priorities and requires strong administrative, technical and managerial staff. For the process to function more effectively, the relevant public bodies should organize promotional information and meetings on the Transfer of Development Right (Dündar, 2010:48).

5.5.2.2. The Risk of Environmental Problems and Disruption of Municipal Services

Increased intensity in the area due to an increase in the number of transfers in the region may decrease the quality of life in the region and cause a decrease in property values (Hanly-Foyde et al., 2014). In the applications to be carried out, technical and

social infrastructure systems may be insufficient without taking into account the number of people to be transferred and the number of people living in the area.

5.5.2.3. The Same Success Can not Be Achieved In Every TDR Program

According to the various variables, such as the characteristics of the sending and receiving areas, the zoning conditions, the details of the TDR program, the actors and the relationships between them, the number of units to be transferred and the individuals of each application are specific to the area. For this reason, even if the variables have similar characteristics in each program, the same results may not be obtained (Pruetz et al., 2013).

5.5.2.4. Long Term Process

Protection priority can be changed by the effect of people and events when determining and evaluating immovables in the protected area. In addition, factors such as structure value and structure quality change from person to person (not subject to subjectivity) is the negative aspect of the process when the assessment is performed. In TDR applications, many studies such as sending and receiving area detection, detailed analysis of these areas, current capacities and projections should be carried out in addition to the normal planning process. Increasing the number of institutions running the program together may cause the process to prolong (Mengilli, Işıldak, 2012:82).

5.5.2.5. The Threat of Rental Tendencies

TDR will be carried out with actors such as private real estate agencies, building contractors, investors. When these actors are left with the sales transactions of the zoning rights, the sales transactions will be made through the open market. In this case, rent can come to the fore instead of the purpose of conservation (Dündar, 2010: 48). Because of that municipalities should clearly state which density will be transferred between regions. It is important to evaluate how the transfer will affect the receiving area.

Table 5.2. Potentials and Threats of the TDR

	Cost	Management	Justice/Equity	Urban Development	Effectiveness in the Conservation
Potentials	A financial incentive tool for sending and receiving areas	Strengthens the relationship between real estate and finance sector	The voluntary participation of landowners in the sending area and investors in the receiving area is <i>essential</i> in the TDR application	By transferring the development rights in the sending areas to the new urban development regions, the development of the recipient areas can be achieved in accordance with the land-use planning and zoning rules	The sustainability of the site as a conservation area is ensured by transferring the restriction of the construction ban on the right of development in the sending area to receiving area
	Expropriation costs are reduced by applying the model	As the program implementation process is followed, negative situations can be intervened immediately	Allows relief for the low-income groups who suffers from the conservation restrictions	Improves the quality of construction and thus eliminates the risk of a disaster	Reducing the building pressure on the protected areas by directing the pressure in the sending areas to the urban development area
		There is a need for strong administrative, technical and managerial capacity to design and implement the model so that capacity is eventually increased		Developing the new residential settlement in the recipient area increases employment opportunities	High building and construction density can indirectly encourages sustainability and safeguarding in the conservation area
				Rights can be transferred to areas where there is a high concentration of private and public services and advanced infrastructure facilities	
Threats		TDR requires more expert team and effort in implementation and management according to other planning tools	The same success can not be achieved in every different application of the TDR programme	Concentration in the recipient (receiving) area can cause environmental problems and disruption of municipal services	The threat that the model may display a speculative tendency when left to market conditions and that its primary objective may deviate from protection
			The process takes a long time due to contextual differences in the detection and valuation of immovables in the sending areas		

5.6. Implementation of TDR in Conservation Areas

Table 2 summarizes the selected TDR applications worldwide. San Francisco, Denver, New York in United States and Vancouver in Canada in particular have been taken as the details since they were applied.

5.6.1. United States

Since the 1960s TDR has been used in the United States of America. The model implementation method has variable types depending on the area characteristics. The differences are occurred by the type of the model that is voluntary or mandatory, by the actors of the model, by the characteristic of the sending and receiving area. Each application has distinct outcomes according to these variations.

5.6.1.1. San Francisco

In 1967, San Francisco established a Landmarks Preservation Advisory Board to promote the preservation and restoration of historic properties. In 1985, with the implementation of a new plan classifying 253 properties in the city center as architecturally significant and 183 other properties as Contributory buildings, the historical preservation attempt took a big step forward. Preservation area that is transfer area that can be transferred from development rights in the C-3 zoning district of San Francisco. Transfers can take place only between lots in the same zoning district or between two combinations of lots of transfer and lots of growth as indicated in the code. Development rights may not be transmitted to development locations with Significant or Contributing buildings unless the additional development is required to satisfy the earthquake standards of the building code for the historic construction (San Francisco, Ca: City of San Francisco, 1985:8) By 2009, owners of 116 designated historic buildings had certified their potential unused floor area, the first step in San Francisco's TDR process (Pruetz, 2013:207).

The plan allows the transfer of unused building rights from important and contributing houses to receiving lots, provided that the landmark lot abuts the receiving lot for a range of not less than 25 feet along a side or back lot line or provided that the

landmark lot is separated from the transfer lot by only one road or alley. If both the landmark lot and the transfer lot are owned by the same party, the lot can be distributed as the owner pleases (San Francisco, Ca: City of San Francisco, 1985:1)



Figure 5.5. TDR is one of San Francisco's primary means of preserving architecturally significant properties. (Photo by Rick Pruetz)

5.6.1.2. Denver

Denver embraced its historic conservation TDR plan in 1979 as a part of its more extensive strategy to integrate the conservation of the City's centrally located historic fabric with the suggested building of a new mixed-used business development, known as the Seventeenth Street Mall. However, the Plan was not followed by either downzoning or historic district designation. The Plan is voluntary, and owner consent is sought before historic designation occurs (Jones, 1992:59).

The Denver Planning Commission attributes this decision on the part of the community not to have mandatory historical designation of properties or mandatory involvement in the TDR program to a perception that a compulsory program would offend

Denverites sensitivities, who prefer to maintain government regulation of private property to a minimum. (Roddewig & Inghram, 1987: 9).

The Denver TDR Ordinance restricts sending sites "only to landmark buildings separately designated by the Denver Landmarks Commission." (San Francisco, Ca: City of San Francisco, 1985:1). Before a transfer of development rights can occur, the building must be rehabilitated to the Denver Landmarks Commission's norms. When the transfer occurs, the development rights of the sending site are calculated by subtracting the density of the landmark structures from the FAR base permitted by zoning.

The receiving site can not improve its density beyond the base zoning to more than 2.5:1, and the landmark can create no more than four transfers. Although the number of development rights sold permanently reduces all future development on the sending site, no requirement is imposed on the owner of the historic building to ensure its long-term maintenance. In the event that the building is destroyed by a fire, the FAR of any successive development on the lot is restricted to the density in force after the transfer. In the downtown TDR region, nearly 2.7 million square feet of unused density occurs above qualified, designated monuments and 13 million square feet of density could be made accessible if buildings recognized by the Denver Planning Commission as "potential landmarks" are also counted. The new building, which was designed to generate a demand for development rights, never materialized because of Denver's infamously high office vacancy rates. Because of this, there has been only one transfer in the four years since Denver's ordinance was implemented, a transfer of 60,000 square feet for about \$15 per square foot. The Denver TDR plan has been credited with providing landmark owners with options they haven't had before, despite Denver's weak development rights market. For instance, property owners used their development rights as collateral for construction loans for rehabilitation. In addition, the implementation of a TDR program has made landmark designation more appealing to property owners in a city whose people reverence property rights. (Jones, 1992:59).

5.6.1.3. New York

In the United States, New York City enacted the first comprehensive zoning act in 1916, partially in reaction to public opposition to skyscrapers that blocked sunlight from adjacent properties. New York City's 1916 zoning code included the ability to

transfer development rights between properties (Roddewig & Inghram, 1987: 8). For instance, it allowed property owners to sell their unused air rights to owners of adjacent lots within the same block; the new owners could then use those air rights even if their buildings exceeded the new height and setback requirements, as long as the average floor area of the affected buildings complied with zoning limits (Pruetz, 2013: 213).

The New York City Planning Commission amended its TDR program provision in 1968 to allow transfers between lots several blocks away, provided the properties met a tortured definition of the term adjacency that included lots across streets or connected by a contiguous chain of properties under common ownership (Johnston & Madison 1997). The New York TDR plan is designed to ensure both preservation of the sending site and responsible development on the receiving site. New York City needs the sending sites to be landmarks designated by Landmarks Preservation Commission. The difference between the landmark size and the zoning permitted building size can be transferred to adjacent zoning lots (Jones, 1992:59)

The landlord must submit a program outlining the maintenance of the landmark, a report from the Landmarks Preservation Commission, and plans for development of the receiving site. In addition to exceptions to the density restrictions on the receiving site, the city planning commission may grant a special permit allowing a receiving site project to deviate from the setback, open space and building height requirements, and also allow for minor differences to plaza, arcade and yard laws. The program offers a one-to - one transfer ratio. New York City originally did not limit the quantity of density that could be transferred to a receiving site by special permit (Pruetz, 2013: 213). While sending sites may transfer all of their unused development rights, the receiving site's floor area may not exceed 20 percent of the amount to which it is entitled by zoning prior to the transfer, although "no ceiling is set for lots in high-density commercial zones." (Costonis, 1974: 19)

Grand Central Terminal

Penn Central's demand to build a fifty-nine-story office tower on top of the Grand Central Terminal, a designated historic landmark. The Supreme Court learned the resulting legal case. In addition to claiming that the city could impose limits on the changes of historic properties, the court decided that the transfer of development rights could be used to reduce the impact of development limitations, thus offering significant

validity to TDR's then-new tool. In this case, four transactions alone transferred 448,000 square feet of floor area potential from the Grand Central Station sending site. (Pruetz, 2013: 213).



Figure 5.6: The U.S. Supreme Court gave TDR credibility in its 1978 decision upholding New York City's denial of alterations to Grand Central Station. (Photo by Rick Pruetz), the photo on the left Ground Central Terminal around 1930's (Web1)



Figure 5.7. Grand Central Terminal in 2012

Source: (Web 2)

Grand Central Terminal

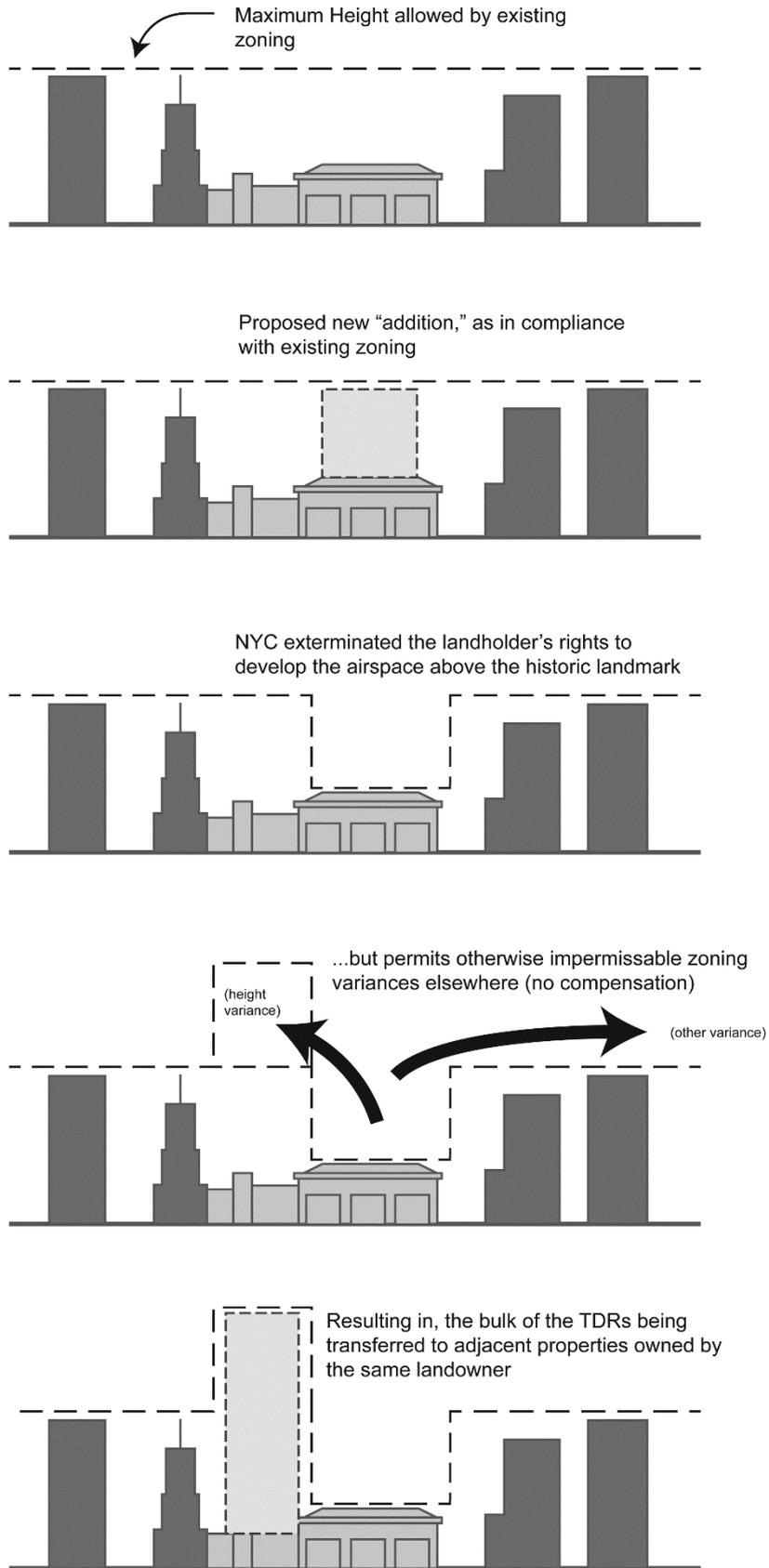


Figure 5.8. Grand Central Terminal TDR process by Doug Woodruff.

South Street Seaport

Another example of the creative manner in which New York has utilized its TDR Plan is the case of South Street Seaport in Manhattan. The TDR program of citywide landmarks calculates transferable floor area as the maximum floor area permitted by zoning, minus the floor area within the landmark structure. However, the South Street Seaport program calculates the transferable floor area as the maximum development permitted, without any deduction for existing landmarks. Furthermore, floor area can be transferred from closed or discontinued roads depending on the maximum amount of floor area that could be constructed there under the maximum development limits of the zoning code. The sending area of South Street Seaport consists of three big parcels and four discontinued roads now designated as pedestrian ways. Applying the zoning potential to this sending region led in a supply of 1,2 million square feet of transferable floor area. By 2010, nearly all of the original 1.2 million square feet of supply had been transferred from sending to receiving sites. (Pruetz, 2013: 213).

