

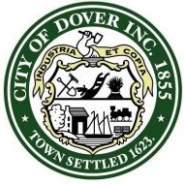


CITY OF DOVER

TDR SUB-COMMITTEE OF THE PLANNING BOARD – AGENDA

Meeting Type: Regular Meeting
Meeting Location: City Hall, First Floor Conference Room
Meeting Date: Wednesday, August 20, 2025
Meeting Time: 5:00 p.m.

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **APPROVAL OF PRIOR MEETING MINUTES**
4. **CITIZEN'S FORUM**
5. **REVIEW OF ZONING DISTRICT DESCRIPTIONS**
6. **IDENTIFY CRITERIA FOR DISTRICT DESIGN GUIDELINES**
7. **SET GOALS FOR NEXT MEETING/DRAFTING OF AMENDMENTS**
8. **SELECT NEXT MEETING DATE**
9. **ADJOURN**



CITY OF DOVER

TDR SUB-COMMITTEE OF THE PLANNING BOARD – MINUTES

Meeting Type: Regular Meeting
Meeting Location: City Hall, First Floor Conference Room
Meeting Date: Wednesday, July 23, 2025
Meeting Time: 5:00 p.m.

1. CALL TO ORDER

2. ROLL CALL

Members in attendance: Leslie Herd, Jan Nedelka, Chris Berry, Kyle Pimental, Doug Glennon
Others in attendance: Abby Lyons, Russ Warnock, Anna Boudreau, Kieran Seavey, and Ken Herd.
Staff in attendance: Donna Benton, Director of Planning and Community Development, Makayla Edgecomb, Assistant City Planner-Environmental Conservation

3. APPROVAL OF PRIOR MEETING MINUTES

4. CITIZEN'S FORUM

Ken Herd, 201 Tolend Road, spoke about last meeting and direction of TDR subcommittee conversations. The base density multiplier may not work in every situation so what information do we have? From a layman, suggest thinking about what success looks like in 10 years from now as a residential map. Shifting that perception that TDR may not be a way around zoning but rather finding that right balance. Then setting those as guidelines as guidelines for developers and the Planning Board. TDR ordinance is designed to be flexible and has to be. Suggestion to include flexibility but also constrain it regarding TDR fee rate to the requested density vs. local target density.

{Editor's note—letter handed out from Fergus Cullen for discussion during next meeting}.

5. DISCUSSION WITH CONSERVATION COMMISSION MEMBERS

A. Lyons and R. Warnock were in attendance from Conservation Commission.

Discussion ensued regarding process of TDR review process, CUP criteria, Conservation Commission authority, etc.

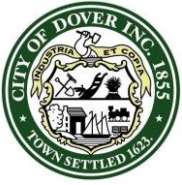
D. Benton suggested a workshop with Conservation Commission regarding relief and the Conservation Commission's role with their review/endorsement.

K. Pimental -TDR is typically conditioned on a site plan.

Discussion of the use of narratives about how CUP criteria has been met. Applicants need to be well-armed with that information.

C. Berry – During the TRC process, discuss if Conservation Commission review is needed earlier.

Discussion ensued on the role of the Conservation Commission's purview, review, and role during the process and what authority it has.



TDR SUB-COMMITTEE OF THE PLANNING BOARD – MINUTES

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J.Nedelka-which map should be this group be focusing on-co-occurrence in NRI or Conservation and Open Space?

6. DISCUSSION WITH OPEN LANDS COMMITTEE MEMBERS

A.Boudreau-answering which map—we have to wait until land owner is ready to conserve. Reminder about land owner rights. She mentions she wears two hats-one as a developer for Our Place and one as Chair of Open Lands Committee (OLC). TDR does take a lot of time and money. We have to be considerate of what developers have to go through to get the housing that everyone wants. As far as land conservation, without the TDR program, half the properties of the last 20 years would not have happened if it weren't for TDR. She went over the list of recent conserved pieces. Discussed the process of conserving lands and prices of some. Conservation is one way to lower the price of land because the development rights are lost. Discussed the goal of a balance of development and conservation and the Spaulding Turnpike as the boundary.

L.Herd-asked about who reaches out to whom about conserving land. A.Boudreau answered that when they first formed the OLC would reach out, now the OLC will only work with willing land owners who come to them because of capacity.

C.Berry asked if the TDR program allows the City to have the liquidity to say “yes, that is worthwhile and we can get that done right now? Or are you able to choose the highest and best?”

A.Boudreau- Yes liquidity has sped up the process from 5 years to 2 years. Yes, the OLC still uses the criteria they have formed. They don't lower their standards just because they have a budget.

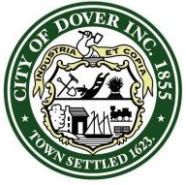
R.Warnock-it is impossible to use a single metric on the land. Green space where people live and have access to is still incredible valuable.

K.Pimental-Planning Board has received criticism regarding of TDR fees. Misconception that all funds used are going towards conservation. Awareness campaign is needed or vocalized a different way. Stewardship, maintenance, and monitoring are all necessary as well not just new conservation land.

A.Boudreau, C.Berry, and L.Herd continued discussing the conservation planner funding.

D.Glennon-TDR used to be just land for land and not admin costs?

J.Nedelka-complaints share a common thread with any revenue source and the public perception. The budget is complex. People want prudence with their dollars but those statements also share a bias that administrative tasks directly related to conservation don't have value. It's about getting best value for those conservation dollars and the benefit of Dover and all of that time takes work and effort by staff.



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Discussion ensued about public education needed to correct misconception about TDR fees going into the general fund.

A.Boudreau-open space conservation and Arch Street example. Discussion ensued about not all land conserved has to be open to the public.

C.Berry-TDR process could allow for increased density and keeping other areas open not only for conservation efforts but also the value of open space in that neighborhood.

K.Pimental-scaling of 30' buffer and screening ideas—in urban projects like in the downtown will look different, so we need to codify that.

7. SET GOALS FOR NEXT MEETING

Start working on re-writing of ordinance. J.Nedelka says no, some things to try to address concerns need to dive right in and then others are more of a process change, how things phase through TRC, how narratives and early sketches are done. Some language of the ordinance do need to change.

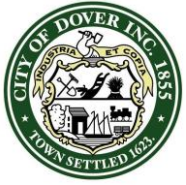
C.Berry-all of these ideas, you will get a good project. You get a group of people not aligned with these ideas will point to the ordinance as to why though don't need to. The best example of that is the form based code idea, how can we use the form based code concept and put into the code to explain expectations of developer. We don't want to strip the applicant or the ordinance of creativity. Look at CBD table for example of setting expectations without stripping the creativity.

L.Herd-we're at a point to start drafting amendments.

K.Pimental- in thinking about using existing resources to target density and open space, there are long term goals of natural resources, agricultural land, etc. Projects in these areas will need to include these types of things.

Discussion ensued about use of maps, land use chapter being updated at the same time, and not wanting to be in conflict or doubling the work.

Next meeting: Discuss F.Cullen's comments, land use map, conservation value co-occurrence map, recreational use map, city owned parcels, etc. to be available.



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8. SELECT NEXT MEETING DATE

The group decided on July 15th at 5pm.

9. ADJOURN

A motion to adjourn was made at 6:36pm by L. Herd. Seconded by J.Nedelka. Vote: U/A.

Transferable Development Rights (TDR)

Using TDRs to Stretch Preservation Dollars and Achieve Smart Growth

*John Snook & John Theilacker
Brandywine Conservancy*

*Eric Jarrell, Montgomery County
Planning Commission*

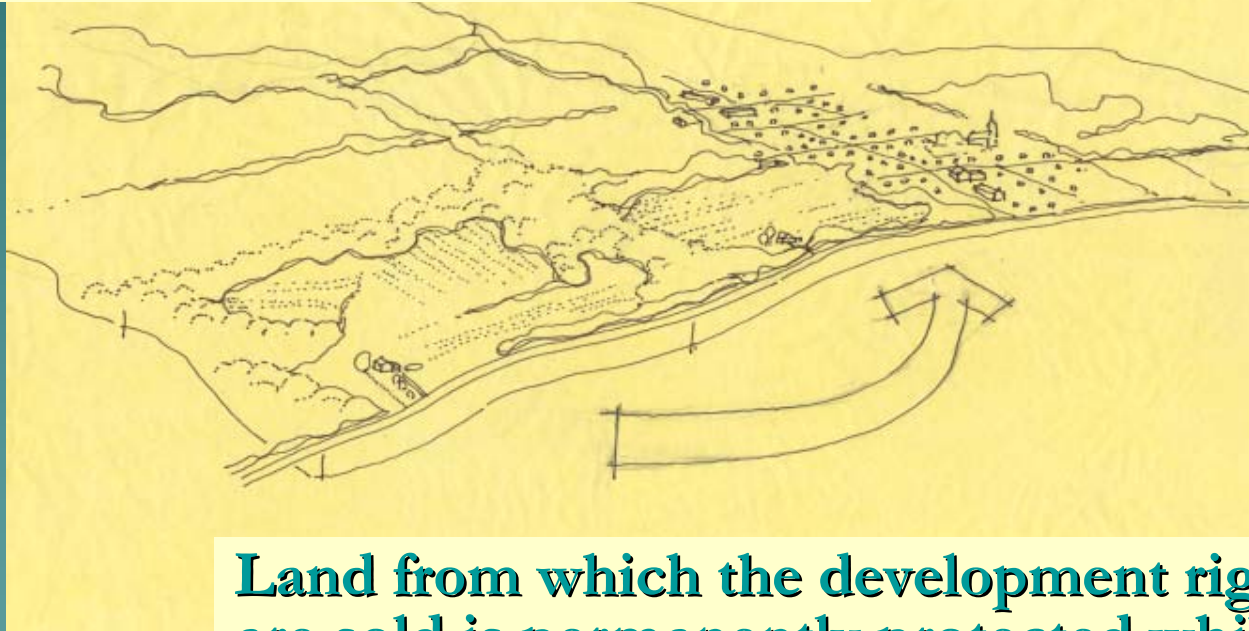


APA PA
October 5, 2009



Transferable Development Rights (TDR)

Landowners in one area (sending zone) may sever and sell their development rights to landowners or developers in another area (receiving zone).



Land from which the development rights are sold is permanently protected while land where the sold development rights are applied is enhanced in development value.

Why TDR?



*Conventional zoning often
seems to be a prescription
for Sprawl!*



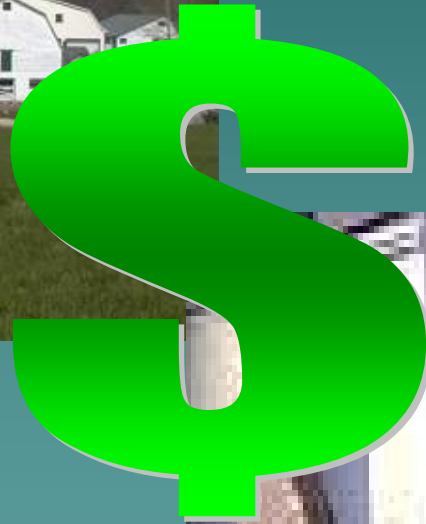
Where development pressure may ultimately prevail, TDR can offer one more tool to achieve a preferred landscape . . .



Providing an option to “Selling Out”



Landowner keeps
the land;



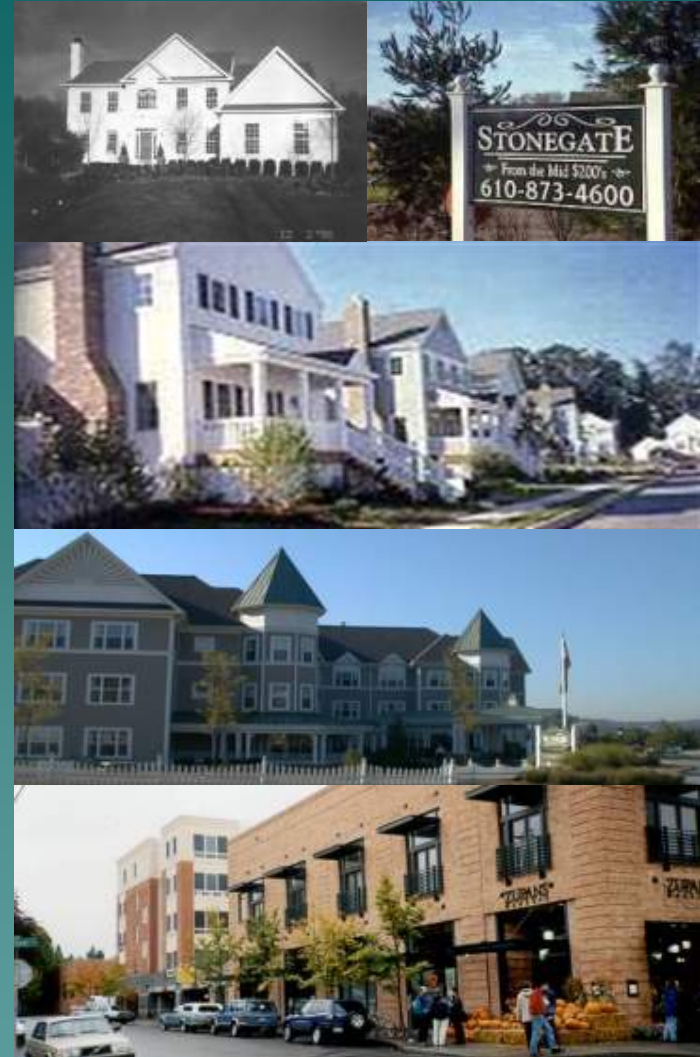
Developer
enhances the
project.



TDR – A Unique Tool!



=



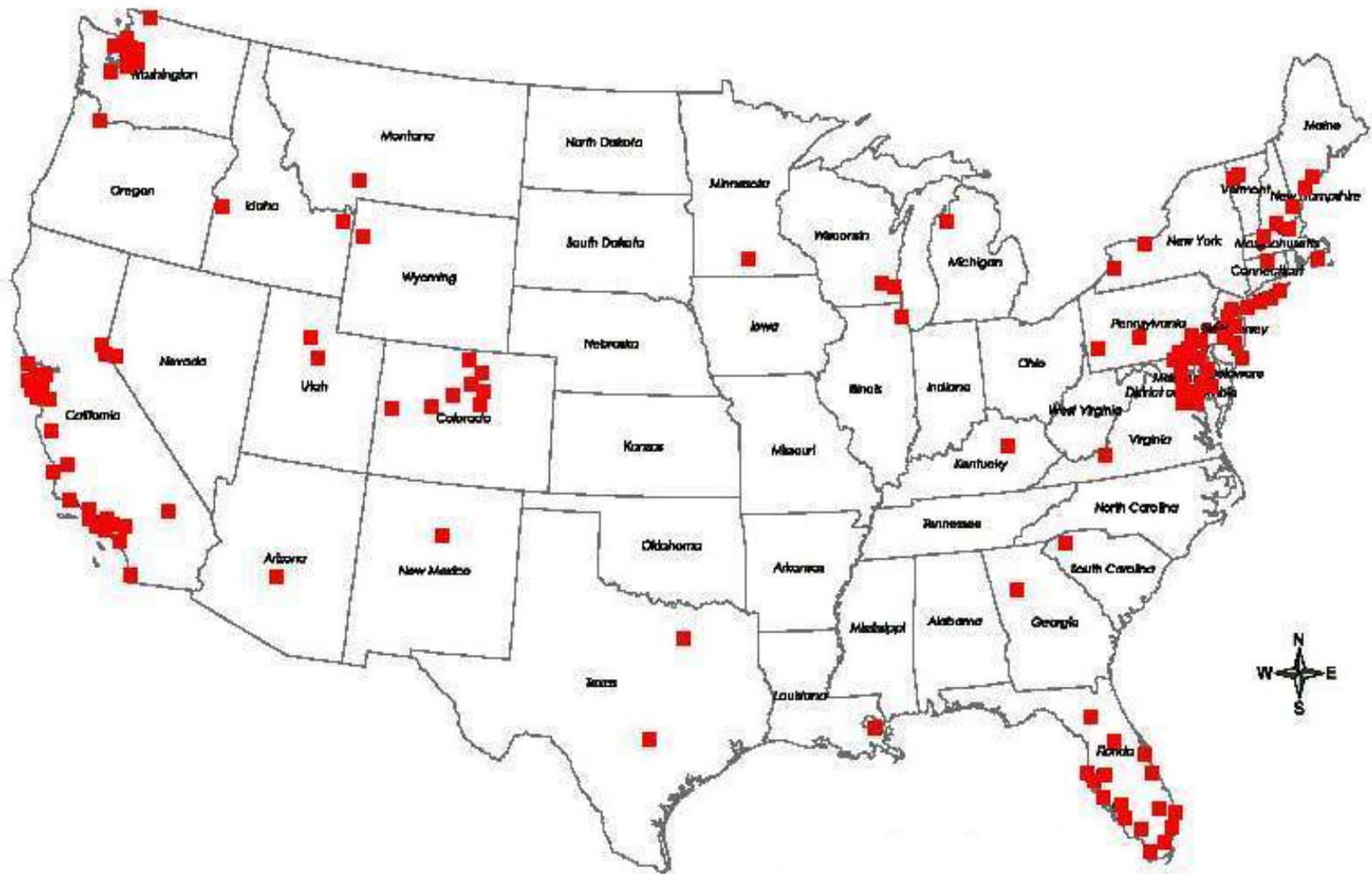
TDRs are established by regulation,
but are driven by the real estate market

Other TDR tool benefits

- ◆ TDRs can help stretch public dollars – private market finance
 - ◆ TDRs are a “non-structural” BMP for watershed management
 - ◆ Mix and match with other tools (Growing Greener, effective ag. zoning, conservation easements)
 - ◆ Revenues generated through PA Act 153 (open space referendum) can be applied to TDR purchase
- 
- A stylized, layered mountain range graphic in shades of teal and blue, located in the bottom right corner of the slide.