In this case, the City enacted a special zoning ordinance, designating both a preservation zone, the Seaport District, and a redevelopment zone within a historic district. The redevelopment zone, at the time of its creation, consisted of street-level parking lots. Excess development rights were shifted from the preservation area to the area designated for new development. In exchange for writing off delinquent mortgages, a number of banks received the development rights from historic buildings, thereby enabling owners of buildings in the Seaport District to qualify for loans to renovate their properties. The banks held their development rights in a TDR "bank" and sold the rights for new construction in the redevelopment zones. As a result, the historically renovated region evolved into a tourist attraction and several significant office buildings were built in the receiving zone with "bank" TDRs. (Roddewig & Inghram, 1987: 8). When development rights are transferred from a sending site, a legal instrument is recorded that reduces the development potential of the sending site by the amount of transferred development for ninety-nine years. (Pruetz, 2013: 213).

Theater District

New York has wanted to maintain its theater district for centuries, estimated to produce \$2 billion in revenue per year and employ 250,000 individuals. After 1968,

theater owners were able to take advantage of the city's TDR conservation program by searching for landmark designation and finding a buyer for their unused floor area potential. Nevertheless, development continued to threaten the district, as demonstrated by the demolition of two historic theaters in 1982 to create space for a new hotel. New York City designated twenty-eight theaters as landmarks in 1987, encountering opposition from many theater owners who claimed that the 1968 landmark TDR program alone provided inadequate compensation.

New York City introduced a new TDR system in 1998, which a neighbourhood organisation quickly challenged in court. In 2001, an appeal court upheld the program, which has since undergone changes. The current provisions distinguish between transfers approved by certification, authorization, and special permit. These approval processes vary in many ways, including the maximum site density permitted when developers choose the TDR option. However, in all three, the sending site must comply with the following regulations intended to guarantee the continuity of the theater:

- Commitment to the operation of a legitimate cinema for at least five years
- Proof that the building is physically and operationally sound or a plan to make it sound (if the theater is a landmark, rehabilitation must maintain important architectural features)
- A financial plan showing the capacity to comply.
- An inspection and maintenance plan
- A legally binding commitment for continuation of the legitimate theater for the life of the related receiving site development

Finally, a contribution of \$10 per square foot of the transferred floor area must be made to the Theater Sub-district Fund to pay for inspections, enforcement and other activities to support the conservation goals of the sub-district. After being delayed by lawsuits, this TDR program has generated at least one transfer: the owner of the Al Hirschfield Theater sold more than sixty-five thousand square feet of development potential to allow bonus floor area in a new development on the western edge of the subdistrict (Pruetz, 2013: 215).

5.6.2. Canada

In Canada TDR implementation Vancouver case taken into consideration. The case is seen as one of the successful TDR model although it has strict rules/principals of implementation.

5.6.2.1. Vancouver

On 25.01.1983, the Vancouver City Council approved a statement allowing for practices of reallocation, covering the transfer of density from one area to another. The Declaration's objectives; such incentives for appropriate housing, social, cultural, educational and recreational uses are envisaged to safeguard historical buildings and regions, to generate open spaces and parking places, to promote growth in mixed-use fields and to attain enhanced urban design. The Vancouver Planning Committee has prepared a document outlining the steps to be taken when implementing TDR for density transfer applicants, and each step is defined in law as a result of informal interviews with the planning unit manager. The projected development permits were therefore continued with the TDR process and the application was aimed at testing whether the area was suitable for additional density. During the first three years of policy implementation, three new zoning practices have been associated and approved for intensity transfer. According to program it is stated that there will be no transfer of more than two settlements and there will be no more than one transfer in the region. The areas to be transferred (sending-receiving areas) can not selected in the same region, however, region, usage, density or height decisions there can not differ as determined by the plan. It was stated that both the immovable sector and the municipality also succeeded in the policy implemented in Vancouver (McLaughlin 1986).

During the process, some suggestions were made by the planning unit. These recommendations are,

- TDR is a policy and tool that is particularly applicable to municipalities and this policy should be used for the public good.
- Transfer guidelines/principals are very essential for the program's achievement. The principals should be clear and simple to comprehend and should not create arbitrary obstacles.
- Municipalities should clearly state which density will be transferred between regions. It is important to evaluate how the transfer will affect the receiving area.
- The risk that leaving the banking system at the discretion of bureaucrats and politicians can trigger numerous pressures, and the risk that an obstacle during the establishment of the banking system will also confuse the property market, leading to an uncertain and speculative scenario.

Table 5.3. Selected TDR applications for the conservation of the cultural heritage of the U.S. and Canada

	Bank of TDR	Bonuses	The ratio of transfer*	TDR in different building blocks	The way to use the transfer of the Development Rights?
San Francisco, California	-	-	1:1	<ul style="list-style-type: none"> • One can find sending and receiving areas in various parts of the city • Unless the transfers are to be retained in the same region, the transfer would be made to the new development areas • Transfer rights can be combined into two different regions and transferred to the new development region 	<ul style="list-style-type: none"> • Transfer rights can be obtained directly from the property owner or someone who collects and purchases the rights • TDR can be transferred in one time and can be conducted several times as fragmented
Denver Colorado	TDR is regulated by local administrative bodies	<ul style="list-style-type: none"> • Providing additional development rights (increasing density) for areas such as housing, child care centres, pedestrian areas, public art areas, underground car parks and cultural heritage areas 	1:4	<ul style="list-style-type: none"> • Transfers are possible not only in adjacent parcels, but also in different parcels of the city. 	<ul style="list-style-type: none"> • Extra densities can be used in the sending zone parcels • The right to transfer developments from the protected areas is transported to the <i>receiving area</i>
New York, New York	TDR is regulated administratively	<ul style="list-style-type: none"> • Public squares, playgrounds and public services are given a density bonus to select locations in newly emerging areas 	1:1	<ul style="list-style-type: none"> • The Landmark Conservation Commission is determine the sending areas • In adjacent regions, the amount of transfer found in the calculation can also be used 	<ul style="list-style-type: none"> • After calculating the total transferable building area, the result is considered to be the maximum total construction area (floor area ratio) of the Zoning Regulation
Vancouver, Canada	The Vancouver Planning Unit is controlled	-	1:1	<ul style="list-style-type: none"> • There are no differences between the areas subject to rights transfer with respect to land-use, density and height planning decisions • In the same building blocks, transfers cannot be made 	<ul style="list-style-type: none"> • The application of the municipality in Vancouver was also considered by the real estate sector as a successful implementation (Aken et al., 2008)

* This ratio is defined as the mathematical relationship between the total limiting potential development rights in the sending area and the increased building density in the receiving area (Nelson, Pruett, & Woodruff, 2013, 286). For example, 1 to 1 ratio (1/1) is defined as the limiting building units per square meter that are equated in the receiving area with the same building units. This means that the unit is transferred in the restricted (sending) area without altering the square meter area of the housing space.

5.7. Turkey’s Legal and Administrative Situation

There are great difficulties in preserving and sustaining the rich cultural heritage of our country, the disappearance of these values or the presence of a permanent threat causes the transmission of intergenerational value to weaken and the loss of settlement identity. For this reason, strengthening conservation policies, mobilizing own resources for conservation efficiency and financing the cost of conservation are of great importance in the implementation of conservation plans (Mazi, 2009). Conservation plan is a plan that by its nature limits construction activities (Table 5.4). In the plan, zoning restrictions can be made for the immovable properties and plots of the site. These restrictions may be limited to the right of immovable owners to develop their immovable property and, in some cases, the complete prohibition of construction.

In our country, it is quite difficult to compensate for economic losses by expropriation and barter/trade. There are also limited preservation resources and difficulties in accessing these resources. Moreover, people living in traditional residential and commercial areas are usually low-income groups, immovable owners' grievances can remain unresolved for many years (Madran & Ozgonul, 2005). For this reason, it is necessary to develop new tools to compensate for the financial problems experienced in conservation and to compensate for the loss of rights due to zoning restrictions. From this point of view, TDR offers a solution as a means of planning.

Table 5.4. Conservation Status and Restrictions on Use

(Source: Compiled from Yamak (2006) and Dündar, (2010: 38)

<i>Status</i>	<i>Restrictions on use</i>
1.st Archaeological site	<ul style="list-style-type: none"> • No construction is permitted in any way • No construction is permitted except for scientific excavations • Even traditional farming is not allowed
2.nd Archaeological site	<ul style="list-style-type: none"> • In accordance with conservation and use decisions, construction activities other than scientific excavations are not permitted • Although new construction is not permitted, simple repairs of unregistered structures currently in use can be made in line with the existing “<i>Principles of Decisions</i>” of the Ministry of Culture and Tourism

(cont. on next page)

Table 5.4. (cont.)

<p>3.rd Archaeological site</p>	<ul style="list-style-type: none"> • New regulations may be allowed in accordance with the conservation and use decisions of the Conservation Plan
<p>Historical Site</p>	<ul style="list-style-type: none"> • No construction or physical activity may cause damage to the natural structure except for the necessary infrastructure applications and public service structures until the Conservation Plan is deemed appropriate by the Regional Council concerned
<p>Urban sites (Law 5226/2004)</p>	<ul style="list-style-type: none"> • By designating any area as a conservation site, this decision resulted in the termination of all kinds of planning activities • The Conservation Regional Board shall determine the “Transitional Conservation Principles and Conditions of Use” of the conservation area within three months valid until the preparation of the Conservation Plan • No new building or development can be applied in urban sites without “Transitional Conservation Principles and Conditions of Use” • In condition of the “Transitional Conservation Principles and Conditions of Use” is determined in urban sites; new construction or zoning applications and mandatory infrastructure applications in accordance with the principles and conditions of use for the transition period can be made in accordance with the requirements of conservation projects
<p>Conservation Plan (Law 5226/2004)</p>	<ul style="list-style-type: none"> • Conservation plan is prepared in accordance with the "Transitional Conservation Principles and Conditions of Use" decree, whether or not it exists, and it is prepared containing the entire area and creating all the necessary interactions in the vicinity and the urban area it is settled • After declaring the specific area as a conservation site, the Conservation Plan must be prepared by the affiliated administrative planning unit within two years • In these two years, if the preparation of the Conservation Plan has not yet been completed, the Regional Council may extend the duration by adding an additional one year • At the end of all these periods, if "Transitional Conservation Principles and Conditions of Use" cannot be prepared, the Conservation Plan will be terminated until the Conservation Plan is prepared (<i>there can be no endless time limits</i>)

Table 5.5. Selected TDR applications for the conservation of the cultural heritage

(Source: Compiled from Yamak (2006) and Dündar, (2010: 38).

	United States, Canada	Turkey
TDR Implementation Areas	<ul style="list-style-type: none"> • Natural and Historical Conservation Areas • Agricultural Areas 	<p>According to Jurisdiction TDR will be implemented on these areas;</p> <ul style="list-style-type: none"> • Immovable Cultural Assets, • Urban Transformation Areas • Disaster-risky Areas
	<p>The program also involves places of use in the immediate vicinity of the area to be conserved by agreement on the grounds that they could threaten the conservation.</p>	<p>There are legal regulations in place to safeguard the region of immediate conservation related to the regions mentioned above.</p>
Legal Statute	<p>In addition to the primary legislation, special regulations are established in the region to be preserved.</p>	<p>In addition to the main laws, it is stated that regulations will be made with the regulations to be issued.</p>
Incentives	<p>Bonuses are provided for incentives when transferring to many applications.</p>	<p>With securitization, the property owner has the right to transfer ownership of the property to the bank or other buyer, the right to use development right in the receiving area or keep it for another region.</p>
Real Estate Valuation	<p>Different techniques are used, such as rating based on the significance of natural resources and evaluation based on the level of protection.</p>	<p>The legislation says that the licensed real estate companies will be responsible for assessing the value of the TDR. (With market value compensation)</p>
Finance	<p>Transfer banks are responsible for transactions such as purchasing and selling certificates under free market conditions.</p>	<p>Iller Bank is authorized to establish and monitor documents relating to the certificates of rights defined as securities, the storage of documents, the process of validating the transfer change, the establishment of the information database in this process.</p>
	<p>Transfer Banks can perform tasks such as determining the lower limit values for valuing the transmitting area and acting as the buyer or seller actor.</p>	<p>Iller Bank is planned to work in the form of a zoning right bank and there is no regulation that plans to include Iller Bankası directly in the transfer and purchase transactions to zoning rights.</p>
	<p>Certificates can be purchased and sold independently under free market conditions. Transfer banks are not mandatory in every application.</p>	<p>Municipalities, governorships and Iller Bank have been authorized to separately regulate certificates from the free market. This means that there will be no market where the rights issued as certificates are freely sold.</p>

The transfer of development rights was regulated in 2004 by amending Article 8 of Law No 5226 and Article 17 of the Law on the Protection of Cultural and Natural Assets³. In the draft text submitted to the Turkish Grand National Assembly for amendment, it is presented for the purpose of preserving cultural and natural assets that the lack of budget in expropriation practices and insufficient public land in barter practices does not yield the desired results in conservation implementation.⁴ At this point, the concept of TDR is an alternative to complete the missing aspects of planning tools like expropriation, trade, etc.

Referring to the Assembly because of the amendment of Law No. 5226;
“In the name of the public interest, the system in which we restrict the right to property and the responsibility for the protection of the structure is left to the citizen is changed and a reasonable, applicable and modern system is established by taking care of the public interest-private property balance.” indicated⁵.

The law stipulates that the TDR may be applied for immovable properties whose rights are restricted, registered immovable cultural assets and conservation areas, immovable properties restricted by conservation plans⁶. The Cultural and Natural Properties, the immovable properties in the conservation areas or with the decision of the Conservation Plan whose development rights are restricted, the rights of restricted ownership and development are transferred to the transferable areas open to the development set out in the zoning plan with the approval of the municipality and the governorship. It is seen that the concept of law is defined within the U.S. implementation framework. The main objective in this direction is to conserve the historical and cultural areas.