Who uses TDR?

At least 191 communities in 33 states



What can TDR protect?

Of 191 TDR programs:

- ◆ 69 environmental
- ◆ 46 environment & farmland
- ◆ 41 farmland
- ◆ 15 historic preservation
- ◆ 20 other (housing, infrastructure, urban design, revitalization)



National Success Stories

King County, WA

138,000 acres

New Jersey Pinelands

56,000 acres

Montgomery County, MD

52,000 acres

Palm Beach County, FL

35,000 acres

Collier County, FL

31,000 acres

Calvert County, MD

13,000 acres

Queen Annes County, MD

11,000 acres

Sarasota County, FL

8,000 acres

Pitkin County, CO

6,500 acres

Boulder County, CO

6,000 acres

San Luis Obispo County, CA

5,500 acres

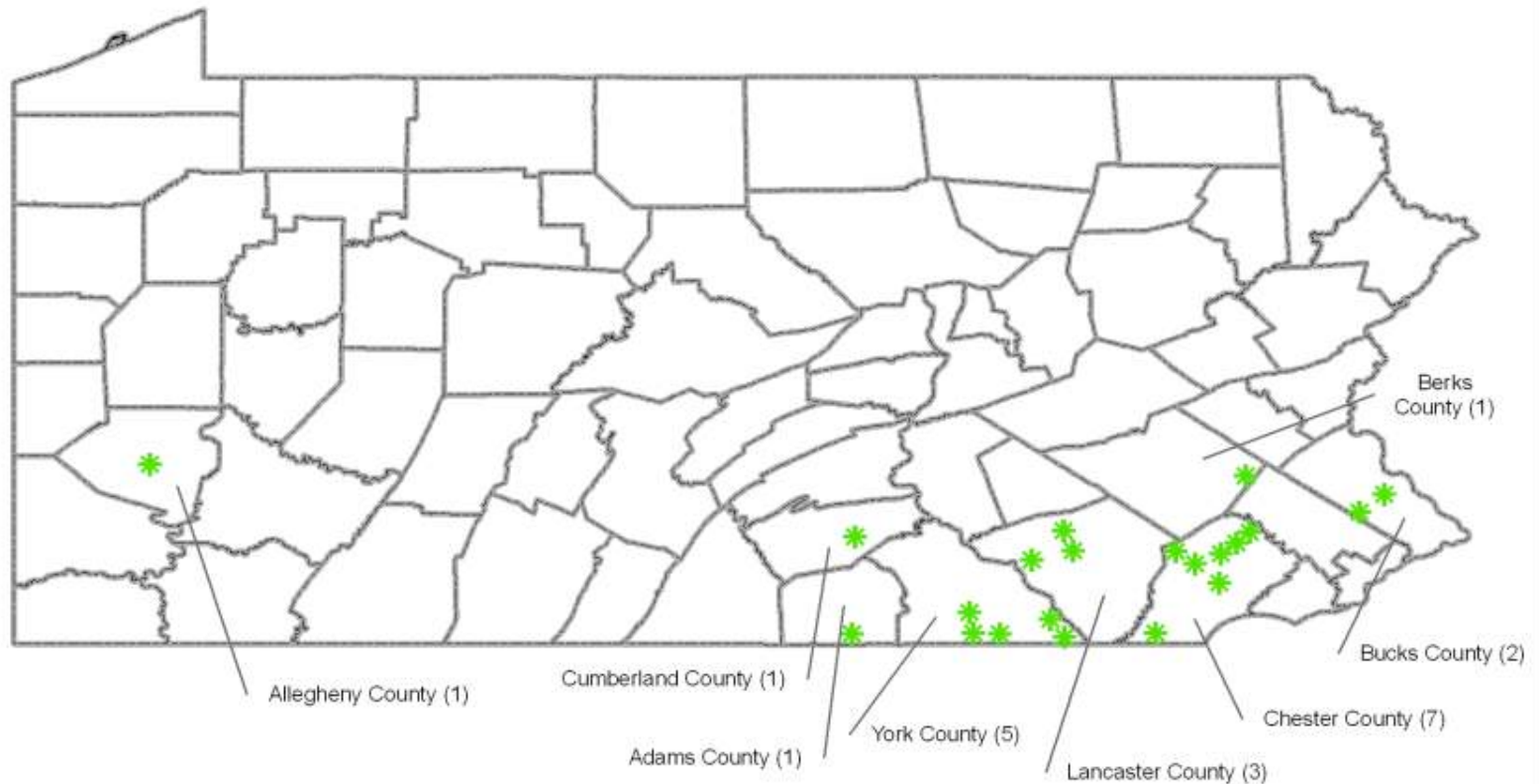
Blue Earth County, MN

5,400 acres



Transfer of Development Rights in Pennsylvania

Municipalities with Active TDR Programs



Brandywine Conservancy

Environmental Management Center
P. O. Box 383 Chadds Ford, Pennsylvania 19307 (302) 384-2700

Data Sources: Pennsylvania county boundaries from PASDA, 2008
TDR program location based on information provided in: Brookings, 2004;
Probst, 2003; Brandywine Conservancy, 2003; and Brandywine Conservancy
staff observations

Map Created: March 12, 2007 (KPA)
Projection: GCS_North_American_1983

Legend

- Active TDR Programs
- Pennsylvania Counties

The PA Municipalities Planning Code specifically authorizes the use of TDR

- ◆ Section 603(c)(2.2) - Ordinance Provisions:
 - Allows municipalities to include TDR provisions as a voluntary option
- ◆ Section 619.1 - Transferable Development Rights:
 - Creates severable and conveyable development rights
 - Requires municipal approval for development right transfer
 - Limits transfers to lands within a single municipal boundary unless through joint zoning or inter-municipal agreement
- ◆ Section 1105(b)(2) – Intergovernmental Cooperation:
 - Specifically enables inter-municipal transfer of development rights among municipalities participating in a county or multi-municipal comprehensive plan

Key TDR Implementation Issues

- ◆ *Enable TDR through Zoning Amendment*
- ◆ *Determine Sending Area Qualifications*
- ◆ *Determine Calculation of TDRs*
- ◆ *Establish procedure for Severance of TDRs*
- ◆ *Set requirement for Permanent Restriction of Sending parcel(s)*
- ◆ *Establish Receiving Area Qualifications*
- ◆ *Set up Provisions for Receipt of TDRs*

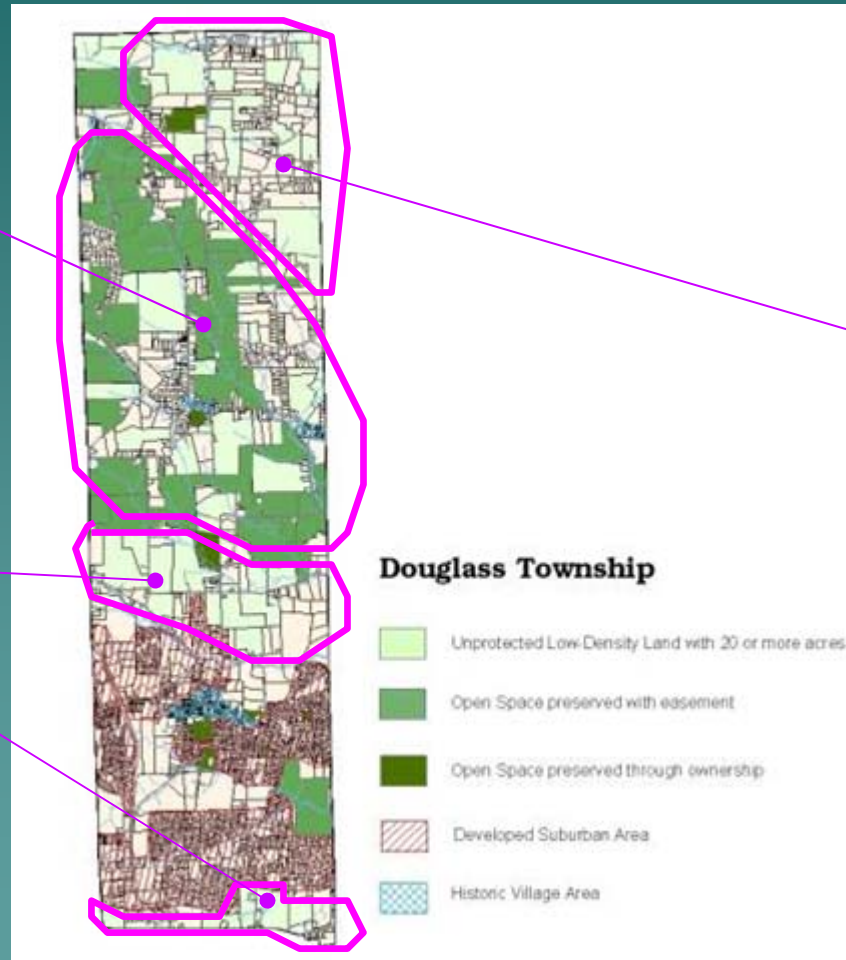
Douglass Township, Montgomery County

Sample Sending Area Definition

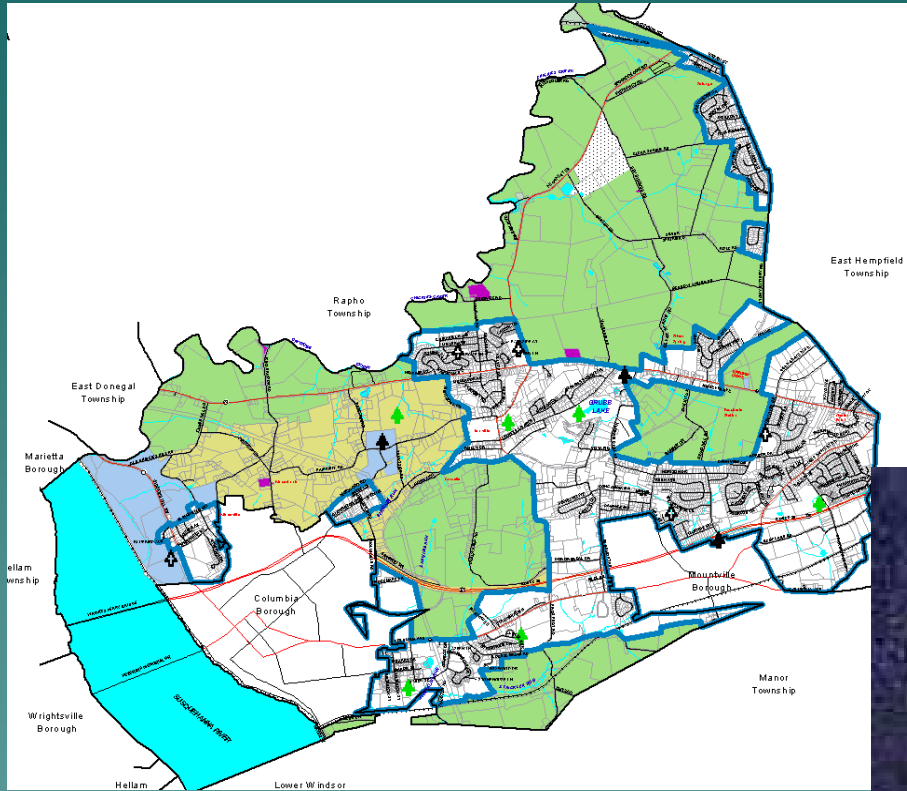
Core Farming
Area

Gilbertsville
Greenbelt

Wooded
Highlands



Sending Zones may be defined by specific qualifications or by zoning district designation



West Hempfield Township
assigns sending rights by
zoning district

West Bradford Township assigns
sending rights by landscape character



Can Community Vision focus on appropriate “Receiving” areas?



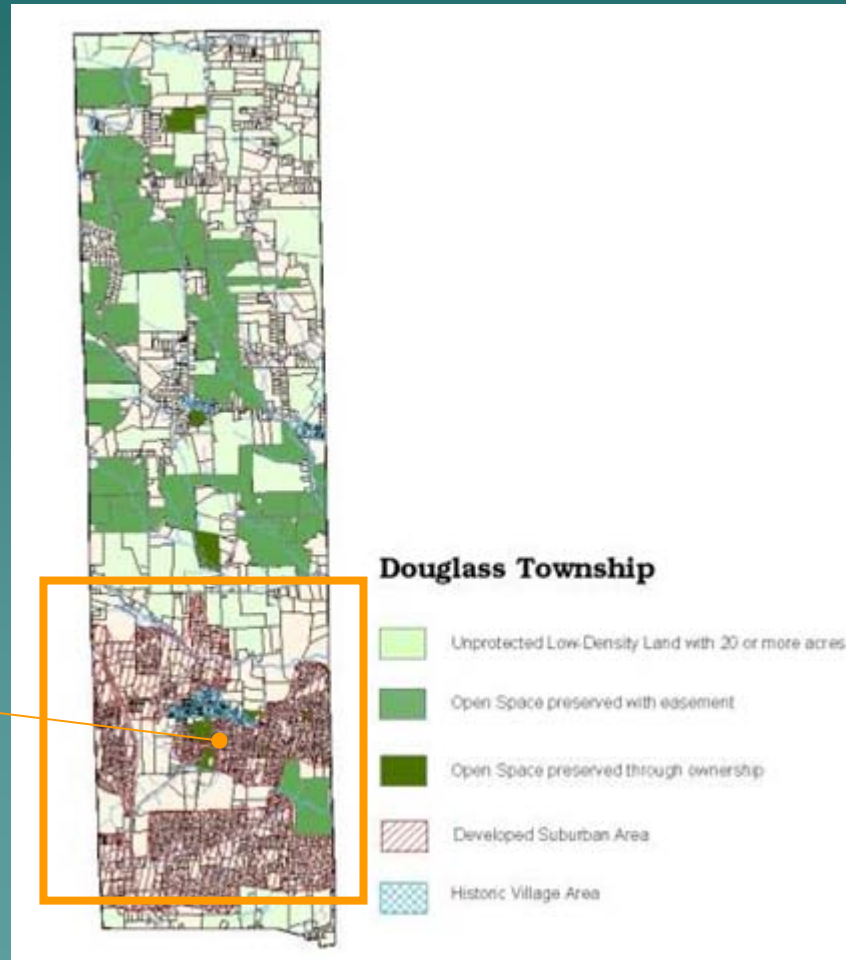
Receiving area development can include a variety of uses and forms

- *Suburban development at increased densities?*
- *“Neo-Traditional” development*
- *Special Uses such as retirement communities or life-care*
- *Non residential receiving uses*

Douglass Township, Montgomery County

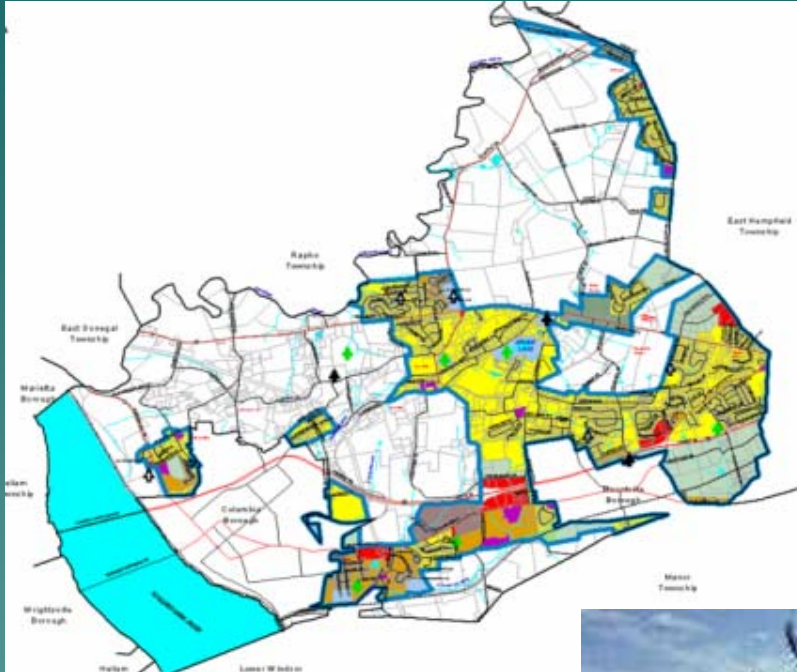
Sample Receiving Area Definition

Gilbertsville
Growth Area



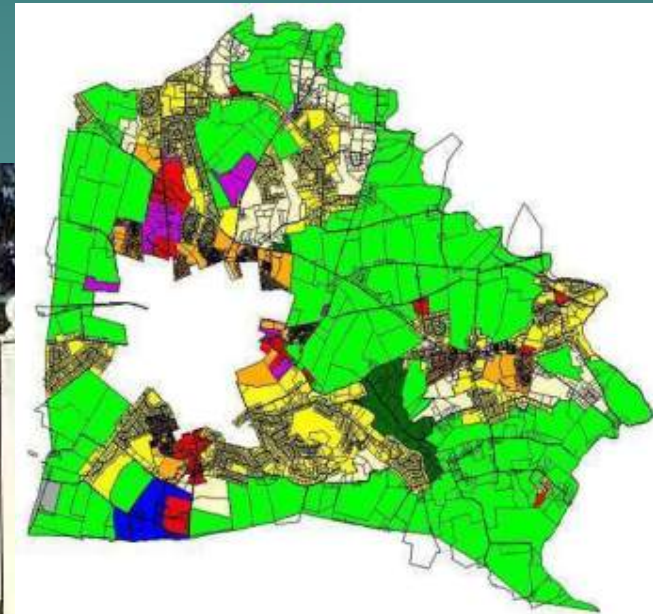
Township is
considering
additional growth
in the
Gilbertsville Area

Receiving Areas may be defined by specific qualifications, geography or zoning district



West Hempfield Township assigns receiving opportunities in residential zoning districts

Warwick Township created new office campus zoning district for TDR receipt



West Bradford Township assigned TDR receipt to tracts meeting certain planning qualifications



Warwick Township, Lancaster County

Program Highlights through 2008

- 597 TDRs severed
- 337 TDRs transferred
- Warwick cooperates with County Ag. Preserve Board & Lancaster Farmland Trust.