The areas to be transferred should be reserved as the receiving area in the zoning plan. The legal method of transfer is performed by certificate. The fair value balancing by the real estate assessment companies approved by the Capital Markets Boards indicates the value of the economic change determined on the certificate and the cultural value of the registered immovable cultural asset is not taken into consideration. In calculating the value of the registered immovable cultural assets, academics and non-

³ Law for Conservation of Culture & Natural Assets (LCCNA) Law No. 5226, Official Gazette, 27.7.2004 / 25535 see: the Article 17/c, 17/c-18.paragraph
<http://www.resmigazete.gov.tr/eskiler/2004/07/20040727.htm#1>

⁴ <http://www.tbmm.gov.tr/sirasayi/donem22/yil01/ss641m.htm>

⁵ Presidential State Supervisory Board Report of 09.02.2000 and 2000/4

⁶ Law for Conservation of Culture & Natural Assets (LCCNA) Law No. 5226, Official Gazette, 27.7.2004 / 25535 see: the Article 17/c, 17/c-18.paragraph

governmental organizations do not consider the value of the structure that qualifies the volume and size as a fair value assessment. Although the regulation has similar characteristics to the overseas examples, the model's implementation in certificate evaluation varies. Iller Bank has been authorized to print and store documents relating to certificates of rights defined as securities, the process of validating the change in transfer, and the establishment and control of information data in this process⁷. The institution is expected to work as a development right bank and there is no regulation that plans to take place in the transfer process directly in the purchase and sale transactions. Therefore, the institution has no duty to determine the lower limit values for the valuation of the transfer area as in the U.S. samples and to act as the buyer or seller actor as the transfer bank. The certificates are kept separate from the free market and authorized by the municipality, the governorships and the Iller Bank. This means that there will be no market where the rights issued as certificates are freely sold.

TDR may be transferred in two different ways, either partially or completely, depending on the nature of the property under conservation status. In partial transfers, the property ownership of the immovable property i.e. the listed building continues. However, in this case, the property owner is obliged to maintain, restore and repair for the conservation and survival of the immovable property in accordance with the protocol to be signed with the relevant administration.

In the case of full transfer of development rights, the property rights of the immovable property change with all of its elements and the ownership of the immovable property is wholly owned by the public. In this case, a certificate is issued to the landowner regarding the development rights he has obtained and his ownership is transferred to the public. Once the property is transferred to the public, the resale can not be allowed in accordance with the law. In other words, a property owner whose development rights certificate has been lost; (1) use the property, (2) benefit the production fruit, (3) possess, sell, rent, bequeath, mortgage, or just "use" his/her property (Mengilli Isildak 2012:98). The fact that the property owner spends his income from the restricted right to restore the restoration, etc., will ignore the principle that the model will compensate for the development rights that are essentially limited.

Although there is no provision in the law concerning the design and determination of the receiving areas, the area to be transferred is first selected from the relevant

⁷ Building Law No. 3194, T.C. Official Gazette, Issue: 18749, 5/9/1985.

municipal boundaries and, if there is no enough area for a transfer (receiving) area, it is foreseen that it will be used in other areas to be determined by joint programs with other public institutions. Administrative units with different jurisdictions (local bodies, municipalities, regional administration or states), primarily the local municipality, were first selected for transfer in the United States. Where it is not possible to implement them at local level, urban or regional authorities prefer to apply. The lack of criteria for the transfer area, the areas to be defined as the transfer area open to development, may pose a threat to the model's purpose of protection and effectiveness. Another area that needs to be protected may be damaged when attempting to protect an area. Therefore, it is great importance to establish the model's implementation regulation and to define the field-related definitions and conditions (Yamak, 2006).

In Turkey, the rules governing the implementation of this process are drawn up by the Ministry of Environment and Urbanization and the Ministry of Culture and Tourism^[8]. Cooperation is very important for many administrations in order to eliminate shortcomings in financial and technical expertise, especially in large-scale applications. As long as the transfer of development right model is properly constructed and implemented, it is evaluated by different segments that the social reinforcement areas created by leaving the protected area, registered structures, roads, green areas etc. can be preserved and that a fundamental solution to the conservation problem can be found by not opening up to the construction.

However, the transfer of development right model could not be implemented as laid down in the Cultural and Natural Assets Protection Act. According to the 2009 Urban Heritage, the Space Quality and Urban Design Commission Report prepared by the Ministry of Environment for Urbanization Council showed that the transfer of development rights to conservation is not applied as a reason not mentioned in Law No. 3194^[9].

⁸ Law of the Decree for Organization and Duties of the Ministry of Environment and Urbanization Law No:648, Official Gazette, 17.08.2011 / 28028
<http://www.resmigazete.gov.tr/eskiler/2011/08/20110817-1-1.htm>

⁹ Ministry of Environment and Urbanism,,: Urban Heritage, Space Quality and Urban Design Commission Report, Urbanization Council, Ministry of Environment and Urbanism: Ankara, April 2009, 25.

Table 5.6. Turkey's TDR Practices (Source: Compiled from Duyguluer, 2006)

Where	Reason to Use	Using Type	Implementation
In the regions where the development plan has been granted with the right to structure,	Transfer of Development Right to, Neighboring parcels / plots Non-neighboring plots / parcels	Plan changes or plan note Urban design Development plan	Necessity (disaster-risky) Non-obligatory (as requested by the investor)
Have the right to structure,	Transfer of Development Right to another areas	Plan changes transform to equipment	No transfer note in development plan or in the case of no transfer note in development plan for parcels where the building permit has been obtained but not started, transfer is use as a reason for plan changes
In the regions where the development plan has not been granted with the right to structure, (The green area, education, protection, security, geological construction etc. are prohibited in the plan's formation phase)	Assuming the right to be built around	Plan changes give a right to use their development right in receiving area	As a provision for expropriation or as Article 18, The aim is to save the municipality from financial expenditure and to implement the related social / technical infrastructure.

In Duyguluer's compilation of various municipal council decisions and plan notes, it was determined that the TDR was arranged in the form of a plan change and in the zoning plan notes (2014). Although the TDR is conducted in line with an integrated planning approach and a program in its international practices, our country's practices are made as fragmentary and ad hoc. In practice, the transfer of development rights is limited by the size of the land parcel and the nature of the parcel is not considered in different dimensions in world practices (e.g., whether or not it has a share, shape or soil, geological structure). Furthermore, the effectiveness of applications is limited without the integrity of the plan and the relationship between the plan and the program. In order to implement the model to be implemented in Turkey on behalf of the compatible legal and administrative framework, the model should clearly set out the well-made definition and application method of the concept and state the necessary actors. However, as the application regulation has not entered into force, the model has not been put into practice.

CHAPTER 6

A CASE STUDY FROM HISTORICAL KEMERALTI, 1. RING RESIDENTIAL AREA IN İZMİR

This chapter begins with the general information about case study area which located in Historical Kemeraltı, 1.st Ring Residential Area in İzmir. Regards of case study area, location and general characteristics of the area, its historical background, plan decisions and status, the ongoing projects with in the area are briefly explained.

6.1. Location and General Characteristics

Having witnessed 8,500 years of human history, İzmir, which the name said to have come from Smyrna, is one of the oldest port cities of the world. İzmir is the third biggest city and the second most important seaport of Turkey. The total population of the Greater İzmir Municipality is **4,320,519** (2018). The metropolitan region of the İzmir is in the western part of Turkey on the way down to the southeastern European Ecumenapolis, a settlement at the centre of important tourism centre and rich agricultural area in the Aegean Region in Turkey.

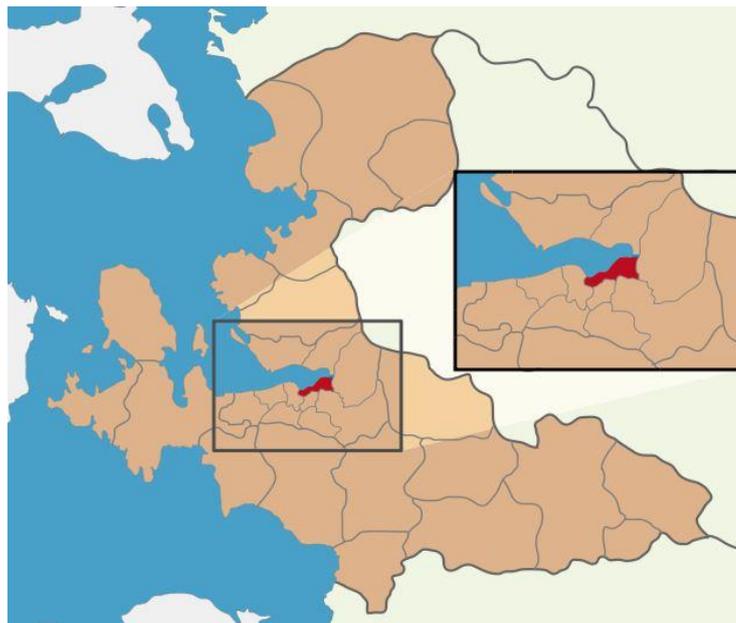


Figure 6. 1. Location of İzmir Konak

6.2. Historical Background

Izmir appears at the point of history in today's Bayraklı dates back to the 3000s before its existence stayed under the dominance of Aeolis, Ioan, Lydia and Persia respectively. At that moment, the town known to have existed by the sea between Bayraklı and Bornova relocated to Pagos Mountain (*Kadifekale*) in 300 BC and continued its settlement.

The new Izmir, dominated by Alexander the Great and ruled by the Hellenistic period. (334-190 BC), has progressed significantly in terms of both trade and culture. It has become a cultural center with its colleges, medical facilities (asklepion), baths, gymnasiums and theatres. The town, which had been under Roman rule as a consequence of the political events around 190 BC, was burned and plundered in 44 BC and was demolished by a huge earthquake in 178 BC, but these were compensated and its growth continued to boost (Akın & Şakar, 2015).



Figure 6. 2. An antique Smyrna

Source: (Çakmakçı & Erdem, 2012)

Until the end of the 16th century, the site was the entrance route of the caravans coming from the north and central Anatolia. It included the Muslim graveyard. As İzmir became an international commercial center starting with the 17th century, the site had gained vital importance of commerce, and housed public assets such as mosque, madrasah, khan, bath and shops (Temizkan and Akan, 2013: 29 - 41).



Figure 6. 3. An old photo from *Kadifekale* (Pagos) in 1905, (Source: Atay, 1998 :186)

The region, however, has experienced major changes in the last century. Following the post-liberation war exchanges, the area's users had to migrate to their countries. This big gap in the social structure has been reflected in time in the space and has led to a basic shift in the region's usage patterns. With the migration of individuals into the empty spaces that began with industrialization, this convergence in the social structure has acquired a different dimension. The urban fabric also has sub-regions where distinct social sub-groups are situated and far from being a single homogeneous region (Aydođan, 2001: 91).

Some of the buildings that have been vacated by migration have been used by small manufacturing, wholesale and retail sectors. Many other buildings have remained unused and suffered significant aging. During this era of change, many valuable buildings in the region were lost. For instance, in the past, only 16 of the city's 107 khan survived (Ersoy, 1991). One of the disadvantages that aggravates the use of the region is the fact that the unemployed and sheltered population who arrived with migration settled in the evacuated historical fabric and solved their sheltering requirements and supplied their livelihood with the marginal works they carried out readily to the bazaar. It can be seen that the Kemeraltı Bazaar, which is alive in 1950s and 1960s, still functions as a city core.

However, due to the intense urbanization and rapid expansion of the city in the 1970s, this status of the market began to change, stagnation in commercial life first began and the economy declined to a great extent in the last 10-15 years. This area, which was the highest rented area of the city in the past and whose functions address the upper income

group of the city, has become a shopping center that addresses the middle and lower economic group of the city today (Aydođan, 2001:91).

Today the city center is on the verge of a major economic collapse as a natural result of all these issues. Most of the region was emptied and most of them lost their prestige and started using low quality features. This collapse of the economic structure has been reflected in the space, and many historical buildings have been damaged by negligence and many of them have been affected by defective maintenance and repairs (Aydođan, 2001:91).

6.3. History of Kemeraltı Conservation Plan

In 1953, The Metropolitan Municipality of *Izmir* was competing to draw up a master plan and chosen master plan was first coordinated master plan of *Izmir*. However, the impact on of the Antiquities Law (*Eski Eserler Yasası*, 1952) in force was not noticeable and a conservation strategy was not established in the plan. Dođan Kuban had prepared a report for the *Kemeraltı* District in 1970 so that regions other than archeological excavation fields had begun to obtain unique status. In order to carry the historical and cultural heritage of *Kemeraltı* and its surroundings into the future, the studies to determine the values related to the field began with the decision of the High Council of Real Estate Antiquities and Monuments (*Gayrimenkul Eski Eserler ve Anıtlar Kurulu*) numbered 17.11.1978/A-1373 as the Kemeraltı Urban Archeologic Site together with the registration of 1470 building within (*Izmir* Metropolitan Municipality *Kemeraltı* Conservation Master Plan Revision Report, 2003).

A master plan for conservation had been prepared in 1982. The law of 2863 Protection of Cultural and Natural Properties was enacted in July 1983. With this law, the concept of the site has been institutionalized and a new plan has been stipulated for the sites within two years.

Although the plan prepared in 1982 offers less intervention in the historical texture compared to the plan of 1955, it is still a master plan rather than a master plan for conservation. Because the new scheme remains to bring in extra construction rights. The plan provided three multi-storey vehicle parks as well as preserving current housing settlements on the region's interior side. In August 1984, the *Izmir* Metropolitan Municipality approved the 1982 plan (Tekeli, 2015).

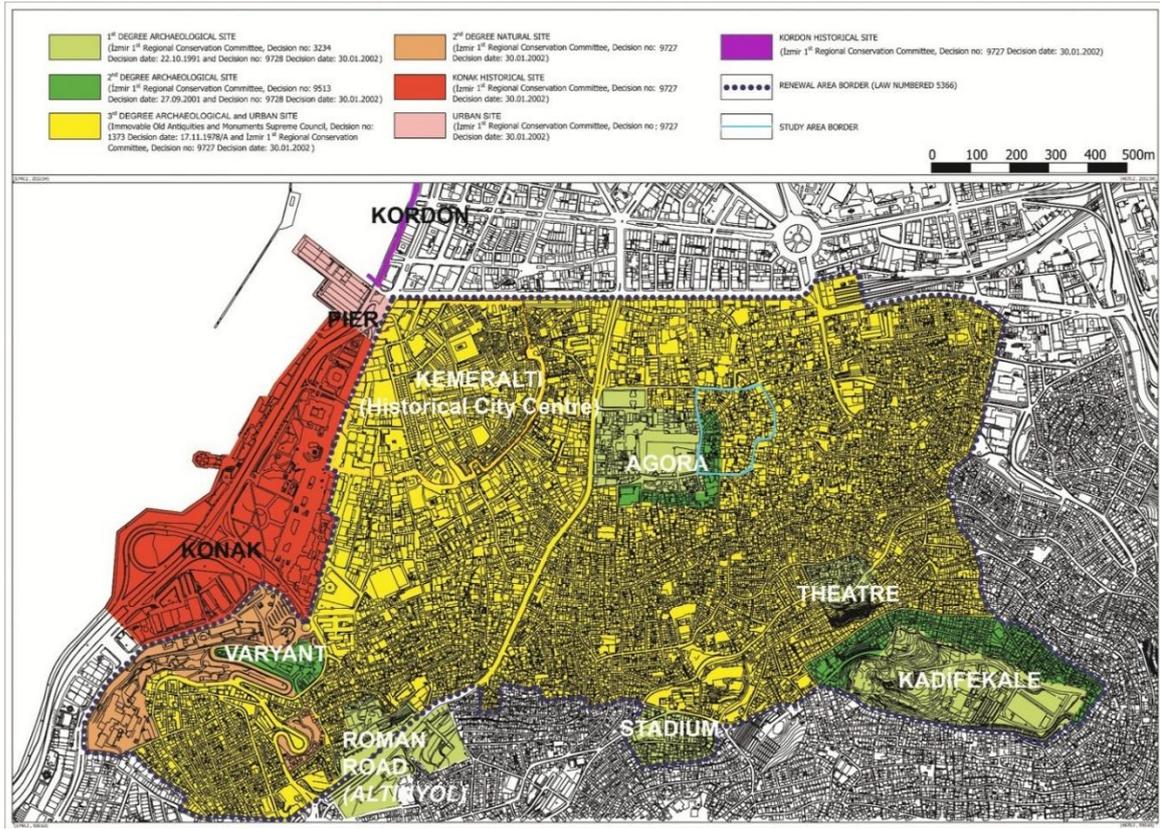


Figure 6. 4. Kemeraltı and its environs: Listed site-renewal area relations in Kemeraltı and its near-by Agora, Study area which located in sub-region 13 in accord with the İzmir History Project

After the conservation area was announced, the field plan studies began in 1984. In this context, the High Council Decision for the Protection of Immovable Cultural and Natural Assets approved the first Conservation plan for the Kemeraltı region on 27.07.1984-348.

However, with the High Council Decision of 17.07.1987-Law 3509, it was stated that the plan in question had been regulated without being more sensitive and protective and therefore had to be re-examined. With the decision of 28.04.1995-5823, was decided to prepare the development plan for the preservation of the region by making necessary changes to the plan with reference to Decision No 3509. In line with Konak Municipality's protocol for a section of the region, a 1/1000 scale revision of conservation master plan has been accepted to revise the 1984 approved zoning plans of the City and Regional Planning Department of Dokuz Eylül University (*İzmir* Metropolitan Municipality *Kemeraltı* Conservation Master Plan Revision Report, 2003).

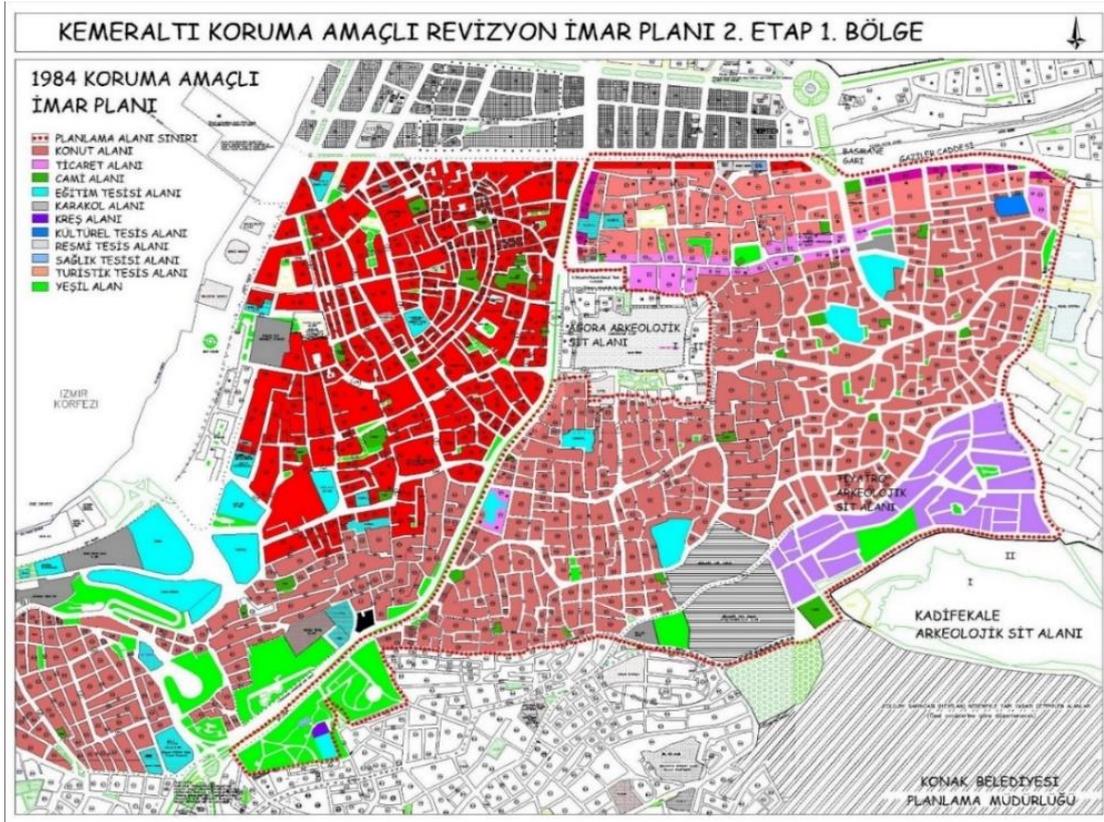


Figure 6.5. 1984 Kemeraltı Development Plan approved in 1984 (Source: Konak Municipality)

The applications were initiated in compliance with 1/1000 scale *Kemeraltı* Urban Site Master Plan Notes approved by the decision of the 1st Numbered Cultural and Natural Heritage Preservation Regional Board with 27 November 1990,2444. In this direction, *Kadifekale*, *Agora*, *Stadium*, *Altınyol* and the *Theater* were determined on 22.10.1991 by decision of the *İzmir* 1st Numbered Cultural and Natural Heritage Preservation Regional Board (No. 3234) as the 1st Degree Archeological Site (*İzmir* Metropolitan Municipality *Kemeraltı* Conservation Master Plan Revision Report, 2003).

Kemeraltı Urban Conservation Area, the area surrounding *Kadifekale* is defined as Archeological Conservation Area and the areas surrounding *Agora* and *Theater*, are defined Urban Site as Urban + 3rd Degree Archeological Site by *İzmir* 1st Numbered Cultural and Natural Heritage Preservation Regional Board Decision No. 30.01.2002, 9727 and Decision No. 30.01.2002/9728 (Çırak Altınörs, 2010:298).

In addition, Decision No. 22.10.1991-3234 of the 1st Numbered Cultural and Natural Heritage Preservation Regional Board extended the *Theater* Area declared as the 1st Degree Archeological Site with Decision No. 04.11.2004-152. The High Council

enacted Principle No: 658 on archeological sites according to code of Protection of Cultural and Natural Properties on 5 November 1999. Following this decision, the *İzmir* Metropolitan Municipality in cooperation with the *Konak* Municipality had begun to develop a 1/5000 scale Master Plan for the Conservation of *İzmir Konak Kemeraltı* and its surroundings. While these studies are continue, *İzmir* 1st Numbered Cultural and Natural Heritage Preservation Regional Board had converted surrounding *Kadifekale* Archeological Conservation Site into 2nd Degree Archeological Site by 27 September 2001, 9513 decision. The boundaries of the metropolitan site of *Kemeraltı* were first described by the Metropolitan Municipality and Prof. Dr. Ümit Serdaroğlu and approved by the High Council of Real Estate Antiquities and Monuments (*Gayrimenkul Eski Eserler ve Anıtlar Yüksek Kurulu*) (GEYAK) (*İzmir* Metropolitien Municipality *Kemeraltı* Conservation Master Plan Revision Report, 2003).

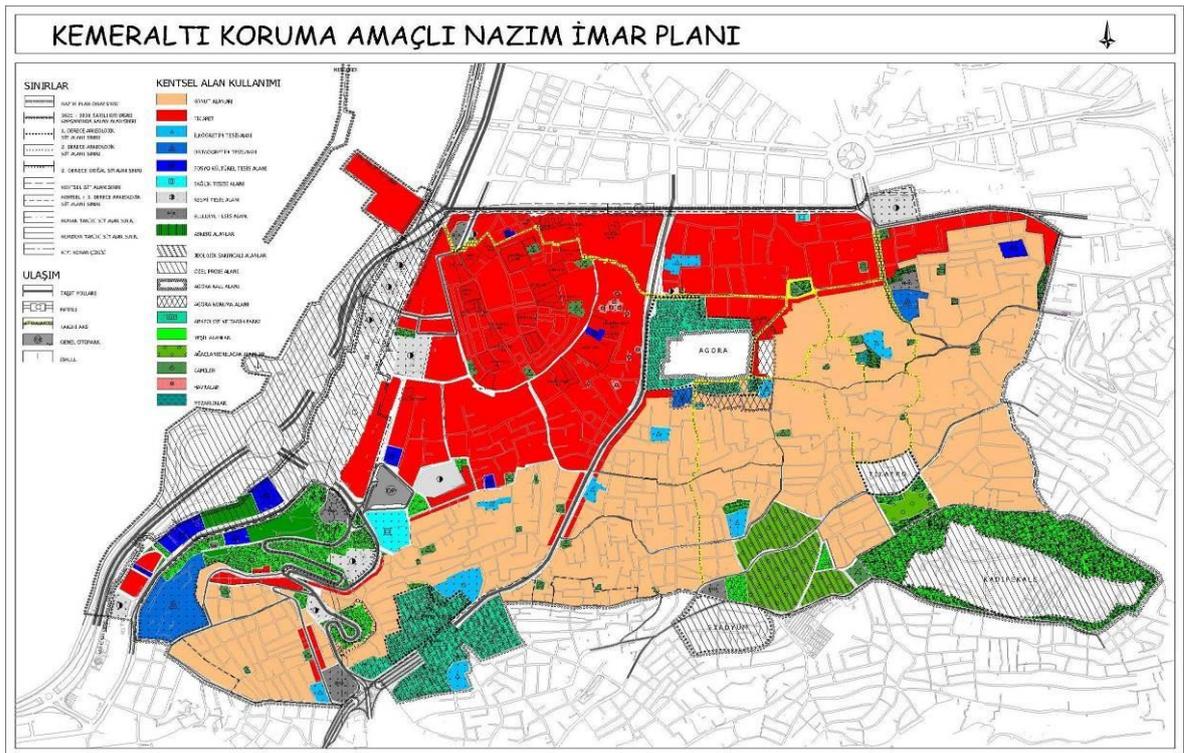


Figure 6. 6. Kemeraltı and Surroundings Conservation Master Plan approved in 2002
(Source: Konak Municipality)

Almost all of Kemeraltı Urban Site (except customs facility) is described as *Kemeraltı* Urban Site and 3rd Degree Archeological Site by decision of the *İzmir* 1st Numbered Cultural and Natural Heritage Preservation Regional Board, 30 January 2002,

Kemeraltı and Environmental Conservation was accepted by the Assembly of Metropolitan Municipalities at its session on May 3, 2002. This master plan covers 272 hectares. Out of 272 hectares, 194.2 hectares is urban site, 25.7 of hectares is Konak Historic Site, 39.7 of hectares is Archeological Site (Agora, Ancient Theater, Ancient Stadium and Kadifekale) and 10.9 of hectares is Natural Site (*İzmir* Metropolitan Municipality *Kemeraltı* Conservation Master Plan Revision Report, 2003).

6.4. The Ongoing Projects In The Case Study Area

In case study area and surroundings there is an ongoing project which named “İzmir-History Project”. Studies of the “İzmir-History Project” began with the meeting held on 09.03.2013 under the coordination of the İzmir Metropolitan Municipality and the “İzmir-History Project” Center. Kemeraltı Urban Site and Kadifekale Urban Regeneration Area were divided into nineteen sub-regions (Figure 6.9.) and it was decided to establish sub-regional participation platforms to determine the actions of revitalization, rehabilitation and protection within the regions. “İzmir History Project” aimed at strengthening the connection between the inhabitants of İzmir and history in the region. The whole conservation area, which is about 248 hectares, is being subjected to conservation, renewal and regeneration applications (Tekeli, 2015).

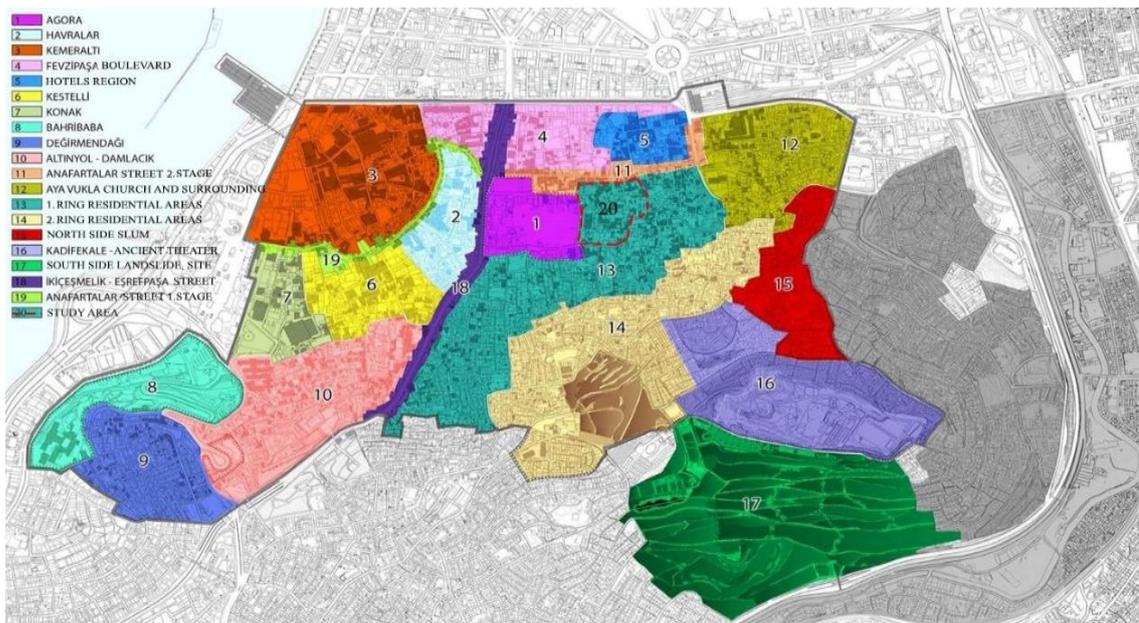


Figure 6. 8. Study area which located in sub-region 13 in accord with the İzmir History Project (20)

6.5. Case Study Area

The studied site is within the borders of the 2nd phase, 1st region of İzmir Kemeraltı Conservation Plan, İzmir Konak Kemeraltı, 1.st ring residential area situated in History Project Number 13 sub – regions. The site being studied is juxtaposed with the ancient Roman Agora in its south.