Preserved Farms since 1997

- 1,845 total acres have been preserved
- 961 acres preserved through TDRs
- 250 additional acres are pending

Warwick Township Development Receiving TDRs

Campus Industrial development



40 TDRs

141 TDRs



Additional Annual School Tax Revenues = \$544,000.00

The end result.....

TDRs have preserved . . .



Hereford Township, Berks County

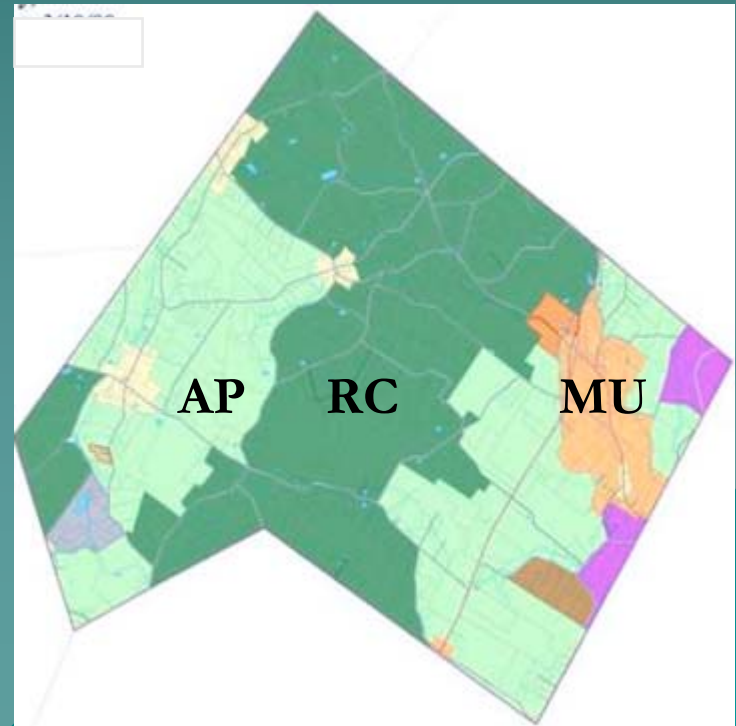
Multi-Faceted TDR Program

- ◆ Sending areas comprise AP and RC zoning districts
- ◆ One TDR per 2 ac. AP, 4 ac. RC
- ◆ Single-family residential receipt in RC
- ◆ Mixed-use receipt in MU district at highway junction



Program Objectives:

- 1) preserve farmland*
- 2) preserve watersheds*
- 3) Manage growth*



Hereford Township, Berks County

Mixed-Use Receipt of TDRs

- ◆ More than single principal use requires 1 TDR per use
- ◆ TDRs also allow increased floor area, impervious coverage and height; 1 TDR = 4,000 sf
- ◆ TDRs afford density increases for multi-family and CCRC



Sample Allocation of TDRs for Development Purposes

Charlestown Township, Chester County (as proposed)

Receiving Area Density Multipliers for use of TDRs:

Receiving unit type

Single-Family Village lot

Townhomes

Multi-Family (apartments)

Age-Qualified units

Office Space

Retail Space

Development per sending unit

1.5 dwellings

2.0 dwellings

6.0 dwellings

8.0 dwellings

4,000 square feet

3,000 square feet



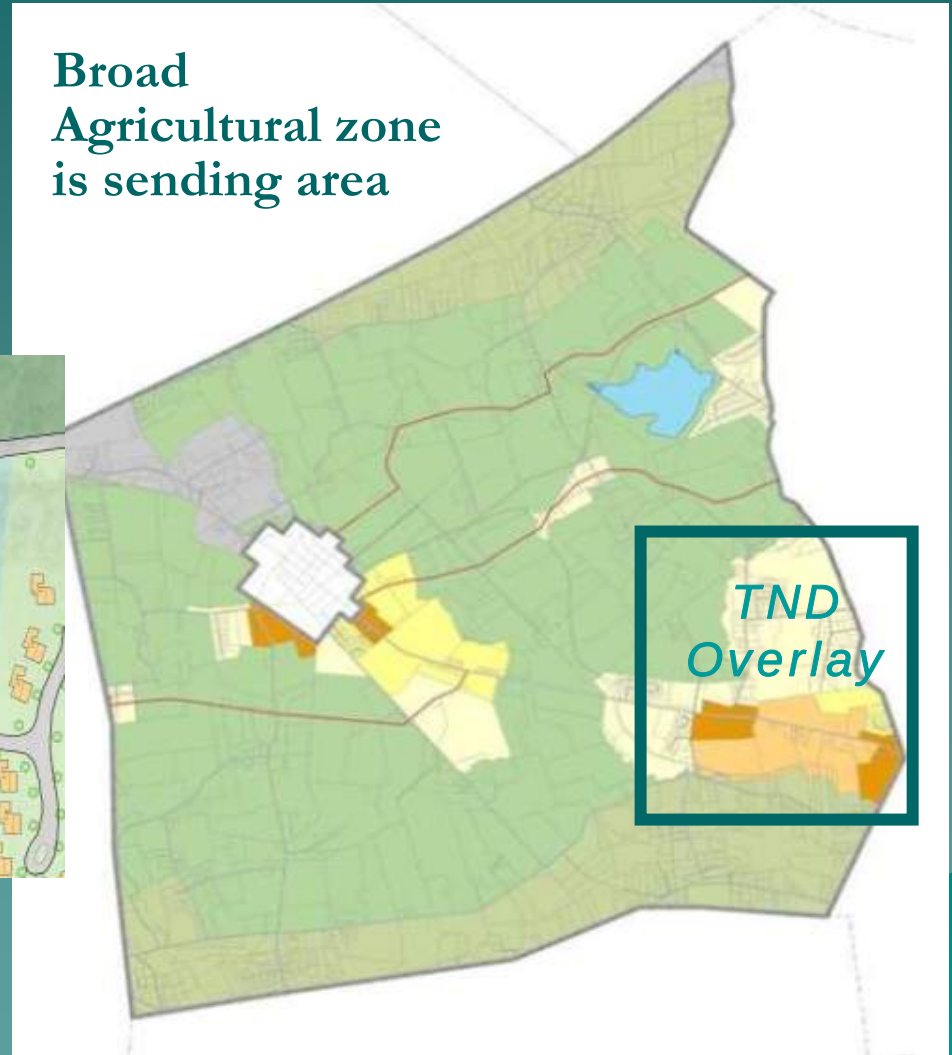
Honey Brook Township TDR Sample

TND overlay is key receiving area, with both residential and non-residential receipt promoted to effect community development objectives



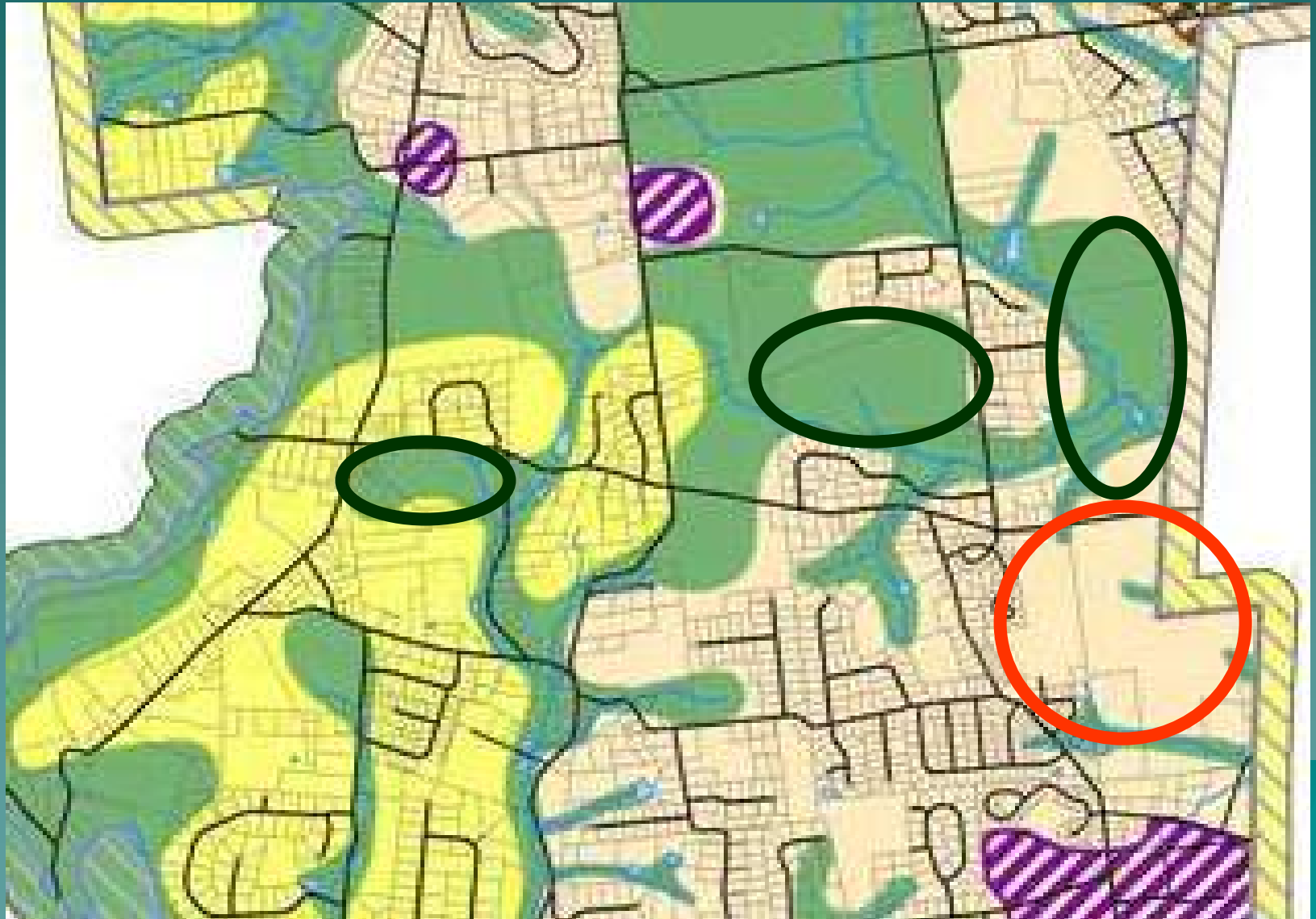
TND master plan is site and form specific

Broad
Agricultural zone
is sending area



West Brandywine Township, Chester County

Variation on the Theme!



West Brandywine Township

Variation on the Theme!

- NO specific TDR enabling provisions in Zoning Ordinance
- Provisions for common conservation design plan on discontinuous tracts
- Conditional Use approval afforded Township opportunity to request dedication
- NO possibility for severance and banking of TDRs
- Required developer to gain control over both sending and receiving parcels



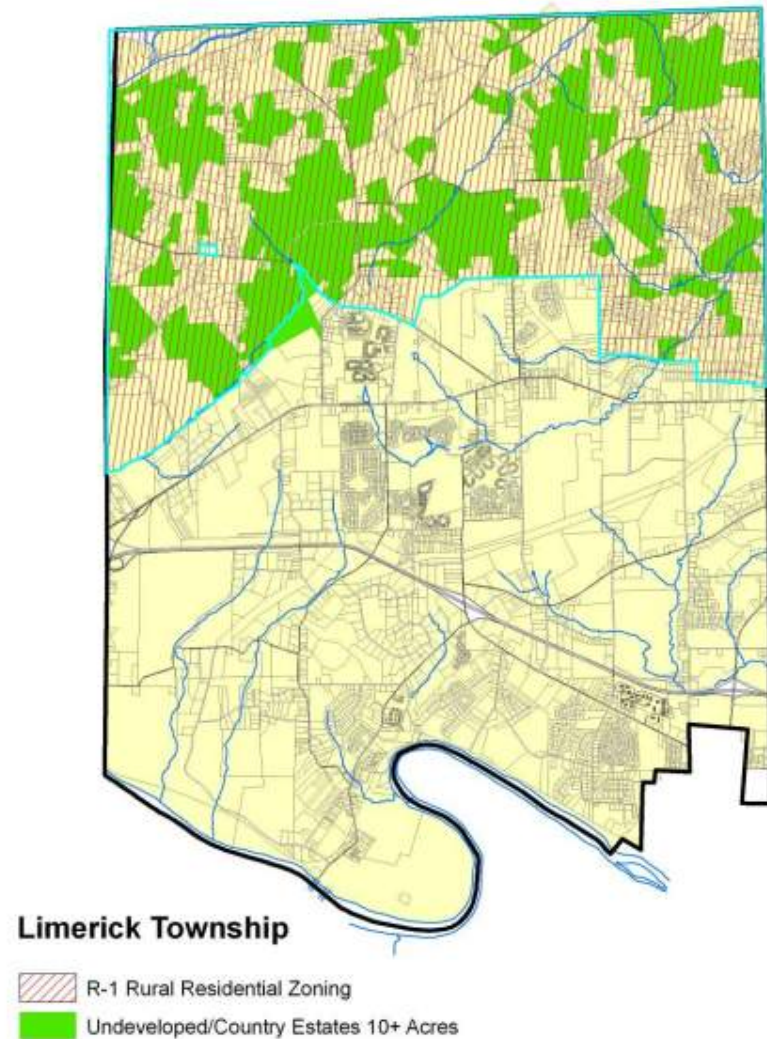
Limerick Township, Montgomery County

Alternative TDR Scenarios

- ◆ TDR can benefit an already suburbanizing municipality
- ◆ TDR can do more than transfer residential density
- ◆ TDR can offer a multi-faceted strategy with broad appeal
 - Residential to Residential transfer
 - Residential to Non-residential transfer
 - Residential to Age Qualified transfer

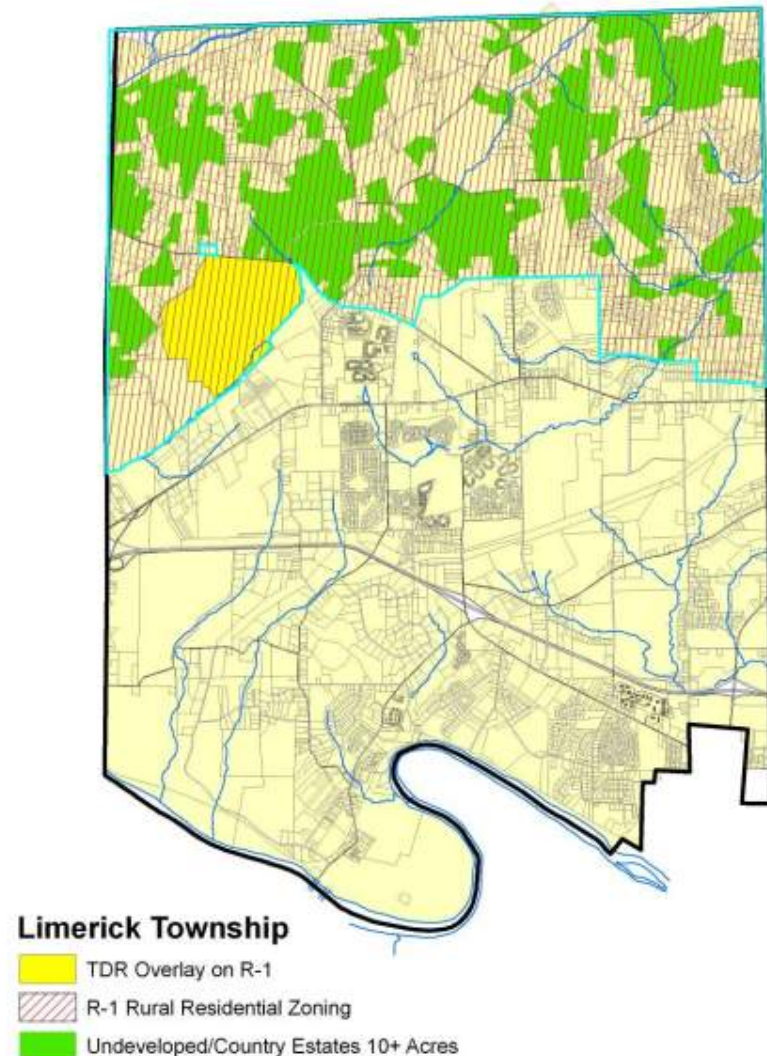
Sending Area Scenario

- ◆ Remaining developable land totaling 2,000 acres
- ◆ R-1 zoning permits .55 homes per acre
- ◆ Sending area contains up to 1,100 TDRs
- ◆ Based upon current R-1 land sales, one TDR might be valued at \$40,000



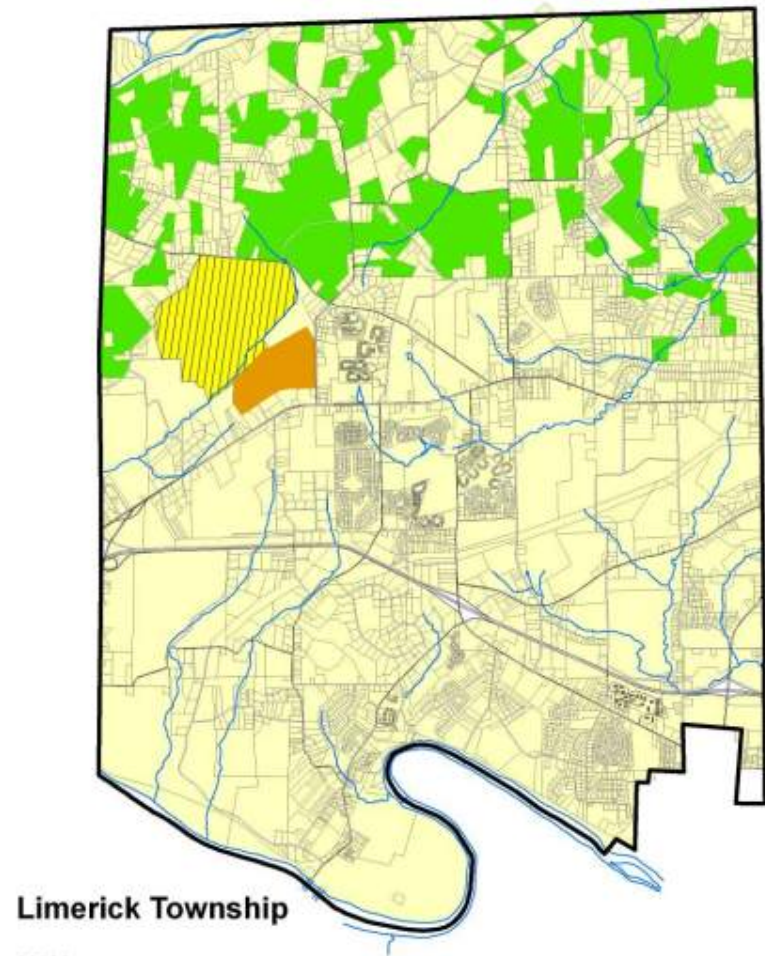
Conventional Residential Receiving Scenario

- ◆ Use existing R-1 low-density district
- ◆ Significant vacant land available
- ◆ Permit higher density with TDR



Conventional Residential Receiving Scenario

- ◆ A logical area for development
 - Access to primary arterial
 - Area is part of planned sewer growth area
 - Good proximity to community facilities
- ◆ “Borrow” existing density and design standards
 - Adjacent to existing medium density R-3 residential district

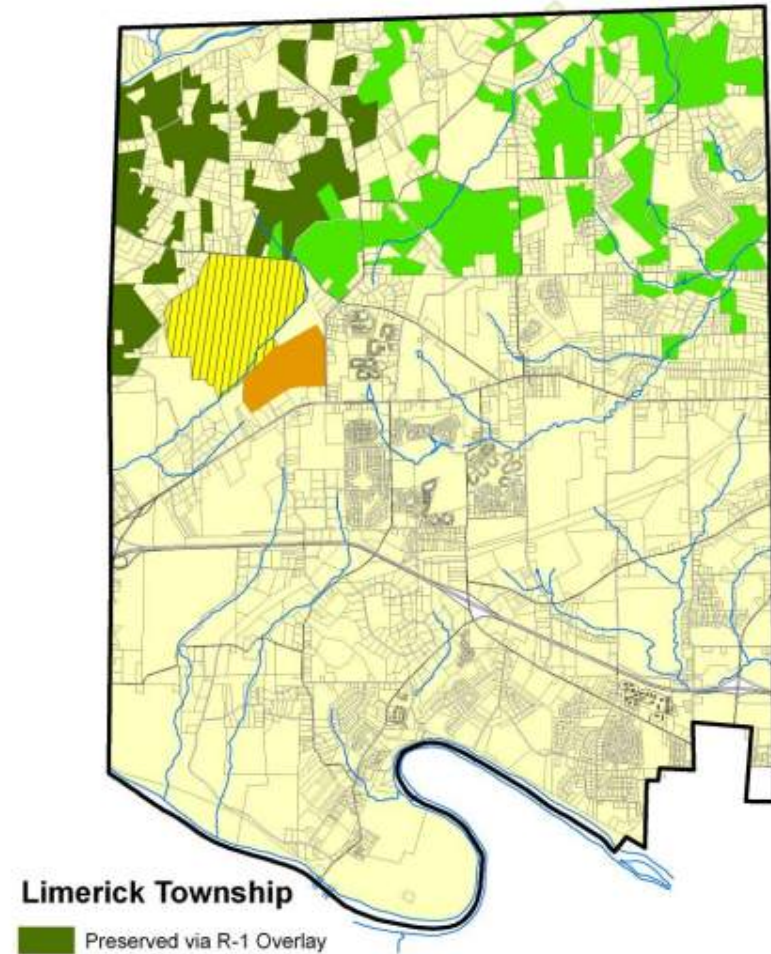


Sample TDR Valuation

- ◆ Density neutral “Buy One – Get One” approach
- ◆ Potential Purchase Processes
 - Developer negotiates with land owners
 - Purchase from Municipal Bank
 - Contribute to Municipal Bank

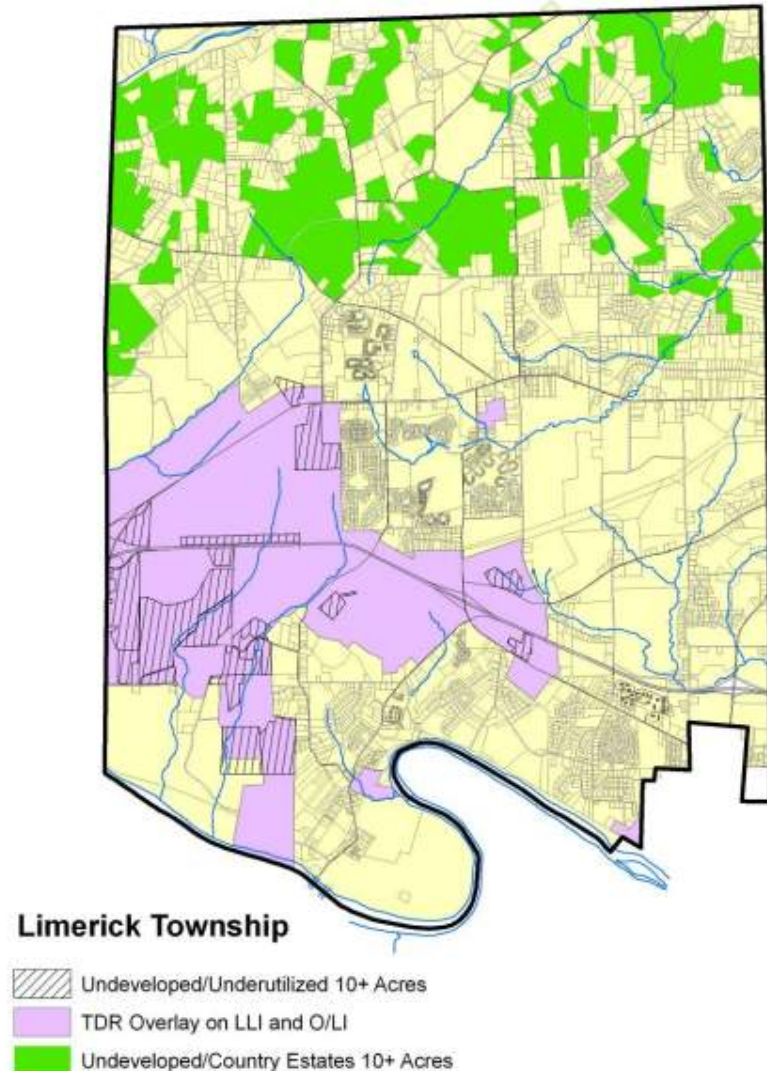
Sample Conservation in Sending Area

- ◆ TDR receipt, using R-3 standards, provides for 540 cluster units (377 more than R-1)
- ◆ Preserves nearly 700 acres in conservation area
- ◆ Value of land preserved is > \$15 Million



Non-Residential Receiving Scenario

- ◆ Existing non-residential zoning
- ◆ 600 acres vacant or underutilized
- ◆ Reduce allowable impervious from 70% to 55%
- ◆ Allow up to 75% impervious with TDR



Non-Residential Receiving Scenario

- ◆ Existing sewer and water service
- ◆ Existing center of commercial development



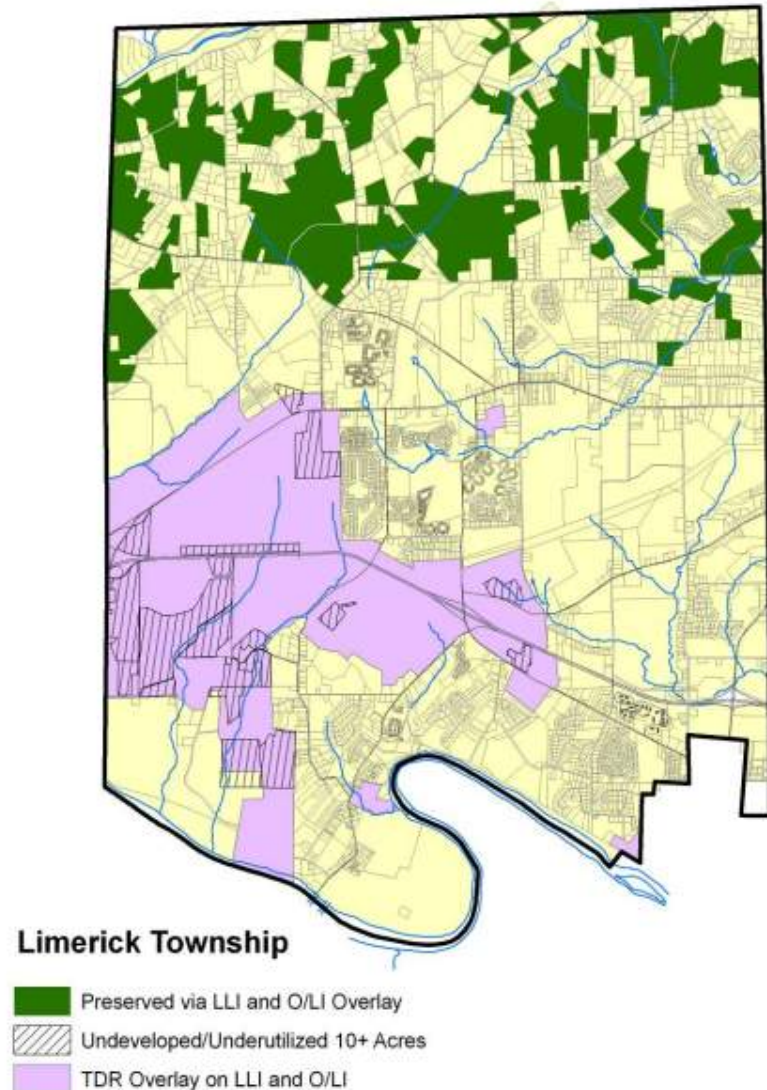
Sample TDR Valuation

- ◆ Establish value of TDR
 - Equate to the additional land that would need to be purchased for the same amount of impervious
- ◆ One TDR permits an additional 5,000 sq. ft. impervious (up to max of 75%)



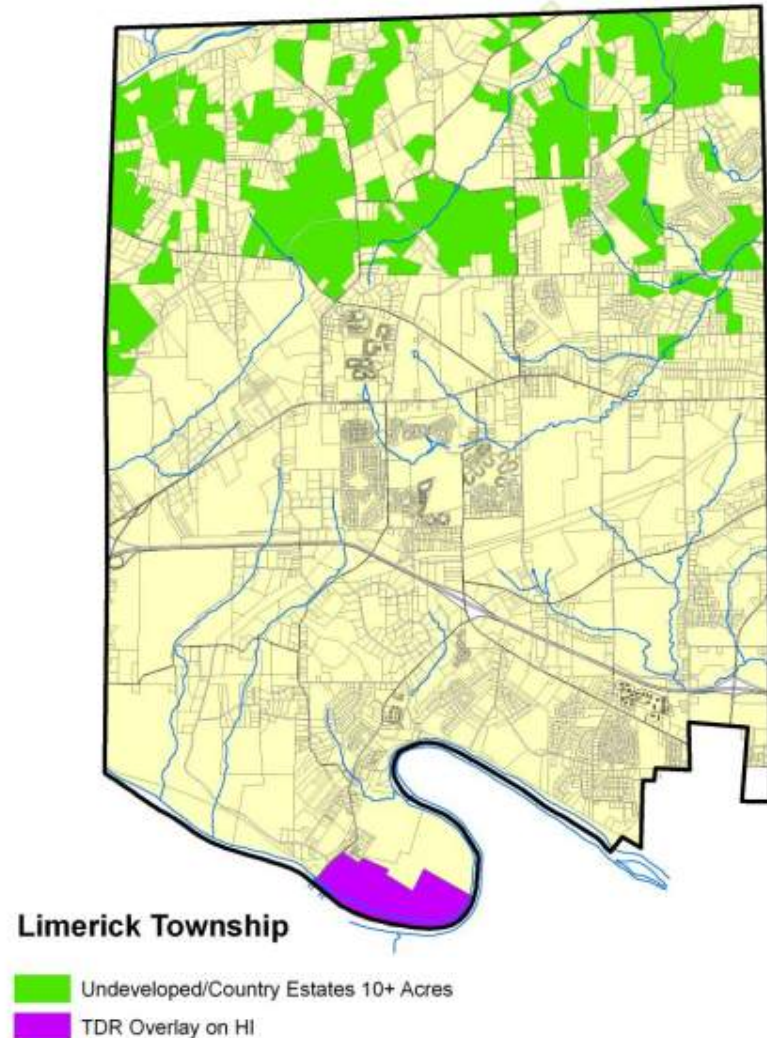
Sample Conservation in Sending Area

- ◆ Increase from 55% impervious to 75% with TDR receipt provides for 116 additional acres of impervious
- ◆ At one TDR/5,000 sq. ft., requires 1,011 TDRs
- ◆ Preserves nearly entire sending area