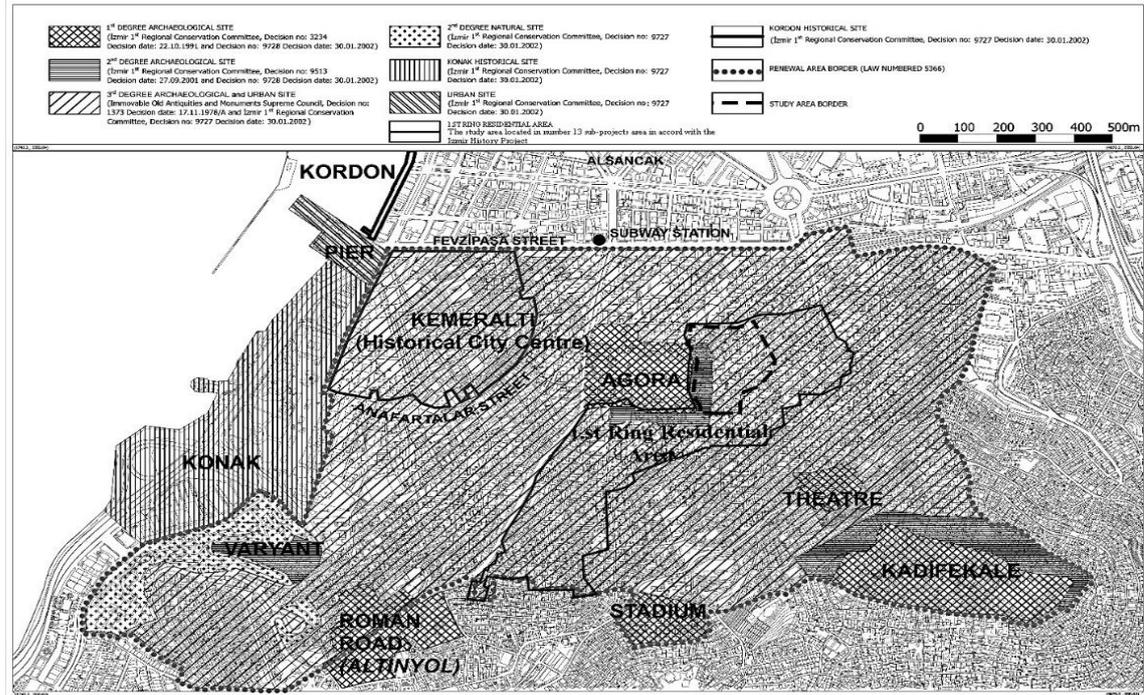


Figure 6.9. Kemeraltı and its environs: Listed site-renewal area relations in Kemeraltı and its near-by Agora

The reasons for selecting this area on the basis of several factors which are given below detailly.

- The chosen area of study are strongly composed of residential units
- Most of the buildings are listed structure (In the borders of study area there are one monumental listed structure which is bath, 67 registered civil architecture buildings, 75 registered parcels)
- Juxtaposition of agora and anafartalar street that could affect the market value
- The continuity value of the 1.st ring residential area
- It is in both conservation and renewal area (The area under the conservation status of 3.rd degree archeological site and urban site, and 2.nd degree archeological site)



Figure 6.10. A look towards of Kadife Kale from the studied site (Source: Revised from the photo of İzmir Greater Area Municipality Archive)



Figure 6.11. Location of the study area

The area of study is surrounded between Tarık Sarı Street and 943 Street and 945 Street. The ancient Roman Agora, which is the first degree archeological site, is located in the south of the study area.

6.6. Materials and Methods

There is no single method of applying TDR so that it is completely context-dependent and differences arise from national and local characteristics and/or approaches. Therefore, a model proposal was introduced in the study taking into account the jurisdictions of the nation, the approach of the municipality of Izmir and the local characteristics of the area.

Figure 6.13. shows the method of a hypothetical TDR model. Interviews were conducted between 01.02.2019 and 01.01.04.2019 with the Real Estate Appraisal Unit of Izmir Greater Area Municipality, Real Estate Appraisal Companies and with officials of the Vakıflar (Foundation) Appraisal Directorate to create the data set used in the model.

The method includes first extensive field studies were conducted for land-use analysis, ownership analysis, building heights, building quality in the title deed, building footprint/floor area ratio and conservation status and then household questionnaires conducted with households living in the area. All these analysis and surveys were conducted in 09 – 27.03.2019.

Following the first phase of the field study, the "marketing value of the property" was calculated in the second phase of the model. For calculation we used (1) market analysis; (2) comparison of previous sales and court decisions in surrounding regions; and (3) use of regional court decisions and related expert reports.

The second step in the second phase of the model is socio-economic analysis of people living in urban conservation sites. The socio-economic conditions of the families living in the area, their ownership status, the bottlenecks they faced in the case of preservation, whether they have sufficient information about the credits and transfers from "conservation funds" and finally their general opinion on conservation issues was asked in the questionnaires. The number of units subject to transferable development rights was also determined in this part (in total the 75 units were selected for the application of TDR). In the third step of the second phase of the model, the cost of simple or substantial maintenance or restoration of the registered building subject to TDR as well as its market research was examined.

In the last step of the second phase of the model, we made a comparative study based on a typical "what-if case" to calculate the real value of the market value of the TDR. The comparison is made between the study area under conservation restriction and the

adjacent areas of Alsancak-Cankaya, 500 meters from the study area which is part of Alsancak's commercial and development zone (Figure 6.12.).

The idea stems from the research question that if the field of study were not really the site of conservation and how it would be developed. The answer to this question "how it would be developed" comes from the selected reciprocal Alsancak-Cankaya region and its market value.

In the 3rd phase of the model, the calculation is based on the assumption that the value of the total development rights (TDR value) of the sending area derives from the difference between the average price per square meter of housing (minus restoration cost) and the market value of the reciprocal Alsancak- Çankaya region. The value obtained from the comparison between the study area and the reciprocal Alsancak- Çankaya region is taken as the value of TDR to be sent to the receiving area.