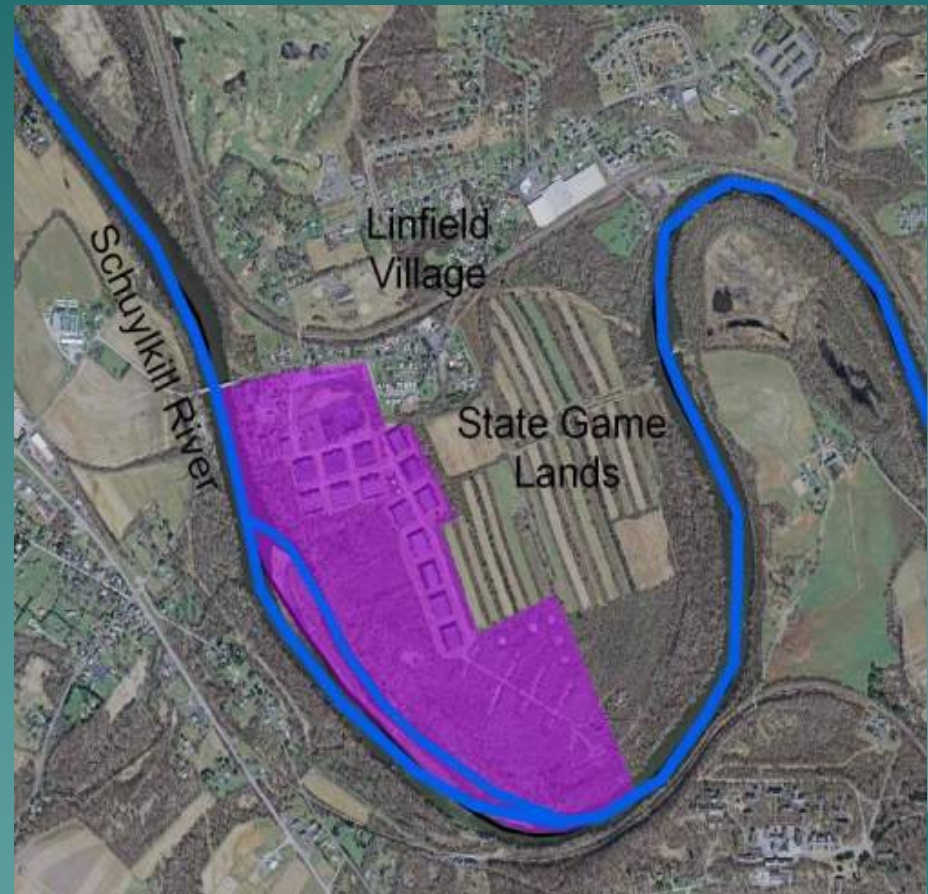
Age-Qualified Receiving Scenario

- ◆ Existing HI District
- ◆ Currently one 200-acre parcel
- ◆ Provide for age-qualified residential development with TDR



Sample Receiving Area

- ◆ Provide a logical area
 - Adjacent to residential Village
 - Age-qualified complemented by preserved open space and river access
 - Encourage activity on unutilized site
 - Provide impetus for needed infrastructure improvements



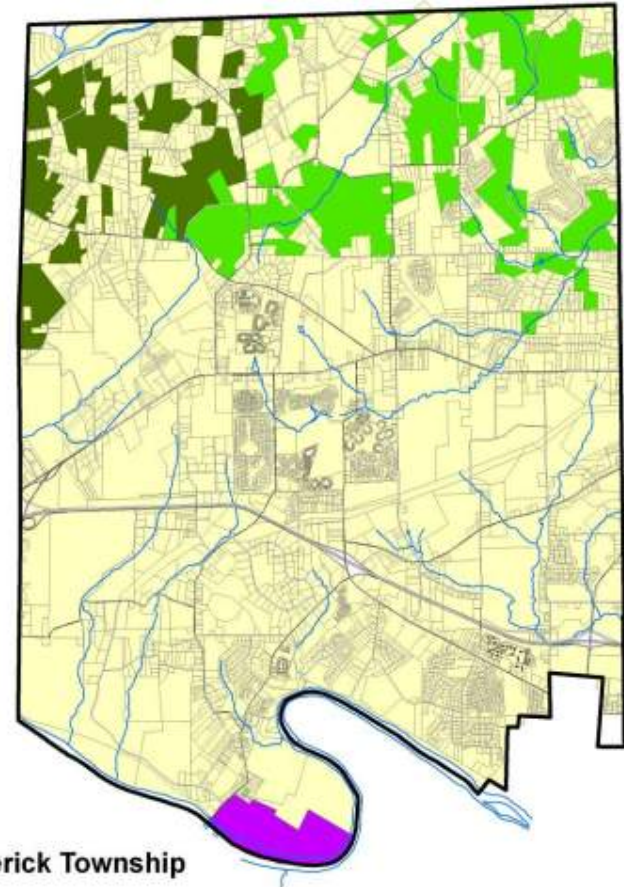
Sample TDR Valuation

- ◆ Provide density bonus as developer incentive
- ◆ Permit 3 age-qualified units per TDR
- ◆ At 3 du/ac density, preserves 370 acres
- ◆ At 6 du/ac, preserves 740 acres



Sample Conservation in Sending Area

- ◆ Preserves 700 acres at 6 du/acre
- ◆ Net gain in school district revenue equation
 - Eliminates 400 units in R-1
 - Allows 1,200 in age-qualified
- ◆ Fosters “brownfield” redevelopment and infrastructure improvement



Limerick Township

- Preserved via HI Overlay (6 du/ac)
- TDR Overlay on HI
- Undeveloped/Country Estates 10+ Acres

The Bottom Line:

TDRs are established by local ordinance but, ultimately, are a market-driven Tool!

- ◆ TDRs only function when:
 1. Buyers want what developers can build with a TDR
 2. Developers want to purchase TDRs & transfer them
 3. TDR owners want to sell them
- ◆ A successful ordinance cannot ignore how value can be created across the spectrum of the real estate market

TDRs don't create demand for development!

Key to TDR Success:

Attractive development opportunities available only through receipt of TDRs



TDR often fails if developers can exceed base density:

- ◆ By using non-TDR procedures like clustering
- ◆ By providing on-site amenities
- ◆ By requesting and receiving re-zonings without TDR



In contrast:

- ◆ Some TDR Ordinances only allow extra density with TDR
- ◆ Some offer significantly more density via TDR than with other development options
- ◆ Adjustments to base zoning (downward) are often necessary

TDR Banking Options

Manheim & Warwick examples, Lancaster County

- ◆ Township Board of Supervisors jump-started TDR Program by buying TDRs from farmers
- ◆ Purchased TDRs either banked or auctioned off via the open market;
- ◆ Warwick Township markets its TDR Receiving Zone and provided supporting infrastructure.
- ◆ Proceeds from sale of TDRs recycled into further land conservation!



Multi-Municipal TDR

Key Issues



- ◆ Receiving municipality must recognize benefits of conservation in sending municipality
- ◆ Receipt of TDRs must achieve mutual goals for community resource protection, e.g., greenbelts, farmland, water resources
- ◆ Receiving municipality must be willing to place TDR “hurdle” in front of local development

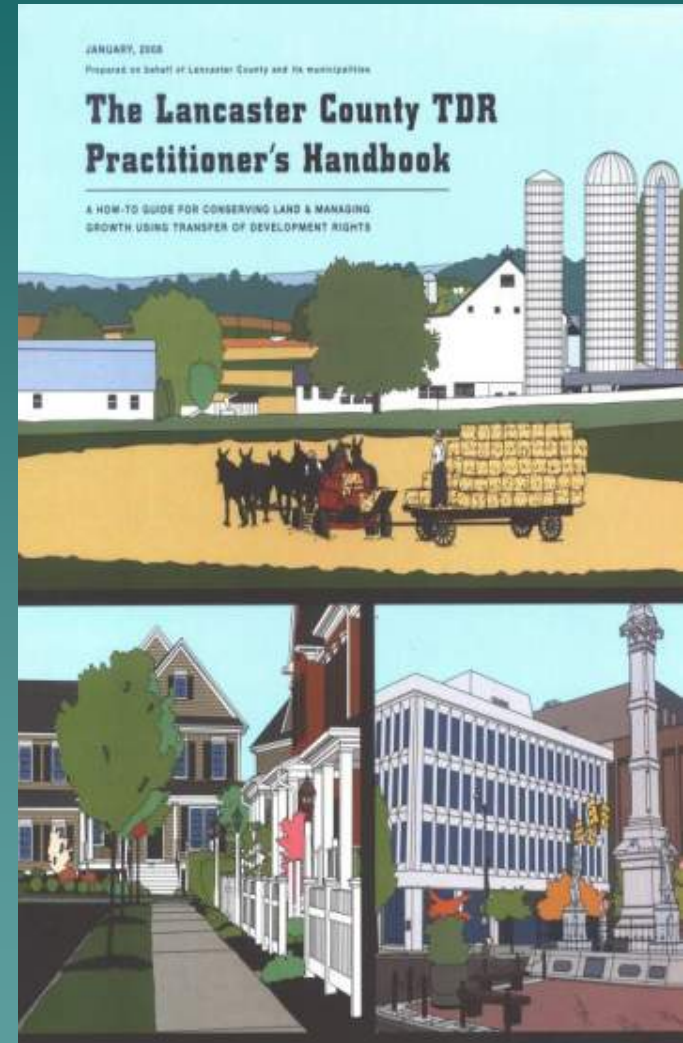
Multi-Municipal TDR

Implementation Ramifications

- ◆ Similar Internal Ordinance Set-Up
- ◆ Inter-Municipal Agreement for TDR Transfer
- ◆ Provision for Receipt of TDRs severed in other municipalities
- ◆ Potential special or favored Sending & Receiving Area Qualifications
- ◆ Potential Density Multipliers to Adjust for varying TDR values
- ◆ Zoning Adjustments to reduce competition with TDR receiving development
- ◆ Compatible Plan Submittal Procedures

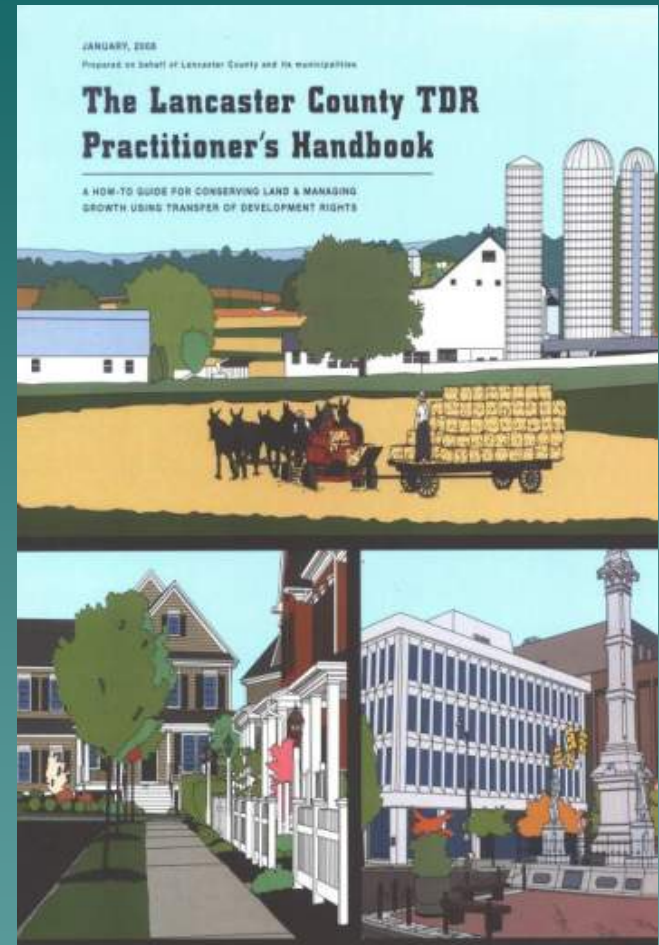
TDR – A Tool for Lancaster County?

- ◆ TDR puts an additional growth management and conservation tool in the “planning toolbox;”
- ◆ The County’s Plan, *Balance*, recommends the use of TDRs for both UGA and Rural Strategies implementation;
- ◆ Regional plans such as LIMC’s *Growing Together* recommend using TDRs; and
- ◆ Why not build on TDR success stories already underway in Lancaster County?



TDR Handbook Objectives

- ◆ Share the knowledge with all Lancaster municipalities:
 - Basic steps for setting up a TDR program;
 - Local TDR practices that have worked;
 - Sample ordinances and other legal documents needed to establish a TDR program.
- ◆ Focus on farmland resources.
- ◆ Reduce the fear of “complexity” in setting up a TDR program.



TDR is not new, nor a panacea. . . but its potential benefits are significant:

- ◆ *Saves farmland and other open spaces*
 - ◆ *Provides cash to sending landowners*
 - ◆ *Can provide estate planning advantages*
 - ◆ *Prevents sprawl by redirecting new development*
 - ◆ *Increases the conservation value of land*
 - ◆ *Land preservation or public space financed by the private market*
 - ◆ *Option of retiring purchased TDRs, or selling them for use elsewhere*
- 
- A stylized, dark teal silhouette of a mountain range is positioned in the bottom right corner of the slide, partially overlapping the bottom edge of the text area.

For further review:

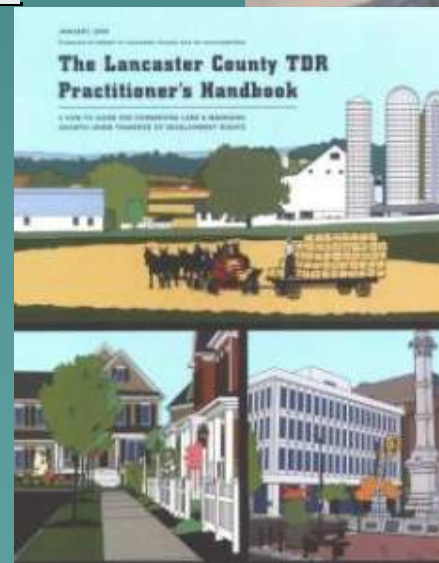
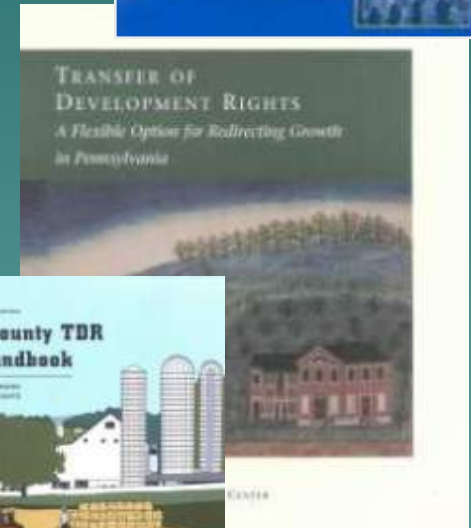
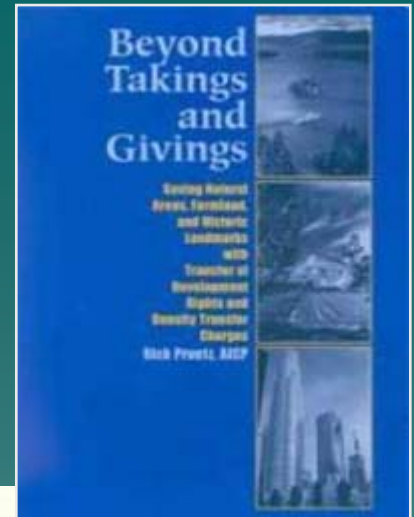
Rick Pruetz, FAICP: Beyond Takings and Givings 2003, Arje Press; and

Saved By Development 1997, Arje Press

Brandywine Conservancy: Transfer of Development Rights, 2003

Lancaster County TDR Practitioners Handbook, 2008

PA Land Trust Association website: conserveland.org; click on “library,” then “tools”



A painting of a large, leafless tree in a landscape. The tree is the central focus, with its intricate, bare branches reaching across the frame. In the background, a small, light-colored building with a dark roof is visible on the left, and a body of water stretches across the middle ground. The sky is a pale, hazy blue. The overall mood is quiet and contemplative.

Thank You !

Smart Growth through the Transfer of Development Rights

**A selection of TDR case studies with relevance for
the preservation of farmland, open space and other
natural resources in New Jersey**

Prepared by Katharine Otto
For New Jersey Future



August 2010

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PREFACE

The following report outlines a selection of Transfer of Development Rights (TDR) programs in the USA that may be relevant in the context of TDR programs in New Jersey. TDR programs can be found under a variety of guises, including Transfer of Development Credits (TDC), density transfer, and lot coverage transfer programs. TDR is a valuable tool for the preservation of farmland, open space, natural and historic resources, as well as promoting development in smart and strategic locations. New Jersey already has several TDR programs, including the highly successful Pinelands Development Credit program. This report was prepared for New Jersey Future to support the work of New Jersey's TDR taskforces which began to meet in 2009, coordinated by the Delaware Valley Regional Planning Commission and New Jersey Future with support from the William Penn Foundation.

This report focuses primarily on regional and county TDR programs that focus on preserving agricultural and open space resources. It examines case studies on a variety of scales, from towns and cities to large counties and regions, with both intra- and inter-jurisdictional examples. Case studies were chosen for their potential relevance within the New Jersey context, particularly looking for innovative examples that may help address some of the issues that face TDR programs in New Jersey. For example, the Town of Southold considered only allowing transfers within school districts for their revised TDR program.

TDR can be adapted to meet a variety of needs within communities, both for sending and receiving areas. TDR is not just a tool for preservation, but can also be used to encourage the more efficient use of infrastructure, the provision of affordable housing and economic development in targeted areas. While the vast majority of programs examined within this report had a focus on preservation of agricultural lands, open space and/or natural resources, two programs shared many similar characteristics to these other programs but had a greater focus on the reduction of residential density (Montgomery County) and encouraging affordable housing (Town of Southold).

Nearly all programs contained within this report transferred development rights between or within place-based (county or municipality) jurisdictions, although the Tahoe Regional Planning Agency (TRPA) mandated transfers within hydrological regions and the Town of Southold has been considering transfers only occurring within school districts. While several county programs use large areas of unincorporated lands as sending and receiving areas, a significant number of counties have negotiated intergovernmental agreements with incorporated communities to become receiving areas and sometimes also part of the sending area. The majority of programs examined had only residential receiving areas (60%) and only three of the programs had only non-residential receiving areas (Hadley Township, Town of Hatfield and Warwick Township).

In the majority of the case studies development rights/credits were transferred from the sending areas to the receiving areas. There were, however, four exceptions with two programs that transferred sanitary flow rights (Long Island Pine Barrens (otherwise known as the Pine Barrens Credit Program, PBCP) and Town of Southold, both in Suffolk County, NY) and two that transferred lot coverage (TRPA and Warwick Township). For the TRPA and PBCP these atypical transfers correspond with one of the goals of their programs, to restore and enhance regional water quality. While the majority of programs relied on density increases as the primary incentive for purchasing development rights in the receiving areas, three programs used open space incentives (Gunnison County, Alachua County, and Cecil County) and three programs used other non-density related incentives (Hadley Township, King County, and Dane County).

Over time more communities are experimenting with new varieties of TDR that can create programs more suited to the individual circumstances of each jurisdiction (Pelletier *et al.*, 2010). Non-traditional TDR programs, such as land mitigation programs and some payment in-lieu options, share many of

the characteristics of traditional TDR programs but lack some of the complexity that reduces the success of some more traditional TDR programs. Two programs within this report had land mitigation components (City of Davis and TRPA) and six programs had payment in lieu options (City of Davis, City of Livermore, Gunnison County, Hadley Township, Town of Hatfield, and Town of Warwick NY).

In many cases TDR programs work alongside Purchase of Development Rights (PDR) programs. TDR programs are distinct from PDR programs which concentrate on the preservation of land, without the component that relocates the development to another location. TDR programs depend on a careful balance between sending and receiving areas; the demand and the price landowners are willing to pay to increase the density of development in the receiving area needs to balance with the willingness of landowners in the sending areas to sell their development rights and at an appropriate cost. PDR programs, on the other hand, can designate as much land as they wish as areas suitable for preservation but the scale of their achievement is often significantly limited by the availability of funding from public and non-profit organizations to purchase the development rights. PDR programs also permanently retire development rights rather than transferring the rights to a more suitable location and preserving the overall development potential of the region. PDR and TDR programs work best alongside each other if they are designed to fulfill slightly different purposes as in Montgomery County, Maryland; thus landowners in Montgomery County wishing to preserve natural resources and prime farmland gravitate toward the PDR program while landowners who wish to reduce residential development density on their property in return for the sale of their development rights use the TDR program.

While this report mainly focuses on programs which have been proved to be successful, it also includes some programs which have been adopted more recently that have not yet been proved successful but contain interesting characteristics that could be useful for TDR programs in the future. The twenty case study programs in this report are not an exhaustive list of relevant or successful programs. This report focuses on highlighting the noteworthy characteristics of each program and useful sources of further information rather than describing the details of the program. A summary of these noteworthy characteristics can be found in the Overview of Programs and listed at the end of each case study. There are hundreds of other successful or innovative programs that are referenced in the existing literature on TDR programs. The Resources section of this report references some of the existing literature that has been useful to explain more about how TDR programs and the places that have used it.

TDR is a valuable smart growth tool that has already preserved hundreds of thousands of acres of farmland, open space, forest and historic resources across the nation in return for promoting more efficient and economically viable communities. Five of the programs listed in this report were identified in the top ten TDR programs in the country in terms of the number of acres preserved by 2008 – King County, Montgomery County, Calvert County, Pitkin County and Boulder County (Pruetz and Standridge, 2009). By 2010 TDR programs had been responsible for preserving over 400,000 acres of land in over 200 jurisdictions (Pelletier *et al*, 2010) and in return encourage development in more efficient and sustainable communities. The number of acres preserved cannot alone determine a successful TDR programs when base zoning densities, development pressures and resource values vary so greatly. The great number of acres preserved, however, serves to indicate the significant private market demand for additional development rights for a price that can preserve local resources.

USEFUL RESOURCES

This report is intended as more of a brief introduction to the diversity of TDR programs. The following resources give interesting insight into more TDR programs and the policy and legislation that supports them. For any additional information about this report contact Katharine Otto, kotto104@gmail.com.

Articles and books

Detailed introduction to TDR and detailed case studies of hundreds of TDR programs across the USA and beyond:

- Pruetz, R (2003) *Beyond Takings and Givings. Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*, Arje Press, Marina Del Rey CA
- Pruetz, R (2010) *Beyond Takings and Givings*. Website: www.beyondtakingsandgivings.com (updates about the status of case study TDR programs after the 2003 book was published)

Overview of selected themes and characteristics of TDR programs:

- American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf
- Bratton, N.; Eckert, J.; and Fox, N. (2008) *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*. Prepared by the Cascade Land Conservancy July 10, 2008. Cited June 12, 2010 at www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6223&MId=944&wversion=Staging
- Pruetz, R; and Pruetz, E (2007) “Transfer of Development Rights Turns 40”, *American Planning Association. Planning and Environmental Law*. June 2007 59(6):3-11
- Pruetz, R and Standridge, N (2009) “What makes transfer of development rights work?”, *Journal of American Planning Association*, Winter 2009, 75(1):78-87

Detailed case studies of county and regional TDR programs:

- McConnell, V.; Walls, M.; and Kelly, F. (2007) *Markets for Preserving Farmland in Maryland Making TDR Programs Work Better*. HRHCAE Pub 2007-03. Report Prepared for the Maryland Center for Agroecology. Final Draft. February 2007. Cited June 23, 2010 at <http://agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%202007-03.pdf>
- New Jersey Highlands Water Protection and Planning Council (2008) *Transfer of Development Rights Technical Report*. (Particularly Appendices A and B.) September 2008. Cited June 13, 2010 at www.highlands.state.nj.us/njhighlands/master/tr_tdr.pdf

Non-traditional TDR programs, particularly Density Transfer Charge Programs:

- Pelletier, M.; Pruetz, R.; and Duerksen, C. (2010) “TDR-Less TDR Revisited: Transfer of Development Rights Innovations and Gunnison County’s Residential Density Transfer Program.” *Planning Advisory Service Memo*. May/June 2010. www.planning.org/pas/memo/2010/may/index.htm

TDR laws and regulations

Municipal and county codes are often available online and give detailed information about the specifics of TDR programs and the other land use regulations that work alongside the program. Where available references to the location of municipal/ county codes is referenced at the end of each case study. Some state and local TDR enabling statutes and ordinances are inventoried at www.farmlandinfo.org/farmland_preservation_laws/index.cfm?function=laws&articleID=0&sortOrder=rating&articleTypeID=246&publishedStatusID=2&questionStatusID=&stateID=&topicID=3257&categoryID=&go.x=35&go.y=13&go=submit.

TDR Taskforces/ Alliances

TDR taskforces and alliances can publish a wealth of resources that critically examine the technical and practical components of TDR programs.

State of New Jersey TDR Policy Taskforce and Salem County TDR Taskforce

Insight into the issues currently facing New Jersey's established and developing TDR programs can be found in the discussions at the State of New Jersey and Salem County TDR Taskforces which were meeting from 2009 to 2010, convened by New Jersey Future and the Delaware Valley Regional Planning Commission (DVRPC). The Taskforces have published notes and agendas at www.dvrpc.org/tdr.

Puget Sound TDR Alliance, Washington

The Puget Sound TDR Alliance includes the Puget Sound Regional Council, Washington State Department of Commerce, Pierce, King and Snohomish Counties, and the Cascade Land Conservancy, who are working together to promote TDR programs in the Puget Sound Region. A key component of the Alliance's work is hosting a series of educational workshops which highlight available grants for receiving areas, technical assistance materials, and outreach materials for landowners and developers. The region already boasts of some of the more successful and long standing TDR programs, which provide a good selection of local examples of policies, regulations, interlocal agreements, TDR certificates, conservation easements and plans for receiving areas, which are all available at www.commerce.wa.gov/tdr. The Washington State Department of Commerce is in the process of drafting a new rule for voluntary interlocal agreement in TDR programs.

TDR/ Land Preservation Work Group of the Maryland Growth Taskforce

As part of Maryland's Task Force on the Future for Growth and Development, the TDR/ Land Preservation Work Group critically examined several examples of interjurisdictional TDR programs from across the country, including Boulder County CO, King County WA, the NJ Pinelands and Chesterfield Township NJ. The work group also examined how TDR programs could evolve in the future. The TDR/ Land Preservation Work Group's final report can be found at www.mdp.state.md.us/PDF/773/20091102/Final_Report_Task_Force_Version_20091101.pdf

OVERVIEW OF PROGRAMS

Location			Preservation of...					Transfer of ...			Transfer within...					Receiving Area			Other Characteristics						Page
		State	Agriculture/ Farmland	Open Space	Historic Resources	Forest	Other Natural Resources	Development Rights	Sanitary Flow Rights	Lot Coverage	Municipality	Unincorp. County Lands	School District	Hydrological Region	Inter-jurisdictional	Low Density	Residential	Non-Residential	Land Mitigation	Under Review	Payment in Lieu option	Non-permanent Easement	Open Space Incentive	Non-Density Incentives	
Davis	City	CA	Ag					DR							IJ		R		LM		PIL				7
Livermore	City	CA	Ag	OS			NR	DR			M						R				PIL				9
Tahoe	Regional Planning Agency	CA, NV		OS			NR			LC				H	IJ		R	NR	LM	UR					10
Boulder	County	CO	Ag	OS			NR	DR				UC			IJ		R								12
Gunnison	County	CO	Ag	OS			NR	DR				UC					R				PIL		O		14
Pitkin	County	CO	Ag	OS	H		NR	DR							IJ		R								16
Alachua	County	FL	Ag	OS			NR	DR				UC					R	NR					O		18
Hadley	Township	MA	Ag					DR			M							NR			PIL			ND	19
Hatfield	Town	MA	Ag	OS				DR			M							NR			PIL	NPE			21
Calvert	County	MD	Ag			For		DR				UC				LD	R								22
Cecil	County	MD	Ag			For	NR	DR				UC					R					NPE	O		24
Montgomery	County	MD	*					DR				UC					R			UR					25
Long Island Pine Barrens	Regional	NY					NR		SF						IJ		R	NR							27
Southold	Town (Suffolk Co.)	NY	Ag	OS					SF				**				R								29
Warwick	Town	NY	Ag	OS				DR							IJ		R				PIL				31
Warwick	Township (Lancaster Co.)	PA	Ag							LC	M							NR							33
King	County	WA	Ag	OS		For	NR	DR				UC			IJ		R	NR						ND	34
Snohomish	County	WA	Ag					DR				UC			IJ		R	NR							36
Thurston	County	WA	Ag					DR								LD	R			UR					37
Dane	County	WI	Ag	OS				DR				UC					R							ND	38

* Reduce residential density

** Being considered in revised TDR program

CASE STUDIES

CITY OF DAVIS, CA

Program Goals

The City of Davis has a program similar to the concepts of TDR known as the agricultural land mitigation program. Primarily the program is intended to mitigate the effects of the loss of agricultural lands to nonagricultural uses and reduce the potential for conflict between agricultural and non-agricultural land uses (City of Davis Municipal Code, Chapter 40A). In cooperation with Solano and Yolo counties, the program also aims to preserve lands within the Davis Planning Area which extends up to about 5 miles from the city limits. Agriculture is an important component of the city's economy and farmland is viewed as an important landscape and environmental resource.

Program Status

Agricultural land mitigation is required when land is altered from an agricultural to non-agricultural use in the general plan designation or zoning. Between 1995 and 2006 the City preserved over 2,000 acres of agricultural land by easement and collected over \$1.2 million in in-lieu fees which were used as matching funds for state and federal preservation program grants (City of Davis, 2006). Details on the structure and performance of this program can be found in detail in the 2006 Davis Agricultural Preservation Program and Nexus Study.

In November 2007, the city amended the land mitigation program to discourage payment of in-lieu fees which were difficult to put to use, and instead encourage mitigation projects to be carried out by the landowners themselves. To calculate the amount of money to be paid in lieu, the fee is based on the appraisal of more expensive land near the city limits rather than on land further out where it is cheaper. The new program also added new locational requirements for mitigation areas. Davis is a slow growth community so, while the current slump in development which is facing most of California and other states is not having a significant impact on the rate of development in the region, growth occurs at a slow enough rate that the new program has yet to be followed all the way through to new developments being built and mitigation lands purchased. The new land mitigation regulations have, however, been a useful tool for developers to run pro formas for potential new projects, with clear options for mitigation projects (Sears, 2010).

Program details

There are requirements for both adjacent mitigation and "remainder" mitigation depending on factors such as the characteristics of the parcel (eg soil quality, parcel shape, proximity to other agricultural land) and the proposed use (such as clustered residential development that would not be conducive to commercial farming operations next door). Adjacent and remainder land mitigation can occur in Davis Planning Area, with adjacent mitigation on the non-urbanized perimeter of the project and remainder mitigation occurring anywhere in the Planning Area. The number of acres that need to be preserved under remainder mitigation depends on the distance from the city limits, proximity to the site, and whether the site is in an priority open space acquisition area.

"Alternative" mitigation proposals (mitigation on non-adjacent properties in lieu of adjacent mitigation) can be approved by the city council if the proposal meets the intent of Chapter 40A.03 (Farmland Preservation), would have extraordinary community benefits, the area is threatened by an equal or greater growth pressure to the project site, the site is strategically located and has agricultural or potential open space values. A mitigation administration fee must be paid by a developer who is seeking a zoning change to convert agricultural land. Mitigation can be accomplished by in-lieu fees which cover the cost of acquisition, administering, monitoring and enforcing the easement.

The program used to have a 500ft buffer around the city to minimize conflict between rural and urban land uses which was eliminated when simplifying regulations. The City does, however, still require a

minimum 150 foot wide agricultural buffer for any developer proposing urban uses adjacent to agricultural land, 50ft of which may have public access and 100ft of which would have not have public access.

There are two additional characteristics to open space preservation in the City of Davis that should be noted with regard to preservation efforts. The City has had an open space tax since 2000 which generates approximately \$600,000 per year which is used as matching funds for state and federal preservation program grants for the purchase of development rights. The City also has a Citizen's Right to Vote for any new project that would annex agricultural land to the city to be developed. While there have only been a few of those cases since 2000, they have all been voted down.

Noteworthy Characteristics

- Mitigation dependent on quality of sending site
- Payment in lieu option, but highly discouraged
- Agricultural buffer
- Adjacent and non-adjacent land mitigation options
- Inter-jurisdictional (but within city's planning area)

More information

City of Davis Municipal Code. Chapter 40A. Right to Farm and Farmland Preservation. Cited May 23, 2010 at <http://cityofdavis.org/cmo/citycode/chapter.cfm?chapter=40A>

City of Davis (2010) *Open Space Program*. Cited May 24, 2010 at <http://cityofdavis.org/pgs/openspace/moreinfo.cfm>

City of Davis (2006) *Davis Agricultural Preservation Program and Nexus Study*. Adopted November 1995. Last updated May 23, 2006. Cited May 24, 2010 at <http://cityofdavis.org/pgs/openspace/pdfs/Davis%20Ag%20Preservation%20Program%20-%20Info%20packet%207-06.pdf>

Correspondence with Mitch Sears, Open Space Planner, City of Davis. July 2010.

CITY OF LIVERMORE, CA

Program Goals

Livermore's Transferable Development Credits (TDC) program has an overarching goal to preserve open space. More specifically the program aims to preserve agriculture, preserve natural resources, prevent further sprawl, provide recreation opportunities, reduce traffic congestion and air pollution, avoid additional expenditure caused by increasing service areas, and preserve the special identity of the area (City of Livermore Development Code, Chapter 4.02.060).

Program Status

By 2008 the city had collected 56 payments adding up to a total of \$1,200,000 (American Farmland Trust, 2008). Livermore's current Transfer of Development Credits Ordinance was adopted in 2004, following in footsteps of the 2002 North Livermore Urban Growth Boundary Initiative.

Sending and Receiving Areas

Receiving areas are designated in the General Plan to allow new residential land use. All properties in North Livermore are part of the sending area. Receiving areas are districts that are zoned to receive additional residential development or density.