Figure 6.12. Agora-Kemeraltı and Alsancak-Çankaya which are 500 m away

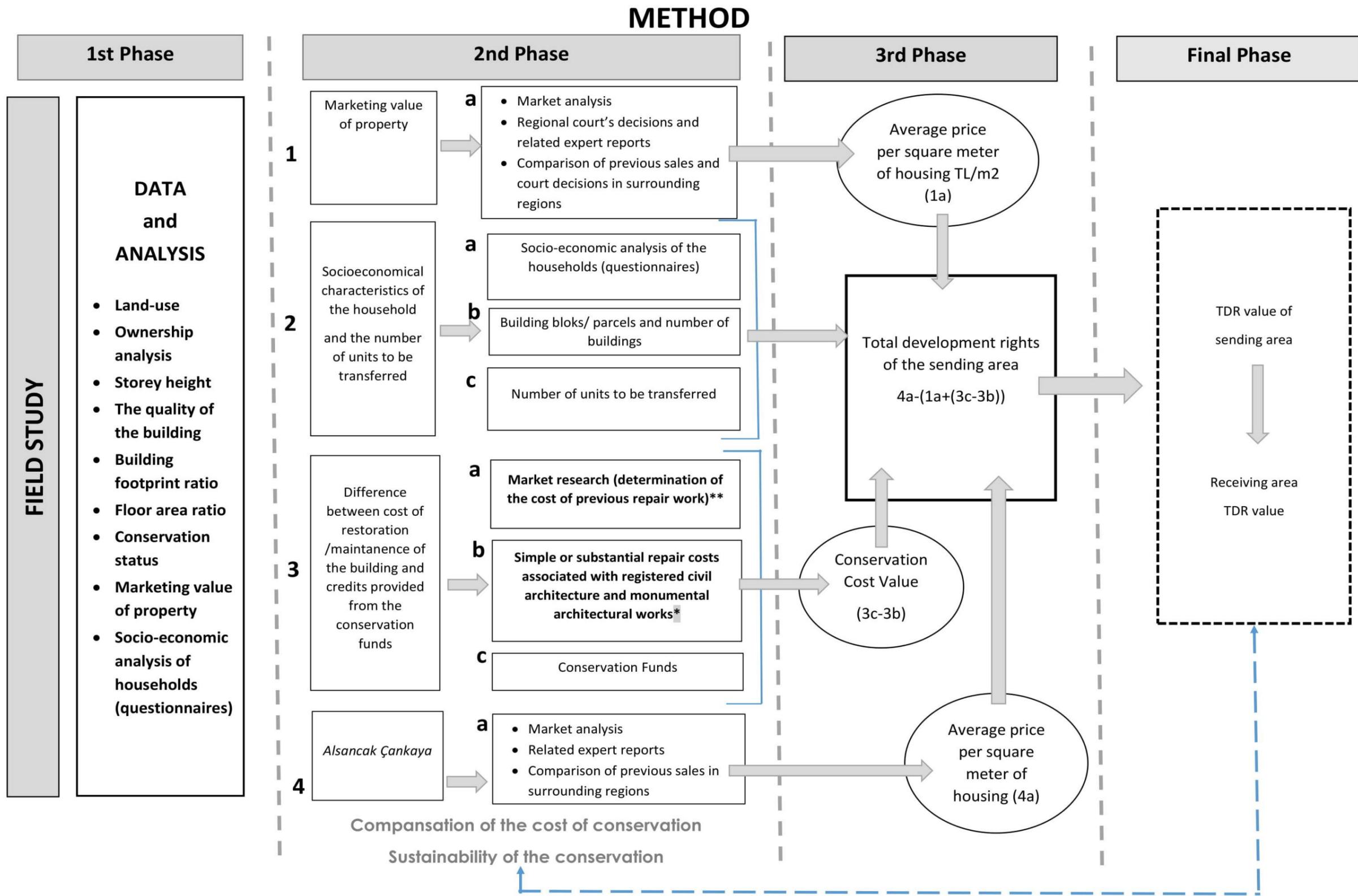


Figure 6.13. Methodology of the Case Study TDR Application

6.7. Sending Area Analysis

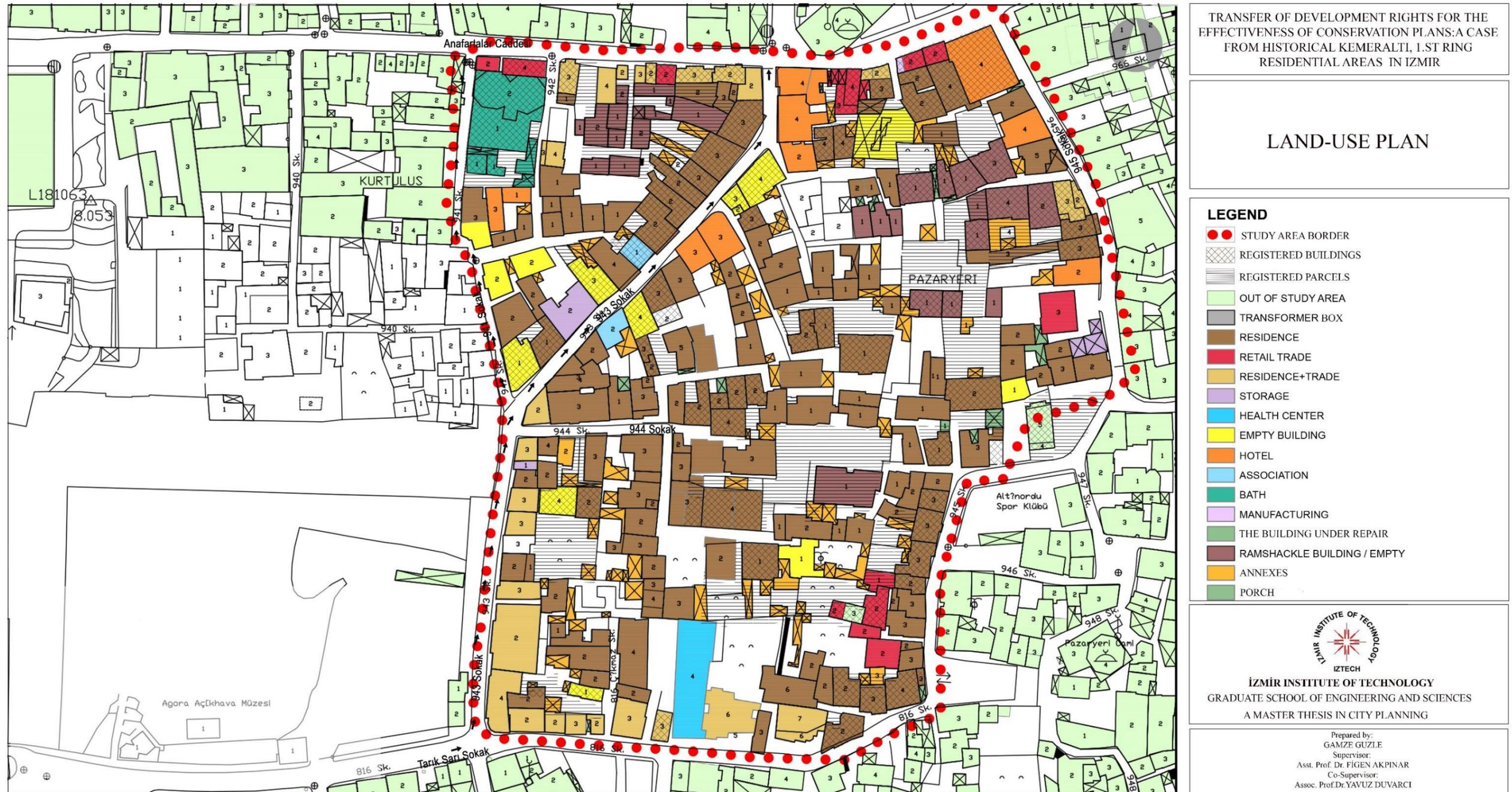


Figure 6.14. Land Use Analyses

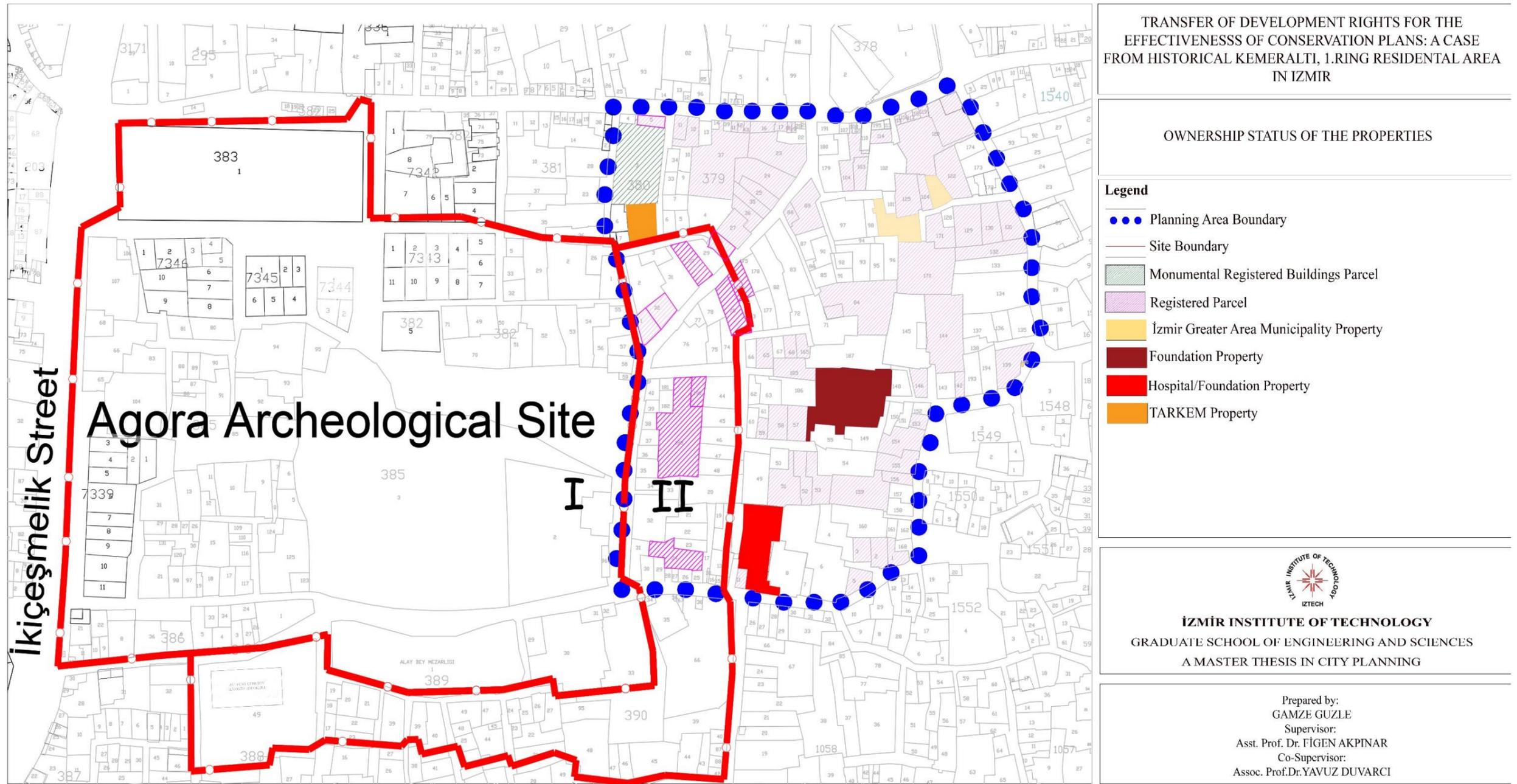
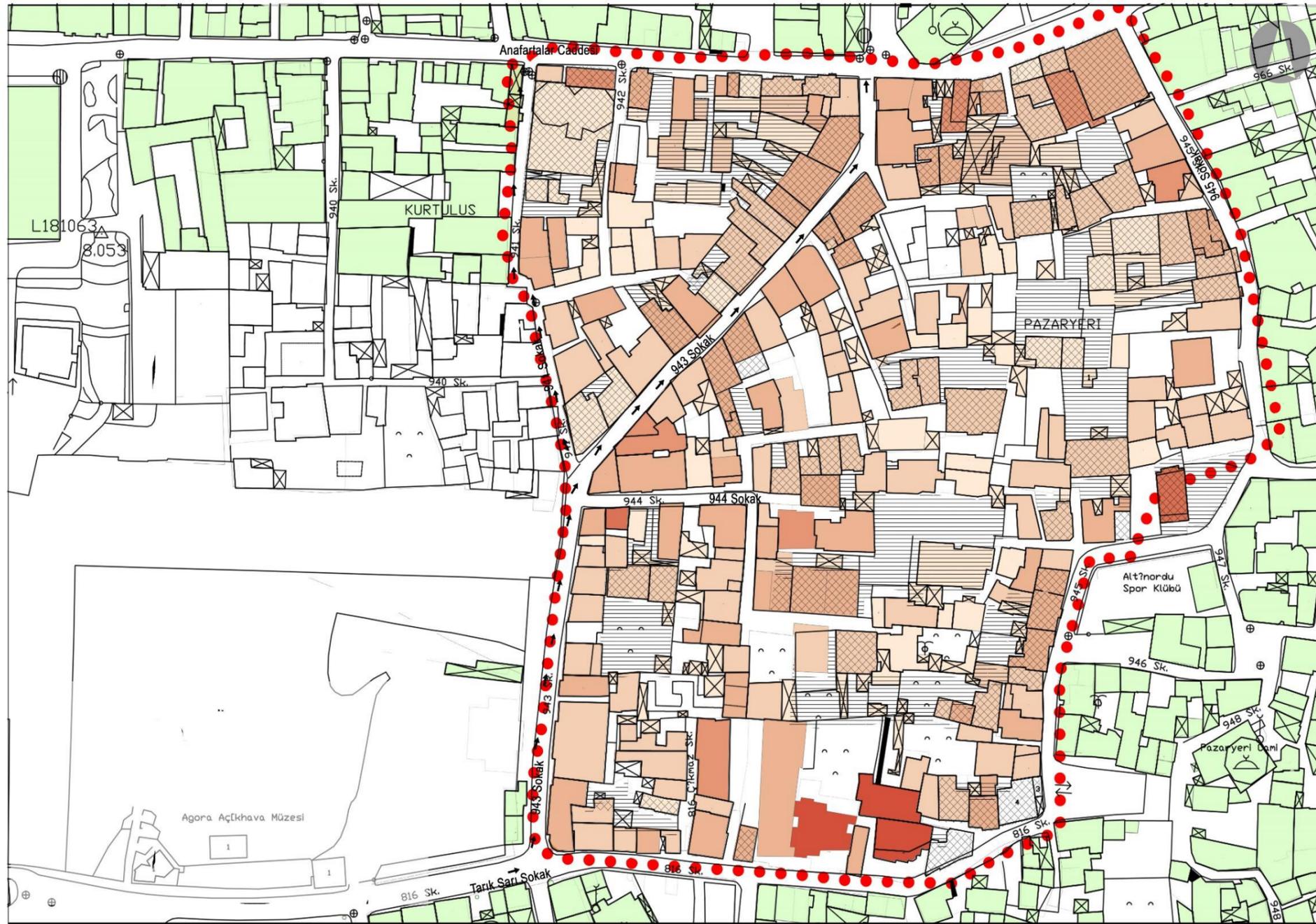


Figure 6.15. Ownership Analyses



TRANSFER OF DEVELOPMENT RIGHTS FOR THE EFFECTIVENESS OF CONSERVATION PLANS: A CASE FROM HISTORICAL KEMERALTI, 1.ST RING RESIDENTIAL AREAS IN IZMIR

FLOOR-HEIGHT OF THE BUILDINGS

LEGEND

- STUDY AREA BORDER
- ▨ REGISTERED BUILDINGS
- ▧ REGISTERED PARCELS
- OUT OF STUDY AREA
- 1 Floor Buildings
- 2 Floor Buildings
- 3 Floor Buildings
- 4 Floor Buildings
- 5 Floor Buildings
- 6 Floor Buildings


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 GAMZE GÜZLE
 Supervisor:
 Asst. Prof. Dr. FİGEN AKPINAR
 Co-Supervisor:
 Assoc. Prof. Dr. YAVUZ DUVARCI

Figure 6.16. Floor Height Analysis



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CONDITION OF THE STRUCTURES

LEGEND

- STUDY AREA BORDER
- ▨ REGISTERED BUILDINGS
- ▨ REGISTERED PARCELS
- OUT OF STUDY AREA

CONDITION OF THE STRUCTURE

- IN GOOD CONDITION (BOTH STRUCTURAL SYSTEMS AND MATERIALS ARE IN GOOD CONDITION)
- NEEDS MINOR REPAIR (MAIN STRUCTURAL SYSTEMS IS GOOD BUT MATERIALS NEED MINOR REPAIR)
- IN BAD CONDITION (MAIN STRUCTURAL SYSTEM IS GOOD BUT MATERIALS NEED MAJOR REPAIR)
- RUINED


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Figure 6.17. Condition of Structure Analysis



1546/123



1546/174



1546/133



1546/125



1546/171



1546/130



1546/129



1546/122



380/1



379/25

Figure 6.18. Condition of Structures

FLOOR AREA RATIO

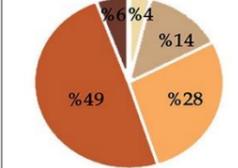
LEGEND

-  STUDY AREA BORDER
-  REGISTERED BUILDINGS
-  REGISTERED PARCELS
-  OUT OF STUDY AREA

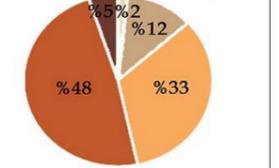
FLOOR AREA RATIO

-  0-0.3
-  0.31-0.8
-  0.81-1.5
-  1.51-3
-  3.1-4.1

FAR DISTRIBUTION by TOTAL PARCEL



FAR DISTRIBUTION by REGISTERED PARCEL



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Supervisor:
Asst. Prof. Dr. FİGEN AKPINAR
Co-Supervisor:
Assoc. Prof. Dr. YAVUZ DUVARCI



Figure 6.19. FAR Analyses



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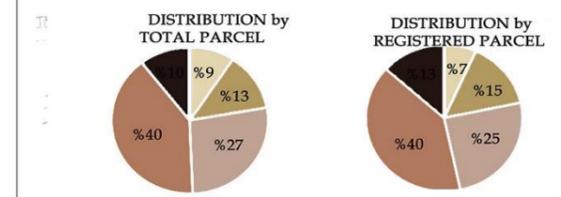
LOT COVERAGE RATIO

LEGEND

- STUDY AREA BORDER
- ▨ REGISTERED BUILDINGS
- ▨ REGISTERED PARCELS
- OUT OF STUDY AREA

LOT COVERAGE RATIO

- 0-0.3
- 0.31-0.5
- 0.51-0.8
- 0.81-1
- 1.1-1.3




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 Asst. Prof. Dr. FİGEN AKPINAR
 Co-Supervisor:
 Assoc. Prof. Dr. YAVUZ DUVARCI

Figure 6.20. Par Analyses

6.7.7. Conservation Status

There are 205 parcels in total in the study area boundaries. 75 of these parcels are listed in the region of conservation of registered buildings. There is one monumental listed structure in the region that is a bath and 67 registered civil architecture buildings. 130 parcel has not been listed instead of this listed structures and registered parcels.

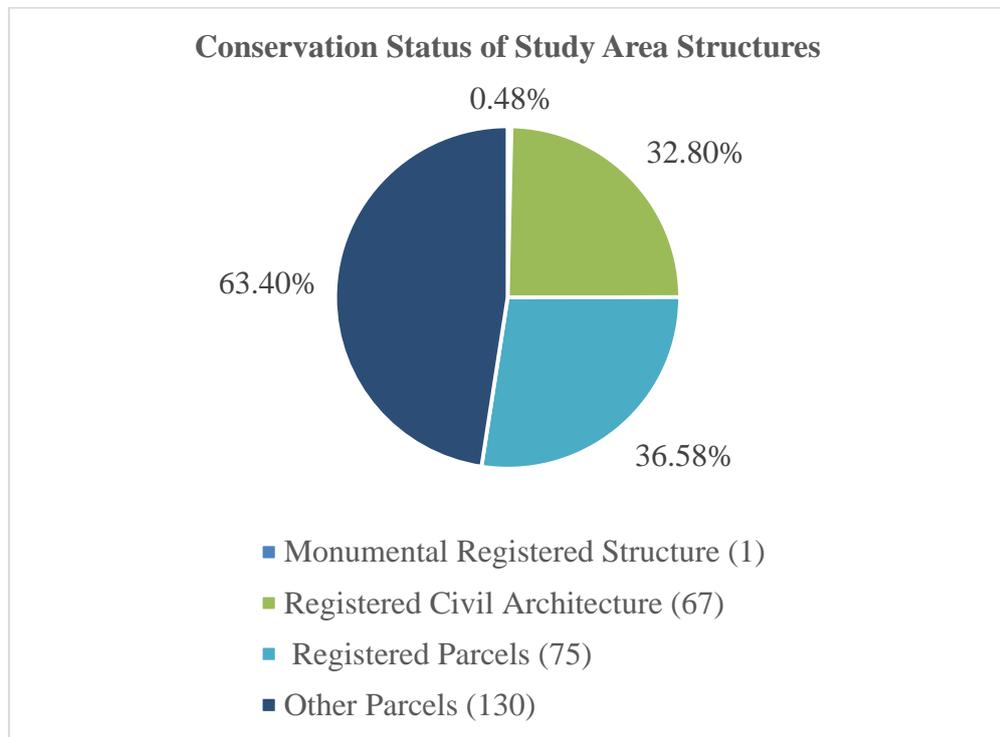


Figure 6.21. The Conservation Status of Study Area Structures

6.7.8. Socio-Cultural Structure Analyses (Survey)

The survey conducted in the boundaries of study area and surroundings of the study area (Figure 6.21). The main point of the extended the survey area is also Patlıcanlı Yokuşu still preserve the cultural value. 120 Families were interviewed in this survey. Individual information on the socioeconomic status of 508 people was obtained. The results are shown in Tables (6., 7., 8., and 9).



TRANSFER OF DEVELOPMENT RIGHTS FOR THE EFFECTIVENESS OF CONSERVATION PLANS:A CASE FROM HISTORICAL KEMERALTI, 1.ST RING RESIDENTIAL AREAS IN IZMIR

THE SURVEY FIELDS

LEGEND

- STUDY AREA BORDER
- SURROUNDINGS OF STUDY AREA


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 Asst. Prof. Dr. FİGEN AKPINAR
 Co-Supervisor:
 Assoc. Prof.Dr.YAVUZ DUVARCI

Figure 6.22. Survey Field



1546/84



1546/53



1546/52



1546/154



1546/153



379/36



1546/68



1546/185



1546/80



1546/11



1546/1



1546/188

Figure 6.23. Buildings from Survey Field

People living in the area, who reside under the conservation status in the buildings, face severe financial difficulties. Most people living in the area have income below the minimum wage¹⁰, according to survey results. The high unemployment rate is also remarkable, 50 percent of the total. It is not possible to meet the maintenance, repairing and restoration costs of the buildings they have or the economic hardships they face.