Other Program Details

The City of Livermore's TDC program is an example of a TDR program that allows a payment in lieu of transfer. Credits in the sending area are allocated based on a variety of factors, including land area, willingness to forgo development rights on one parcel and/or subdivision rights, and demolition of existing structures. Credits can be granted for land that is already under easement, providing that the existing easement is less restrictive than the proposed. On the receiving site, credits are allocated according to the type of housing (more credits required for a single family dwelling than a multi-family dwelling). An in lieu fee may be paid for each required transferred development credit, a fee which is reviewed no less than bi-annually. Affordable housing units are exempt from the transferable development credits requirements.

The Transferable Development Credits Regulations have some close connections to the North Livermore Urban Growth Boundary Initiative. It should also be noted that the city also implements a Seismic Hazard Mitigation Program that include the increase of coverage or floor area ratio in the Downtown Specific Plan area.

Noteworthy Characteristics

- Payment in lieu option

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

City of Livermore Community Development Department Planning Division website – www.ci.livermore.ca.us/CDD/Planning/planning.html

City of Livermore Development Code. *Chapter 3-10. Transferable Development Credits*. Last updated June 23, 2006. Cited June 12, 2010 at www.ci.livermore.ca.us/CDD/Planning/pdfs/Planning_Handouts/TransferableDevelopmentCredits.pdf (Note: The development code was repealed after August 2009, to be replaced by: City of Livermore Development Code. *Part 4.02.060 Transferable Development Credits Regulations*. Cited June 23, 2010 at www.codepublishing.com/CA/Livermore/Zoning/LCU_Part4.pdf)

TAHOE REGIONAL PLANNING AGENCY, CA AND NV

Program Goals

The Tahoe Regional Planning Agency (TRPA) is a key example of a regional program, one aims to preserve, restore and enhance the unique natural and human environment of the Lake Tahoe region in California and Nevada.

Program Status

The TRPA coordinates several mechanisms which control development in the Lake Tahoe region. The mechanisms – transfer of lot coverage (TLC), transfer of development rights (TDR), transfer of existing development, and annual allocations – were initiated in 1987 as part of the 1987 Tahoe Regional Planning Agency's Regional Plan. Depending on which of four scenarios is chosen during the current update of the Regional Plan, these programs may alter slightly in the future.

The residential “unit of use” for all single family properties has two components – a development right to build a home which is present as long as the right has not been transferred or extinguished, and an allocation. Commercial, recreational and tourist accommodation land uses are all regulated separately.

Annual Allocation

Development in the Lake Tahoe area is restricted by an annual “allocation” which is based on types of development (residential, tourist accommodation, commercial and recreation). Residential bonus units are used as an incentive for affordable housing. Residential allocations can be transferred under certain conditions.

Transfer of Lot Coverage

The allowable lot coverage is calculated using two different scoring systems, one for when a lot was developed before the implementation of the 1987 Regional Plan (Bailey Land Scoring System) and one for properties developed after (Individual Evaluation System). The program includes special consideration of sensitive lands, limiting permissible uses and also maintaining a sensitive land mitigation mechanism. The TLC program also includes an excess coverage mitigation mechanism for projects involving new development on parcels with existing coverage that exceeds the TRPA's limitations for maximum allowable land coverage. For this program landowners have the option to reduce coverage on or off site, or pay a coverage mitigation fee.

Transfers of lot coverage must occur within hydrologically related areas, and occur at a 1:1 ratio for areas where up to 50% lot coverage is allowed and the ratio increases proportionally from 1:1 to 2:1 for areas with a 50% to 70% base allowable coverage (commercial uses within approved community plans). Coverage transfer must be to lands of equal or less sensitivity (ie more capable for supporting development). The region has “land banks” for each hydrologically related area which process mitigation fees. Landowners are responsible for negotiating transfers of lot coverage from one lot to another and need to show that the transfer meets TRPA's standards. Coverage transfers are permanent for sensitive lands (Land Capability Districts 1 to 3 of 7).

Transfer of Development Rights and Existing Development

Residential development rights can be transferred from a vacant parcel to an area in a plan area or adopted community plan and designated as a receiving area for multi-residential units. Existing development can also be transferred from one parcel to another.

Noteworthy Characteristics

- Transfer of lot coverage
- Transfer of development rights and existing development
- Annual allocation for building
- Transfers within hydrological regions

- Land mitigation program
- Inter-jurisdictional, regional program

More information

Tahoe Regional Planning Agency (TRPA) (2009) *Land Use Subelement. TRPA Draft Regional Plan Update Alternatives. Environmental Threshold Carrying Capacities and Pathway Vision Statements*. Cited June 3, 2010 at

www.trpa.org/documents/rp_update/RPU_Descriptions/Land_Use/1.8.1_Land_Use_Sub.pdf

TRPA (2010) *Regional Plan Update Fact Sheet # 3: Land Use*. Cited June 3, 2010 at www.trpa.org/documents/rp_update/Facts&Presentations/RPU_Fact_Sheet_3_Land_Use.pdf

TRPA (2010) *Coverage Information*. Cited June 3, 2010 at www.trpa.org/default.aspx?tabindex=9&tabid=187

TRPA Code of Ordinances. Chapter 20 Land Coverage Standards. Last Amended August 27, 2008. Cited August 3, 2010 at www.trpa.org/documents/docdwnlds/ordinances/COCh20.pdf

TRPA Code of Ordinances. Chapter 33 Allocation of Development. Last Amended February 24, 2010. Cited August 3, 2010 at www.trpa.org/documents/docdwnlds/ordinances/COCh33.pdf

TRPA Code of Ordinances. Chapter 34 Transfer of Development. Last Amended October 28, 1998. Cited August 3, 2010 at www.trpa.org/documents/docdwnlds/ordinances/COCh34.pdf

Pruetz, R (2003) *Beyond Takings and Givings. Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*, Arje Press, Marina Del Rey CA

Correspondence with Heath Gustafson, Soils/IPES Senior Planner. Tahoe Regional Planning Agency. August 2010.

BOULDER COUNTY, CO

Program Goals

The main goal of Boulder County's TDR program is to "promote county-wide preservation of agriculture, rural open space and character, scenic vistas, natural features, and environmental resources" (Boulder County Land Use Code, 6-700A).

Program Status

Adopted in 1995, the county's voluntary TDR program allowed up to five percent of a sending site to be developed with the remainder of the land protected by a conservation easement. Up until 2007, this program succeeded in preserving over 5,000 acres of agricultural and resource land through the issuance of 293 TDR certificates (Boulder County, 2007). By 2008 the county had preserve 5,900 acres (Pruetz and Standridge, 2008). Following the completion the County's Sustainability Element in 2007, the Expanded TDR Program was approved in June 2008.

Sending and Receiving Areas

Potential receiving areas are not mapped by the county so that property values are not artificially raised or lowered through speculation. Instead, the county requires that any interested property owner show how their property meets the criteria for approval. Neighboring land owners are notified and public hearings are held once a receiving area is proposed. The County has intergovernmental agreements with several of the communities within the county to act as sending and receiving areas, including the Cities of Boulder, Erie, Lafayette, Longmont, and Louisville, and the Town of Superior. Unless there is an intergovernmental agreement that requires a higher percentage, 75% of the units transferred to the receiving site must come from the sub-area surrounding the site.

Other Program Details

The Expanded program approved in 2008 allows the creation of a Transferable Development Credits (TDC) Clearinghouse in August 2008. The Expanded program also included the mandate that all property owners of unincorporated county land must purchase TDCs if they want to build a home of more than 6,000 square feet. If a property owner has a vacant parcel or home smaller than 2,000 square feet on unincorporated county land, they now have the opportunity to sell TDCs. The new program is responding to the dramatic increase in median dwelling unit size in the last decade and is an effort to preserve the diversity of the housing stock. The number of development rights that can be transferred, and the number of units that may still be built on the remaining site is defined by formula, with more development rights allocated per acre for larger lots. For receiving sites, the number of development credits per 500 sq ft of additional development increases from 1 TDC per 500ft for the first additional 500 sq ft to 3 TDCs for each additional 500ft after 2,000 sq ft of addition.

The program is used alongside other land development tools such as non-urban planned unit developments program which was started in 1978. The majority of the county is under a 35 acre minimum lot size zoning. In conjunction with the Expanded TDR program, the County also released an additional site plan review standard of compatibility – requiring that the size of dwelling units remain compatible with the surrounding neighborhood (area within 1,500 feet of the site, platted subdivisions of more than seven developed lots, or mapped townsites).

At present the TDR program only allows transferral of single family residential development rights. TDR dwelling units cannot serve as affordable housing unless a TDR participating municipality wishes to add an affordable housing element to the site as the county recognizes that its model encourages relatively low density development (two dwelling units per acre or less) and the additional cost of purchasing development credits would significantly increase the underlying cost of the land.

Noteworthy Characteristics

- Voluntary until 2008

- Sending or receiving area dependent on size of home
- Inter-jurisdictional
- Preserved parcel allows development of up to 5% of site

More information

Boulder County Land Use Department. Planning Division. *Transferable Development Rights Program*. Cited June 30, 2010 at www.bouldercounty.org/lu/planning_division/tdr_program/index.htm

Boulder County Land Use Code. Article 6. Planned Development Districts. Cited June 30, 2010 at www.bouldercounty.org/lu/lucode/pdf/Boulder_County_Land_Use_Code_Article_6.pdf

Boulder County Land Use Department. Planning Division. *Boulder County Code Updated: Expanded TDR Program*. Cited June 30, 2010 at www.bouldercounty.org/lu/planning_division/expanded_tdr/index.htm

Boulder County (2007) *Boulder County Comprehensive Plan Update. Sustainability Element*. Adopted May 16, 2007. Cited June 30, 2010 at www.bouldercounty.org/lu/bccp/pdf/BCCPSustainabilityElement.pdf

Boulder County Board of County Commissioners (2008) *Expanded TDR Program*. Approved June 12, 2008. Cited June 30, 2010 at www.bouldercounty.org/lu/planning_division/expanded_tdr/pdf/BOCCEExpandedTDRDocuments061208.pdf

Boulder County Land Use Department (2010) *Intergovernmental Agreements (IGAs)*. Cited August 13, 2010 at www.bouldercounty.org/lu/igas/index.htm

- Boulder Valley. Parties: Boulder, Boulder County. Boulder Valley TDR CDP Successor IGA
- East Central Boulder Comprehensive Development Plan. Parties: Boulder County, Erie, Lafayette. Isabelle Ranch TDR/PUD Amendment
- Lafayette Transfer of Development Rights Comprehensive Development Plan. Parties: Boulder County, Lafayette. Resolution Approving TDR IGA.
- Longmont Planning Area Comprehensive Development Plan. Parties: Boulder County, Longmont. TDR Map, TDR Sending Site Map
- Longmont Transfer of Development Rights IGA. Parties: Boulder County, Longmont. First Amendment, and Second Amendment.
- US 36 Corridor Comprehensive Development Plan. Parties: Boulder County, Boulder, Louisville, Superior. Willow Ranch TDR Amendment to US 36 Corridor CDP

Pruetz, R and Standridge, N (2009) "What makes transfer of development rights work?", *Journal of American Planning Association*, Winter 2009, 75(1):78-87

GUNNISON COUNTY, CO

Program Goals

The main goal of Gunnison County's TDR program, known as the Residential Density Transfer (RDT) program, is to "provide an effective and equitable tool to conserve ranchlands used in agricultural operations and other valuable natural lands, and to help protect those lands from development impacts" (Gunnison County Land Use Resolution, Division 14-200).

Program Status

Gunnison's RDT program was adopted in November 2009 and has not been used to date (Pelletier, 2010). The program is a simplified version of Berthoud, Colorado's TDR program. It was established as a voluntary TDR program that applies to subdivisions of five or more lots. For these subdivisions there is an 30% open space requirement (pre-existed the 2009 RDT ordinance) which can be reduced to 15% if the developer complies with the RDT programs requirements.

Sending and Receiving Areas

There are no particular sending or receiving areas. The program currently applies to all unincorporated lands within the county. Some lots may not be eligible for the open space reduction as the natural environmental constraints on the land already exceed 30%. Lots used for mobile homes or solely for Essential (Workforce) Housing are also excluded from the open space calculation.

Other Program Details

The payment in lieu option for this program is based upon the difference in tax assessed (not appraised) values for the properties. Developers would currently pay 10% of the difference between the assessed value property before subdivision and sum value of all lots after subdivision. By reducing the required amount of open space on the property from 30% to 15% the number of lots that can be subdivided from the original lot can be increased and the amount of usable area on the lots may increase. The percentage was set low enough that developers can still make a profit on projects that are sited on a wide variety of original lot sizes, while providing suitable funding to acquire conservation easements in other areas of the county particularly. The funds generated are mainly used to leverage state lottery funds. The county also has an active PDR program which is funded by sales taxes.

Noteworthy Characteristics

- Open space requirement reduction
- Payment in lieu option

More information

Gunnison County Land Use Resolution. Reprinted 2006. Last amendment approved August 4, 2005. Cited July 26, 2010 at www.gunnisoncounty.org/planning_pdf/GC-LUR-2006.zip?download=GC-LUR-2006.zip

Gunnison County (2007) *Transfer of Development Rights (TDR) Program for Gunnison County*. November 30, 2007. Cited June 24, 2010 at www.gunnisoncounty.org/gis_pdf/TDR_information.pdf%3Fdownload%3DTDR_information.pdf

Gunnison County Land Use Resolution 2009-47 Concerning the Addition of a Voluntary Residential Density Transfer Section. Adopted November 3, 2009. Cited July 26, 2010 at www.gunnisoncounty.org/commissioners_pdf/resolutions/2009/Resolution%202009-47.PDF

Pelletier, M.; Pruetz, R.; and Duerksen, C. (2010) "TDR-Less TDR Revisited: Transfer of Development Rights Innovations and Gunnison County's Residential Density Transfer Program." *Planning Advisory Service Memo*. May/June 2010. www.planning.org/pas/memo/2010/may/index.htm

Shoemaker, W (2009) "Program aims to conserve land via developer incentive". *Gunnison Country Times*. Thursday November 5, 2009. Page A4. Cited June 24, 2010 at www.gunnisoncounty.org/gis_pdf/RDT_newspaper_article.pdf

Correspondence with Mike Pelletier, GIS Manager, Gunnison County. July 2010.

PITKIN COUNTY, CO

Program Goals

Pitkin County's TDR program is provided as an alternative to the Growth Management Quota System (GMQS). In Pitkin County, both systems are designed to promote smart growth, with the GMQS managing the rate, type, location, quality and quantity of growth in unincorporated rural and urban areas in the county, and the TDR program also promoting the Pitkin County Comprehensive goal plans by transferring development rights to preserve natural and historic resources and lands which are physically and visually constrained (Pitkin County Land Use Code, Chapter 6).

Program Status

Pitkin County's TDR program was first adopted in 1994, with the adoption of a new land use code in 2006 that expanded from the original TDR program's focus on relocation of development closer to existing services and infrastructure thereby preserving the backcountry, to also include an element of protecting environmentally sensitive areas and discouraging development in environmentally hazardous areas. As of 2008, the County had preserved over 6,452 acres (Pruetz and Standridge, 2009). By December 2009, 308 TDR certificates had been issued for a variety of different site types and 121 of the rights had been redeemed with 30 TDRs used for new growth management exempt homes and 91 TDRs used for additional floor area (Pitkin County, 2009). Another 314 TDRs on receiver sites have been granted approval, mainly for additional floor area. The expansion of the program in 2006 allowed the program to have a more balanced supply and demand of TDRs, which is evidenced in the annual TDR tallies.

Since 2006, areas within the Aspen Urban Growth Boundary have also been receiving sites. Most receiving areas only allow the size of house to increase when "transferred development rights" are purchased, but within the Aspen Urban Growth Boundary new development rights can be created on the sites. The City of Aspen also has its own TDR program which focuses on historic preservation. A study of alternative TDR transaction mechanisms highlighted the rather unusual situation in Pitkin County that helped the program protect over 5,000 acres; that the county includes the Aspen which, while an affluent city, believes that protecting rural areas in exchange for building large vacation or ranch homes in particular areas is an worthwhile exchange (Bratton *et al.*, 2008).

Sending and Receiving Areas

Sending areas include parcels within preservation and conservation development planned unit development (CD-PUD) zone, physically and visually constrained constrained sites, sites identified in the Open Space Preservation Master Plan and sites on the County Historic Register. Receiving areas include sites in certain residential districts, to the CD-PUD zone, and to any existing site without development rights if it is within the Aspen Urban Growth Boundary (designated center in unincorporated county land, not within any of the incorporated areas such as the City of Aspen) or part of the Conservation Development Option in rural areas. Depending on the receiving site zone, a credit can be used for a right to develop a new structure on the property and/or to increase the floor area of the house.