Table 6.1. Socio-economic structure (1)

	<i>Count</i>	<i>Percent</i>		<i>Count</i>	<i>Percent</i>		<i>Count</i>	<i>Percent</i>
Literate	38	9.5	Wage earner	72	15.25	Housewife	164	69.49
Illiterate	74	18.53	Causal earner	156	33.05	Retired	60	25.42
Primary Sch.	86	28.1	Self employed	4	1.69	Disabled	3	1.27
Secondary schooling	56	24.3	*U.F.W	236	50.01	Not want to work	2	0.84
High school	34	15.07				Seeking for job	1	0.42
University	4	4.5				Elders	6	2.54
Total	292	100	Total	468	100	Total	236	100

*Age 15 and over and members of the family continuing education did not include (40 people).

**Age over 15

The education level of the people living in the area is low and their income is relatively below the minimum wage. Regular income is low (15 percent).

Table 6.2. Socio-economic structure (2)

*Income Quintiles			Places of Birth			Ownership status of the House		
	<i>Count</i>	<i>Percent</i>		<i>Count</i>	<i>Percent</i>		<i>Count</i>	<i>Percent</i>
Lowest	58	48.3	<i>İzmir</i>	32	26.6	Tenant	62	51.66
Mid	34	28.3	<i>Mardin</i>	24	20	Tenure	54	45
Top	28	23.3	<i>Hatay</i>	12	10	Not paid (belongs to the family)	4	3.33
			<i>Istanbul</i>	4	3.33			
			<i>Batman</i>	6	5			
			<i>Abroad</i>	33	27.5			
			<i>Gaziantep</i>	4	3.33			
			<i>Diyarbakır</i>	5	4.16			
Total	120	100	Total	120	100	Total	120	100

* Employees' wages are grouped (1) lower than minimum wage, (2) equal to minimum wage and (3) higher than minimum wage.

¹⁰ Minimum net wage (*asgari ücret*) in Turkey is 2020 TL.

Most families are migrated from Izmir and settled in the area. Their level of education is very low. Furthermore, Syrian migrants account for nearly 30 percent of the population. The level of education for refugees is very low too. Moreover, they do not appear to be able to take an active role in the sense of urban protection when they are foreign to the country's bureaucratic system and language problem and are deemed to be under temporary conservation status. Many of them prefer the area because of low rent. It is not possible to meet the maintenance, fixing and restoration costs of the buildings they have or the economic hardships they face.

Table 6.3. Socio-economic structure (3)

*Satisfaction level of dwellers from their house (Ratings from 1 to 5)			Feeling Safety (Ratings from 1 to 5)			Desire to financial support for dweller's house			Desire to move another building		
	Count	%		Count	%		Count	%		Count	%
1	34	28.3	1	68	56.6	Yes	112	93.3	Yes	56	46.6
2	20	16.6	2	26	21.6	No	8	6.6	No	64	53.3
3	18	15	3	12	10						
4	39	32.5	4	12	10						
5	9	7.5	5	2	1.66						
Total	120	100	Total	120	100	Total	120	100	Total	120	100

* Rates are grouped, 1 (strongly dissatisfied) is minimum - 5 (strongly satisfied) is maximum.

Table 6.4. Socio-economic structure (4)

Awareness of the Conservation Status in the Area			*Dwellers Financial difficulties to restoration/repair of buildings (Ratings from 1 to 5)			Knowledge of Conservation Funds, Credits			Knowledge of the institution and how to apply for Conservation Funds/Credits		
	Count	%		Count	%		Count	%		Count	%
Archeological site	48	40	3	2	1.66	Yes	4	3.33	Yes	4	3.33
Urban site	2	1.66	4	10	8.33	No	116	96.6	No	116	96.6
Archeological and Urban site	2	1.66	5	108	90						
No idea	70	58.3									
Total	120	100	Total	120	100	Total	120	100	Total	120	100

These people are unaware of the state's support, loans and contributions for the protection of immovable cultural assets. Therefore it is clear that they will not be able to follow the long and complex bureaucratic processes with which institutions they will contact for support. Under these circumstances, the capacity of the residents is very limited and their living conditions are far from satisfactory.

All these hardships and conflicts claim that new financial tools are needed to conserve the cultural heritage of the area. In addition, the high rate of tenants in the area (more than half) makes conservation attempts difficult. Respondents stated that they preferred this area due to the low rent and proximity to the center.

As a result of the questionnaire, the average residential rental prices in the case area are 501.16 TL. We have determined that the average rental value is between 3500-4000 TL as a result of our research on real estate sales link via the internet located in Alsancak, adjacent to the study area. The average rental rate and sale rate in the vicinity of the study area is very low compared to the Alsancak region.

6.7.9. Housing Value Analysis

Housing value analysis was conducted to determine the marketing price in both study area (Kemeraltı-Agora) and compared area (Alsancak-Çankaya). This analysis was performed to show the if the case study area were not really under the status of conservation then how it would be developed in accord with the Development Plan's right. Assumption that "If the Agora-Kemeraltı area were not really under the status of conservation, it would be similar to the Alsancak-Çankaya area which is 500 meters away." The comparison of the housing market value between the two regions realized the restricted development right by conservation plan.

6.7.9.1. Housing Values For the Study Area (Kemeraltı-Agora)

As a result of interviews with homeowners, land agents and real estate assessors in the vicinity of the study area, the properties of the houses sold / rented in previous years and current sales are examined. In Table 6.6. and in Table 6.7. The characteristics of the houses sold / rented currently in Agora-Kemeraltı region and in Alsancak Çankaya region

briefly shown. The characteristics of the two region houses explained in detail according to their reference number and block/parcel number.



Figure 6.24. The parcels which houses sold / rented in the previous years and currently

Table 6.5. The properties of the houses sold / rented currently

Neighbourhood	Block	Parcel	Type	Size (m2)	Selling year	Selling Price (m2) TL	Selling Price TL
1) Pazaryeri	1546	80	Masonry House (kargir)	126	2019	3015	380 000
2) Kurtuluş	379	24-25	Masonry House (kargir)	285	2019	3315	944 775
3) Pazaryeri	1552	19	Masonry House (kargir)	180	2019	2166	390 000
4) Pazaryeri	1546	104	Masonry House (kargir)	385	2019	3015	350 000
5) Pazaryeri	1546	96	Masonry House (kargir)	144	2012	361	52 000
6) Pazaryeri	1546	129	Masonry House (kargir)	240	2011	258.3	62 000

Reference 1: 1546 block 80 parcel

The related property is a registered building with 126 m2 size and 90-100 years. The house is 4 + 2 and has 2 storey duplex structure. There are 2 shops in the basement. It has 3 independent units. For sale in 2019 and located on 943 Street.

Reference 2: 379 block 24-25 parcel

The related property is a registered building with 285 m² size and 90-100 years. The house is 4 + 2 and has 2 storey duplex structure. There are 2 shops in the basement. It has 3 independent units. For sale in 2019 and Located on 943 Street.

As a result of the interview conducted by the property appraisal company; it is learned that the house's selling price is higher than that of similar houses in the area.

The house's sales value has changed due to the fact that the aforementioned immovable property has not been sold for a long time and the landlord is a foreigner. In order to reach the real sales value of the house, the values were reduced by 7 percent.

$$4736 \text{ TL/m}^2 \times 0.7 = 3315 \text{ TL/m}^2$$

Reference 3: 1552 block 19 parcel

Property is 180 m² and 50-60 years old. The residence is 3 + 1 and located on the 2nd floor. It has 4 independent units. For sale in 2019 and located on Tarik Sari Street.

Reference 4: 1546 block 104 parcel

Property is 385 m² and 80-100 years old. The building has 42 rooms (kortejo). Located on Anafartalar Avenue.

*** Reference 5: 1546 block 96 parcel**

The related property is 144 m² and 40-50 years old. The residence is 2 + 1 and has one floor. It has 1 independent units. It sold in 2012 and it has no facade.

When the sales value of 2012 was adapted to 2019;

According to the 2019 Domestic Producer Price and Change Index, (March is 431.98, January is 424.86.)

The value of the house is:

$$361 \text{ TL/m}^2 \times (431.98 / 424.86) = 367.049 \text{ TL/m}^2$$

$$144 \text{ m}^2 \times 367.049 \text{ TL/ m}^2 = \mathbf{52\ 855.171 \text{ TL}}$$

*** Reference 6: 1546 block 129 parcel**

The related property is a registered building with 240 m² size and 90-100 years. The house is 4 + 2 and has 4 storey. It has 35 independent units. It sold in 2011 and Located on 945 Street.

When the sales value of 2012 was adapted to 2019;

$$258.3 \text{ TL/m}^2 \times (431.98 / 424.86) = 262.628 \text{ TL/m}^2$$

$$240 \text{ m}^2 \times 262.628 \text{ TL/m}^2 = \mathbf{63\ 030.890 \text{ TL}}$$

*The values of precedents 5 and 6 were obtained by adapting the expert reports to the 2019 value.

The results obtained from the analyzes shows that, the average m² value of the sale/sold house prices in the Kemeraltı-Agora region is found **2260 TL**.

6.7.9.2. Housing Values For Alsancak-Çankaya Area

The same procedure has also been applied to the Alsancak-Çankaya. The results of interviews with homeowners, land agents and real estate assessors in the vicinity of the study area, properties of houses sold/rented in previous years and current sales are reviewed.



Figure 6.25. The parcels which houses sold / rented currently (2)

Table 6.6. The properties of the houses sold / rented currently (2)

Neighbourhoods	Block	Parcel	Type	Size (m ²)	Year	Selling Price (TL/ m ²)	Value Price TL
1)İsmet Kaptan	1053	7	Plot	42	2017	3.333	140,000
2)İsmet Kaptan	1032	19	Plot	90	2017	3000	270,000
3)İsmet Kaptan	1050	53	Six-floors reinforced concrete	40	2017	3500	140,000
4)İsmet Kaptan	1019	6	(a) block 35 floors (b) block 5 floors reinforced concrete building has basement	60	2019	9666	580,000
5)İsmet Kaptan	1024	12	Store	65	2019	10000	650,000

*** Reference 1: 1053 block 7 parcel**

The building where the immovable property is located is built in the form of adjacent structure and reinforced concrete structure. The property is located on the 8th floor in a 30-year-old building. The building consists of 33 independent sections. The Bureau is for sale at 140.000 TL.

When the sales value of 2017 was adapted to 2019;

$$3333 \text{ TL/m}^2 \times (431.98 / 288.59) = 4989.04 \text{ TL/m}^2$$

$$42 \text{ m}^2 \times 4989.04 \text{ TL/m}^2 = \mathbf{209\ 539.68 \text{ TL}}$$

*** Reference 2: 1032 block 19 parcel**

Located on Gazi Boulevard, an 8-story building 16-20 years old, the office area of 90 m² is for sale at a price of 270,000 TL. Because of the façade of the real estate boulevard, the property is more valuable.

When the sales value of 2017 was adapted to 2019;

$$3000 \text{ TL/m}^2 \times (431.98 / 295.31) = 4388.40 \text{ TL/m}^2$$

$$90 \text{ m}^2 \times 4388.40 \text{ TL/m}^2 = \mathbf{394\ 956.48 \text{ TL}}$$

*** Reference 3: 1050 block 53 parcel**

The property is an 8-story building 15 years old, the office area of 40 m² is sold at a price of 140,000 TL.

When the sales value of 2017 was adapted to 2019;
 $3500 \text{ TL/m}^2 \times (431.98 / 288.59) = 5239.02 \text{ TL/m}^2$
 $40 \text{ m}^2 \times 5239.02 \text{ TL/m}^2 = \mathbf{209\ 560.96 \text{ TL}}$

Reference 4: 1019 block 6 parcel

The property is a new apartment with 60 m² size, 1+1 and on the third floor of 6 storey building. Close to the Alsancak Hilton hotel, and building is on the facade of 1385 street.

Reference 5: 1024 block 12 parcel

The property is a new apartment with 65 m² size, 1+1 and on the third floor of 5 storey building. Close to the Alsancak Hilton hotel, and building is on corner of the parcel surrounded with 1371 and 1372 street.

The results obtained from the analyses shows that, the average m² value of the sale/sold house prices in the Alsancak-Çankaya region is found 6856.49 TL.

Table 6.7 *Alsancak-Çankaya İsmet Kaptan* Neighborhood Rental Office-Apartment

Number	Type	Size	m ²	Year	Price	TL/m ²
1.	Office	1+1	65	26-30	1250	19.23
2.	Office	5+1	330	26-30	4500	13.6
3.	Office	5+1	200	21-25	8700	43.5
4.	Office	1+1	90	16-20	2000	22.2
5.	Apartment	1+1	65	4	2950	45.38
6.	Office	2+1	80	26-30	1600	20
7.	Office	5+1	200	26-30	2500	12.5

The rental apartment/office analysis in *Alsancak-Çankaya İsmet Kaptan* neighborhood has shown that the average rent prices is **3700 TL**.

CHAPTER 7

RESULTS AND DISCUSSIONS

As a results of the analysis, the average m² value of a house's market price in the study area, Agora-Kemeraltı, is 2260 TL per square meter. In the study area the housing's average size is 220 m², and the parcel's average size is 140 m². The number of buildings floors varies between 2-3 floors. Assuming that the average parcel size in the region is 140 m² and has 2-story buildings, the value of the total 75 registered civil architectural buildings is 47,460,000 TL.

The market analysis for Alsancak-Çankaya, on the other hand, shows that the average square meter value of house's market prices in the comparative area is 6856,49 TL per square meter. This value is approximately three times (2260/6856) higher than the area of conservation. Our findings reveal that conservation can be very costly under such rent differences between the conservation area and the conservation-free area.

The comparative area, Alsancak-Çankaya, consists heavily of commercial activities as opposed to the conservation area, whereas heavily residential uses. For this reason, we take 1 + 1 (One room in one lounge), 2 + 1 (2 rooms, one lounge), and the average size of the building is 60 m² because the workplace is more than a residential unit. The average size of the parcel is 200 m² and the number of building stories varies between seven or eight stroyes. It is consider that 200 m² for the average parcel and the number of stroyes is 7 for the calculation, and the final value of the 75 buildings is 719,880,000 TL.

The difference in total values of 47,460,000 TL of the Agora-Kemeraltı area and 719,880,000 TL of the comparison area (Alsancak-Çankaya) is equal to 672,420,000 TL.

However, the difference in market prices between the two areas with the same number of building units (75 units) in the same region under different status is remarkable, which is 15 times (719,880,000 TL / 47,460,000 TL) higher market prices in favor of the conservation-free area. The two separate plans, the conservation plan (*Koruma Amalı İmar Planı*) and the development plan (*İmar Planı*), their jurisdictions generate a significant market value difference (**15 times**) (719,880,000 TL/47,460,000 TL) between the areas of Çankaya-Alsancak and Agora-Kemeraltı, which is 500 m away.

This difference shows the numerical equivalent of the financial victimization resulting from the state of the conservation site.



Figure 7.1. The parcels which are sold/rented currently

In determining the repair and restoration costs of the buildings, the calculation of the building/restitution/restoration minimum cost webpage¹¹ of the Chamber of Architects (*Mimarlar Odası*) and the building unit cost value (for the year 2019) of the Ministry of Environment and Urbanization published on the official website¹².

Buildings are divided into two groups, the first group consists of simple repair buildings and the major (*esaslı*) repair buildings. In simple repair, the cost of repair is calculated on the assumption that the cost of restoration is one to fourth. In the major repair, the restoration cost is calculated and then the application cost is added to this value.

According to the site survey, sixty eight listed buildings are of simple repair, whereas seven buildings are of major repair. As a result of the calculation, the total simple repair cost was 490,900 TL and the major repair cost was 5,700,000 TL for the study area. The total cost of simple and major repair/restoration is 6,200,000 TL.

¹¹ <http://www.mimarlarodasi.org.tr/enazbedel/index.cfm>

¹² <http://www.resmigazete.gov.tr/eskiler/2019/03/20190316-12.htm> (2019 yılı Yapı Yaklaşık Birim Maliyetleri).



379/37

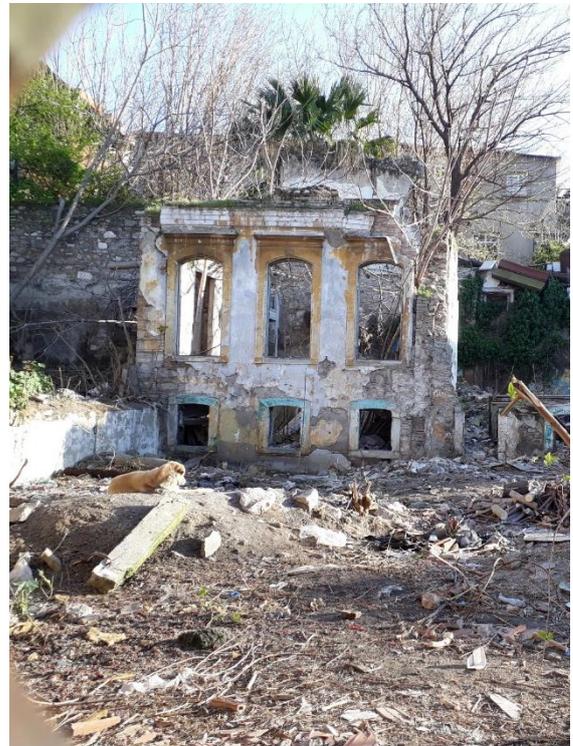


1546/130

Figure 7.2. Buildings in a bad condition that require major restoration (1)



1546/122

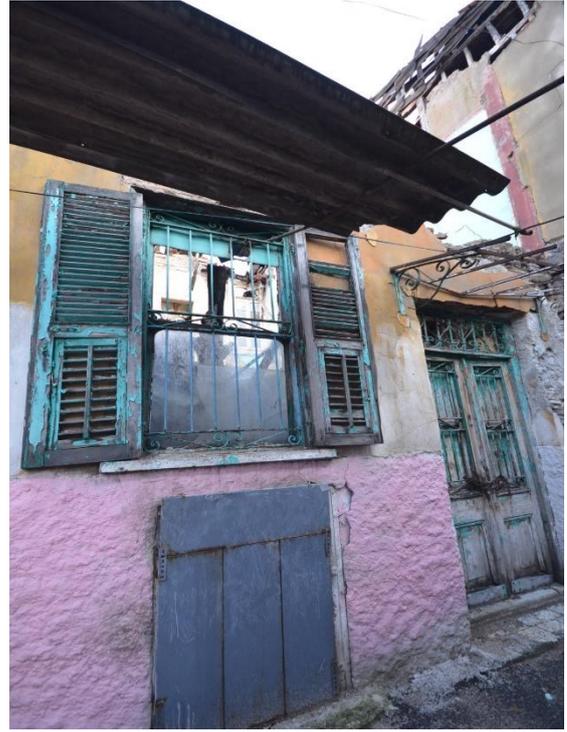


1546/125

Figure 7.3. Buildings in a bad condition that require major restoration (2)



1546/103



1546/123

Figure 7.4. Buildings in a bad condition that require major restoration (3)



Figure 7.5 : Building on 1546/129 parcel in a bad condition that require major restoration

The Ministry of Culture and Tourism¹³ provided financial support in obtaining a repair project equivalent to 75,000 TL for immovable cultural assets owned by private individuals. The Ministry can give grants to cover a 70 percent of the implementation cost of the repair projects (upper limit is 300.000 TL). According to Table 6.8 major restoration project cost for these 7 civil architecture building is shown.

Table 7.1. Major Maintenance/Restoration Cost of the Buildings in Study Area

Major Maintenance/Restoration Cost					
Number	Block	Parcel	Project Cost (TL)	Restoration Cost (TL)	Total (TL)
1	379	37	2,244,000	197,000	2,441,000
2	1546	122	598,000	63,000	661,000
3	1546	129	443,000	49,000	492,000
4	1546	130	554,000	32,000	586,000
5	1546	125	672,000	70,000	742,000
6	1546	123	352,800	36,200	389,000
7	1546	103	352,800	36,200	389,000
Total			5,217,980	488,300	5,700,000

As a result of all the calculations, only 3,009,000 TL can be covered by the Ministry of Culture and Tourism, whereas the total area repair/restoration cost is 6,200,000 TL. The Ministry only accounts for **48 percent of the total repair/restoration cost**.

Our findings reveal that conservation can be very costly and grants can be unsatisfactory under such rent differences between the conservation area and the conservation-free area.

In the calculation we excluded all the problems of obtaining funds from the Ministry, long delays and waiting times and also excessive red tape of applications. Moreover, the application of the funds can only take place after the projects are available and after the implementation of the project. Conservation is a nightmare for the majority of people who own and live in the area under such overwhelmingly financial reality.

According to this study, some principals are examined in the following sentences to guide TDR implementations:

- Under Law No. 5226 (Protection of Cultural and Natural Assets), 75 registered houses and parcels with limited development rights will be transferred to the

¹³<http://teftis.kulturturizm.gov.tr/TR-138974/tasinmaz-kultur-varliklarina-yardim-saglanmasina-dair-y.html>

region within the same municipal boundaries. In the case of no area designated as receiving area in this region, it is foreseen that it will be used in other areas to be carried out by joint programs in line with zoning plan decisions as receiving areas.

- The legal transfer method is conducted by certificate. The quantity of units is 75 and it is deemed that one certificate should be provided per unit. Assuming a certificate is given for each unit, the value of each certificate will change in direct proportion to the size of the parcel it holds.
- The fair value balancing by the Real Estate Appraisal Companies approved by the Capital Markets Boards indicates the value of the economic change determined on the certificate and the cultural value of the registered immovable cultural asset is not taken into consideration when determining this TDR value.
- The certificates are kept separate from the free market and authorized by the municipality, the governorships and the Iller Bank. This means that there will be no market where the rights issued as certificates are freely sold.
- Iller Bank has been authorized to print and store documents relating to certificates of rights defined as securities, the process of validating the change in transfer, and the establishment and control of information data in this process. The institution is expected to work as a development right bank and there is no regulation that plans to take place in the transfer process directly in the purchase and sale transactions. Therefore, the institution has no duty to determine the lower limit values for the valuation of the transfer area as in the U.S. samples and to act as the buyer or seller actor as the transfer bank.
- Local governments and metropolitan municipalities are permitted to identify priority regions for transfer of development rights as sending-receiving region. While making these determinations, both areas need to be analyzed in detail and projection research should be carried out.
- Before the implementation of the TDR, both sending areas require severe analysis and market research for the registered and monumental listed buildings and receiving areas. Factors such as the market price value of the receiving area where the transfer will be carried out, the size of the parcel in the region and the amount of building floors should be determined clearly and in detail before the transfer takes place. The TDR program, which is explained in a clear and detailed manner, will both ensure that the model is carried out effectively and that owners can

understand the transfer of development rights and use the programs. This will discourage property owners from using the TDR program due to lack of information. Similarly, the conditions to be laid down in one or more TDR programmes, the acceptance and transfer procedures in such a way that property owners are unable to achieve it will interrupt the application at that stage, the process will not be completed or delayed.

- The size of the sending and receiving area is directly related to the successful management of the program. The management of the TDR program, which encompasses broader boundaries, requires more controlled progress and requires more crowded and strong administrative-technical personnel support. Therefore, when determining these areas, the boundaries of the TDR model should be clearly defined according to the condition, character and size of the regions to be transferred.
- In accordance with the developed method, the restricted development right value (669,229,000 TL) to be transferred to 75 units will be distributed according to features of the receiving region such as the market price value, parcel size and building floor height. Another important point in determining the transfer regions for the model's applicability will be considering the negative impacts of the increase in density. The receiving region should be able to meet the requirements of the extra future population for urban technical and infrastructure facilities.
- Within the scope of the study, partial TDR transfer will take place in the area and the restricted development rights under the conservation plan will be transferred. The property rights of registered property owners will be protected. In partial transfers, the property ownership of the immovable property i.e. the listed building continues. However, in this case, the property owner is obliged to maintain, restore and repair for the conservation and survival of the immovable property in accordance with the protocol to be signed with the relevant administration. Therefore, owners of immovable cultural properties where partial transfer is carried out for conservation purposes will be responsible for the maintenance, repair and restoration of the structure after issuing the restricted rights as certificates.

CHAPTER 8

CONCLUSION

In this study, we have tried to demonstrate the economic hardship and conflict that has been experienced in the process of historic inner city core area, Kemeraltı's conservation efforts. Since the conservation is part of the public domain, the contributions offered by the Public bodies as such; "Contribution to Conservation Fund" of the Ministry of Culture and Tourism, credits, funds, tax exemption, etc. are proven far from satisfactory. New ways of exchanging the privately owned historical property with government owned non-historical property have been introduced.

In this thesis, as a result of the reviews and evaluations of enacted legal arrangements and worldwide TDR implementations, a method has been developed to compensate for the restricted development rights constraints and to cover the cost of conservation implementations. The applicability of the TDR has been assessed and findings shown to TDR can be a viable tool for conservation efforts. According to method, there are some analysis carried out on the study area (Agora-Kemeraltı) and the comparison area (Alsancak-Çankaya). In the study, 75 registered civil architecture buildings and registered parcels in Agora-Kemeraltı region, which is sending area, are subject to TDR model. We made a comparative study based on a typical "what-if case" that if the case study area were not really under the status of conservation then how it would be developed in accord with the Development Plan's right. Assumption that "If the Agora-Kemeraltı area were not really under the status of conservation, it would be similar to the Alsancak-Çankaya area which is 500 meters away." the comparison of the housing market value between the two regions realized the restricted development right by conservation plan.

As a result of the market analysis for both Çankaya-Alsancak and Agora-Kemeraltı region reveals that the market value differences is approximately three times (2260/6856) higher than the area of conservation. Accordingly, the housing market value of 75 units (registered civil architecture buildings and registered parcels) subject to TDR is 47,460,000 TL in Agora-Kemeraltı region and 719,880,000 TL in Alsancak-Çankaya region, which are only 500 meters away. Difference in market prices between these two areas for 75 buildings is 15 times (719,880,000 TL/ 47,460,000 TL) higher than market

prices in favor of the conservation-free area. The difference in total market values for these areas is equal to 672,420,000 TL. The right to be transferred has been found by removed the market value differences (672,420,000 TL) from the simple and major repair/restoration costs of the buildings to be transferred, and funds provided by the Ministry of Culture and Tourism with the regulation of “Contribution to Conservation Fund “ (*Taşınmaz Kültür Varlıklarına Yardım Sağlanmasına Yönelik*). Registered civil architecture buildings are divided into two groups as simple and major repair/restoration according to condition of structures. In simple repair, the cost of repair is calculated on the assumption that the cost of restoration is one to fourth. In the major repair, the restoration cost is calculated and then the application cost is added to this value. According to the site survey, **68 listed buildings are of simple repair**, whereas **7 buildings are of major repair**. The total cost of simple and major repair/restoration, **which is** the total simple repair cost is 490,900 TL and the total major repair cost is 5,700,000 TL, is **6,200,000 TL**. Ministry of Culture and Tourism provided financial support repair project **75,000 TL** for owner’s of the listed buildings. The Ministry can give grants to cover a 70 percent of the implementation cost of the repair projects (upper limit is 300.000 TL). As a result of all the calculations, only 3,009,000 TL can be covered by the Ministry of Culture and Tourism, whereas the total area repair/restoration cost is 6,200,000 TL. The Ministry only accounts for **48 percent of the total repair/restoration cost**. The difference equivalent to 52 percent corresponds to the right of development restricted by conservation decisions is 669,229,000 TL (672,420,000 TL – (6,200,000 TL-3,009,000)) and to be transferred only by TDR.

However, all these contributions have shown limited benefits of the new regulations. As shown above, the grants from the "Contribution to Conservation Fund" of the Ministry of Culture and Tourism are far from satisfactory (only cover the 48 % of the total cost). Another handicap is the prolonged delay in paying the funds, as the Ministry withholds the payments until the conservation project is established or after the project is completed. This process, with the added layer of painful bureaucracy, usually worsens the picture.

The study has revealed once more that the heritage itself is not simply for public good, but it is often a base for conflict. This conflict is generally caused by economic development, which is the opposite of conservation. The cultural value of the conservation

area has no equivalent in the functioning of the present market system but, on the contrary, has the impact of reducing the market value.

Effective conservation cannot be achieved without meeting this value distinction in today's market circumstances. Property owners, whose property's under conservation status, face severe financial difficulties. Most people living in the area have income below the minimum wage, according to survey results. Property owners are unaware of the state's support, funds and contributions for the conservation of immovable cultural assets. Therefore it is clear that they will not be able to follow the long and complex bureaucratic processes with which institutions they will contact for support. Besides that, 27 percent of the total respondents who migrated from Syria are temporary visitors. Their education level is very low. Moreover, they do not appear to be able to take an active role in the sense of urban conservation when they are foreign to the bureaucratic system and language problem, and, are deemed to be under temporary conservation status. Many of them prefer the area because of low rent. It is not possible to meet the maintenance, fixing and restoration costs of the buildings they have or the economic hardships they face. The research shows exactly that the social and economic capital of the area's users to cover this cost is almost impossible under the current circumstances. Unless the closure of this big difference is transferred to a part of the city that is wanted to be developed using TDR, the grievance cannot be eliminated.

Study shows that the enormous difference in between the conservation area and the adjacent central area has irreconcilable property values that jeopardize all conservation intentions and efforts. Another handicap is the prolonged delay in paying the funds, as the Ministry withholds the payments until the conservation project is established or after the project is completed. This process, with the added layer of painful bureaucracy, usually worsens the picture. All these hardships and conflicts claim that new financial tools are needed to conserve the area, and TDR offers high potential.

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