Noteworthy Characteristics

- Sending area includes environmentally hazardous and constrained lands.
- Inter-jurisdictional

More information

City of Aspen Land Use Code. Chapter 26.535 Transferable Development Rights. Cited June 22, 2010 at www.aspenpitkin.com/Portals/0/docs/City/clerk/municode/coaspent26-500.pdf

Bratton, N.; Eckert, J.; and Fox, N. (2008) *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*. Prepared by the Cascade Land Conservancy July 10, 2008. Cited June 12,

2010 at

www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6223&MId=944&wversion=Staging

Estin, T (2006) "Pitkin County 2006 Land Use Code: A Primer", *Mountain Business Journal*, July 4, 2006. Cited June 21, 2010 at www.estinaspen.com/2006070468/pitkin-county-2006-land-use-code-a-primer.html

Pitkin County Land Use Code. Chapter 6. Growth Management Quota System and Transferable Development Rights. Cited June 22, 2010 at www.aspenpitkin.com/Portals/0/docs/county/countycode/chapter_06_ord_014D,%2007-06,%20030-06,%20038-06,%20021-07,%20023-07,%20022-08,%20019-09,%20024-09,%20026-09.pdf

Pitkin County. Department of Community Development. Division of Planning and Zoning. *Transferable Development Rights Program Summary and Annual Review of the TDR Program*. Last updated December 16, 2009. Cited July 26, 2010 at www.aspenpitkin.com/Departments/Community-Development-Pitkin-County/Planning-and-Zoning/Transferable-Development-Rights-%28TDRs%29/

Pruetz, R (2005a) "Aspen, Colorado." *Beyond Takings and Givings Book Updates*. Cited June 22, 2010 at www.beyondtakingsandgivings.com/aspen.htm

Pruetz, R (2005b) "Pitkin County, Colorado." *Beyond Takings and Givings Book Updates*. Cited June 22, 2010 at www.beyondtakingsandgivings.com/pitkin.htm

Pruetz, R and Standridge, N (2009) "What makes transfer of development rights work?", *Journal of American Planning Association*, Winter 2009, 75(1):78-87

ALACHUA COUNTY, FL

Program Goals

The purpose of Alachua's TDR program is to "protect the County's environmental resources and promote viable agriculture while encouraging efficient use of services and infrastructure within the Urban Cluster" (Alachua Unified Land Development Code, Chapter 402.180).

Program Status

While originally adopted in 2005, Alachua County's TDR program was only fully adopted in 2010 and has not been used so far. The county does not have much expectation of the program being used significantly in the near future for a variety of economic reasons.

Sending and Receiving Areas

The program is focused on unincorporated county lands, although there are options that allow the establishment of additional receiving areas in municipalities through intergovernmental agreements. Transferred development rights may be used to reduce the open space requirement and as support for a comprehensive plan amendment to expand the Urban Cluster.

Agricultural sending parcels are properties that are classified as agricultural by the Alachua County Property Appraiser, is outside the Urban Cluster, and are over 160 acres, contiguous to a designated sending area or has exceptional agricultural value. Conservation sending parcels are those identified as a Strategic Ecosystem or on the Alachua County Forever active acquisition list, and is over 160 acres, contiguous to 160 acres of eligible conservation sending parcels, or contains critical resources or ecological value. Sending parcels are rezoned to either Agricultural or Conservation with TDR Zones after development rights are sold. The sending area and transfer formulas differ according to whether the sending parcel is an agricultural or conservation area.

The program encourages non-residential development in receiving areas, with any non-residential development on unincorporated lands being eligible to receive. Mixed use developments in unincorporated areas can also receive development rights, but only proportional to the amount of non-residential use in the development. Any amendment to the Urban Cluster requires the purchase of two development rights per residential unit and 10 development rights per acre for non-residential land uses.

Noteworthy Characteristics

- Preserved parcels rezoned once development rights are sold.
- Open space requirement reduction
- Voluntary non-residential receiving area in unincorporated areas
- Expansion to Urban Cluster for residential and non-residential uses require purchase of transferred development rights

More information

Alachua County (2009) *Unified Land Development Code. Adopted 2005, last modified 2009. Chapter 402, Article 29 (Transfer of Development Rights Program)*. Cited June 10, 2010 at <http://growth-management.alachua.fl.us/ldr.php> (Note: the updated TDR section is in the "replacement pages" document)

Correspondence with Steve Lachnicht, Director, Division of Administration, Office of Growth Management. Alachua County. July 2010.

TOWNSHIP OF HADLEY, MA

Program Goals

There are three goals for Hadley's Farmland Preservation Bylaw: to "permanently protect farm land and agricultural soils in the Town", "protect farmland property values and provide a fair economic return to owners of property restricted from further development", and to "foster compact commercial and industrial development in central areas served by public infrastructure" (Hadley Zoning Bylaws, Section XVII).

Program Status

Adopted in 2000, Hadley's Farmland Preservation Bylaw is one of the first examples of TDR in Massachusetts and often serves as an example to other municipalities in the area. To date over ten new developments have been approved in the commercial/ industrial receiving area to pay the in-lieu fee for either a reduction in parking requirements or increase in density.

The TDR program in Hadley is based upon the transferral of credits from farmland to commercial property, allowing additional commercial floor area and a parking requirement reduction. The program has not been amended to date, although there is discussion about expanding the program for some residential uses in the receiving areas. While there are two options in the Bylaw about how to transfer the development rights, to date there has been no uptake on direct purchase of development rights by a developer. Instead, developers have all chosen to pay into a revolving fund which is then used as matching funds for the State of Massachusetts' Agricultural Preservation Restriction Program for preservation of chosen properties. To date, Hadley has generated \$338,772 in in-lieu fees from four TDR projects, funds which have been leveraged to preserve over 239 acres of farmland (Pioneer Valley Planning Commission, 2009 and Dwyer, 2010).

Sending and Receiving Areas

The sending area is all developable farmland of at least five acres within the Agriculture/Residential Zone. The receiving area is a state highway commercial corridor – all lots within the Business and Industrial Zones with frontage on Route 9, Mill Valley Road or North Maple Street. The program is particularly relevant now that many anchor stores in both enclosed and strip malls want to own their land and parking lots, thus making them subject to zoning requirements on a store by store (lot by lot) basis (rather than the combined parking requirement for the entire mall being spread across the single lot).

Other Program Details

Another interesting characteristic of Hadley's program is that not all applications for increased floor area or a reduced parking requirement are automatically approved. Applications for the increased density or reduced parking requirement are processed as Special Permit applications, thus allowing the Planning Board to assess whether the parking reduction or density increase is suitable given the individual lot, deal with properties that were grandfathered into the program but wish to make changes, and also make allowances depending on the proposed use of the site (a restaurant would have different requirements from a manufacturing site that required more floor area but fewer parking spaces).

Calculation of the in-lieu fee uses the average cost for the purchase of Agricultural Preservation Restrictions in the Town over the previous three years.

Noteworthy Characteristics

- Payment in lieu option
- Non-residential receiving area – highway commercial/ industrial
- Option for reduction of parking requirement
- Processed as a Special Permit by the Planning Board

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Town of Hadley Master Plan. October 2005. Prepared by Long Range Planning Committee with the assistance of Daylor Consulting Group. Cited May 29, 2010 at www.hadleyma.org/masterplan/HadleyMasterPlan.pdf

Town of Hadley Zoning By-laws. Section XVII Farmland Preservation Bylaw. Last amended May 2008

Pioneer Valley Planning Commission (2009) "Transfer of Development Rights". *Smart Growth Strategy 7. Preserve Farmlands and Support Farm Businesses*. Cited May 29, 2010 at www.pvpc.org/val_vision/html/toolbox/PDFs/building%20blocks/Transfer%20of%20Development%20Rights.pdf

Correspondence with Bill Dwyer, Clerk for Hadley Planning Board. July 2010.

Correspondence with Bob Wagner, Senior Policy and Program Advisor, American Farmland Trust. June 2010.

TOWN OF HATFIELD, MA

Program Goals

The purpose of Hatfield's TDR program is to "protect farmland and open space, protect property values and provide a fair economic return to property owners, foster compact development in areas served by public services and infrastructure, and to preserve the remaining rural, historic and agricultural character of the community by directing new commercial and industrial development to appropriate locations" (Hatfield Zoning Bylaws, Chapter 6.1).

Program Status

Created in 2003, Hatfield's TDR Program has not been used as of July 2010. The program includes an option for payment in lieu of credits.

Sending and Receiving Areas

The sending area is all land within the agricultural, outlying residential and rural residential zoning districts. The program allows for increased commercial and industrial development density (floor area and lot coverage) for land served by municipal water and sewer within the business, industrial and light industrial zoning districts. Development in the receiving area using transferred development credits requires an application to the Planning Board for a Special Permit.

Other Program Details

There is an option for the "restriction" (easement or covenant) on a property to be released if the land is deemed no longer suitable for agricultural or horticultural uses, as approved by two-thirds of the Massachusetts general court.

Noteworthy Characteristics

- Payment in lieu option
- Preservation easement can be released under certain circumstances
- Processed as Special Permit by Planning Board

More information

Town of Hatfield Zoning Bylaws. Chapter 6.1 Transfer of Development Rights. Adopted May 13, 2003, Amended May 11, 2004. Cited June 28, 2010 at www.townofhatfield.org/About%20the%20Town/zoningbylaws.pdf

Correspondence with Bob Wagner, Senior Policy and Program Advisor, American Farmland Trust. June 2010

CALVERT COUNTY, MD

Program Goals

The main goals of Calvert County's TDR program is to "preserve prime agricultural and forestry land", "utilize the free market system for financing preservation" and "guide development away from prime agricultural and forestry lands" (Calvert County Agricultural Preservation Rules and Regulations). The program also aims to "promote and preserve the identity of intact rural agricultural communities" and to "minimize conflicts between agricultural and non-agricultural land use by providing for functional separation of the two". The County also has a Forest Conservation TDR program which was designed to help meet the goals of the Maryland Forest Conservation Act.

Program Status

Calvert County's TDR program was the first in Maryland, adopted in 1978. As of December, 2005, the TDR program had preserved over 11,900 acres of the 23,767 acres of lands preserved in the county. By 2008, this number had increased to 13,260 acres preserved through the TDR program. The most notable characteristic of the Calvert County TDR program is that it uses low density receiving areas and does not require infrastructure like sewer service within these areas.

Sending and Receiving Areas

The county's program operates within its unincorporated lands. Sending areas are established voluntarily. Landowners can voluntarily apply to be designated in the county's Agricultural Preservation District, a designation which must remain for at least five years. To qualify, at least fifty percent of the total acreage must be suitable for cropland and/or managed forest land. Properties within the Agricultural Preservation District can be preserved through three County mechanisms – the TDR program, the Purchase and Retirement Fund (which purchases, retires and permanently removes transferable development rights), and the Leveraging and Retirement Fund (which also permanently retires development rights for the property, but there is no limit on the number of rights that can be purchased, and the owner receives tax-free interest payments and a lump sum payment at the end of a fixed term).

The base density of receiving areas has been slowly decreased over time. All zoning densities in the county were reduced in 1999 and 2003, with TDR providing the only method to regain previous densities, resulting in new development concentrating in the Residential Districts and within a mile of Town Centers. Receiving areas for the TDR program are any areas that are not part of the Agricultural Preservation District, and includes Priority Funding Areas (Residential Districts and Town Centers) and the Rural Community District (RCD). Several of these options are low density, with densities as low as one dwelling unit per four acres in the RCD and one dwelling unit per two acres in the RD when TDRs are used. The RCD has proved the most popular area to transfer rights to. Some lands in the RCD are both sending and receiving areas.

Noteworthy Characteristics

- Low density receiving areas
- Downzoning used
- Complimentary PDR Program

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Calvert County (2009) *Preserving Farm and Forestland in Calvert County, MD*. Agriculture workshop. March 19, 2009. Cited June 3, 2010 at www.co.cal.md.us/assets/Planning_Zoning/Slideshows/March19-AgWorkshopSlideshow.pdf

Calvert County Board of County Commissioners (2006) *Calvert County Land Preservation, Parks and Recreation Plan*. Approved and adopted December 2006. Cited June 23, 2010 at www.co.cal.md.us/assets/Planning_Zoning/PDF_Files/AdoptedOpenSpacePlan.pdf

Calvert County Zoning Code. Effective Date May 1, 2006. Last updated May 19, 2010. Article 2: Zoning Districts and Maps. Article 5: Residential Development Requirements. Cited June 23, 2010 at www.co.cal.md.us/assets/Planning_Zoning/ZoningOrdinance/Article2-Final.pdf and www.co.cal.md.us/assets/Planning_Zoning/ZoningOrdinance/Article5-ResidentialDevReq.pdf

Calvert County. Calvert County Agricultural Preservation Rules and Regulations. Adopted January 9, 2007 and amended March 20, 2007. Cited July 28, 2010 at www.co.cal.md.us/assets/ResolutionAugust07andRulesRegulations20070109.pdf

McConnell, V.; Walls, M.; and Kelly, F. (2007) *Markets for Preserving Farmland in Maryland Making TDR Programs Work Better*. HRHCAE Pub 2007-03. Report prepared for the Maryland Center for Agroecology. Final Draft. February 2007. Cited June 23, 2010 at <http://agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%2007-03.pdf>

Pruetz, R and Standridge, N (2009) "What makes transfer of development rights work?", *Journal of American Planning Association*, Winter 2009, 75(1):78-87

Correspondence with Veronica Cristo, Rural Planner II, Calvert County Department of Planning and Zoning. August 2010.

CECIL COUNTY, MD

Program Goals

The goal of Cecil County's TDR program is to "encourage preservation of natural resources and facilitate orderly growth in the County" and to encourage the provision of a more attractive living environment (Cecil County Zoning Code, Article XI, Part V, Section 246).

Program Status

Adopted in 2006 with an effective date of January 1, 2007, the Cecil County TDR program is relatively new. Unfortunately, primarily due to the housing market crash, there has been no use of the TDR program to date.

Sending and Receiving Areas

Sending parcels must be located in either the northern or southern agricultural residential zoning districts and be at least 50 acres in size. At least 50% of the parcel must have soils in USDA Classes I, II, or III, and if the parcel is wooded, 50% of the land must be classified as Woodland Group 1 or 2. The TDR ordinance also contains some site design standards to guide new development.

Receiving areas include the Suburban Residential District (up to four dwelling units per acre with TDR), Development Residential District (up to twelve dwelling units per acre) and the Town Residential District (up to six dwelling units per acre). While at present the program just operates within the county's unincorporated lands, the county does have a provision that development rights may be used in incorporated municipalities if the municipality has adopted mechanisms that allow the rights to be used.

Other Program Details

The County also has an active PDR Program. Under the county's PDR program easements can be repurchased by landowners after 25 years if the Board of County Commissioners has "determined that the land is no longer suitable for farming". The county also has a 15% minimum common open space requirement for all subdivisions, unless a payment in lieu of open space is made to the County's PDR Program.

Noteworthy Characteristics

- Payment in lieu option for PDR program
- Open space incentive
- Preservation easement can be released under certain circumstances

More information

Cecil County (2006) Zoning Ordinance Amendments adopted on August 18, 2006, effective January 1, 2007. Cited June 10, 2010 at www.ccgov.org/uploads/PlanningAndZoning/General/TDR_7_17_06.pdf

Cecil County (2006) *Purchase of Development Rights Program. Instructions for Completing the Application to Sell An Easement*. Cited June 10, 2010 at www.ccgov.org/uploads/PlanningAndZoning/AgPreservation/CC%20PDR%20Instructions_11_06.pdf

Cecil County Planning and Zoning Department (2010) *Transfer of Development Rights. Executive Summary*. Cited June 10, 2010 at www.ccgov.org/dept_planning/TDRExecSum.cfm

Correspondence with Eric S Sennstrom, Director, Cecil County Department of Planning and Zoning. August 2010.

MONTGOMERY COUNTY, MD

Program Goals

The main goal of Montgomery County's TDR program is to reduce residential density in sending areas. Preserving natural resources and agriculture is primarily the goal for the county's Purchase of Development Rights (PDR) program.

Program Status

One of the earliest and most successful TDR programs in the country, the Montgomery County TDR program has preserved over 64,000 acres at a density of one dwelling unit per 25 acres and over 5,000 acres are preserved without any potential for future development (MNCPPC, 2007:3). The County is currently in the process of a comprehensive rewrite of the County Zoning Code, a process that started in 2008 and not expected to be completed until 2012.

In the early 2000s the problem of "fifth TDR" arose, where individuals were developing country estates in the sending areas with the remaining development right, thus causing an escalation in land value in the area which made it unaffordable for commercial farming (McConnell *et al.*, 2007; and Bratton *et al.*, 2008). This issue still remains and is part of the motivation for developing the Building Lot Termination program which allows for the exchange of the fifth development right for a higher value (Dunn, 2010). As of 2007, the BLT program had successfully severed over 200 buildable ("fifth") TDRs from the land which represented over 5,000 acres protected from future development at any density (MNCPPC, 2007).

The program has nearly reached its goal of conserving 70,000 acres. As such a large proportion of the agricultural land is conserved and there are increasing pressures to develop the remaining lands, thereby increasing the value of those lands. While the county has been considering new development rights programs so that the remaining areas can be preserved, with the exception of the BLT program, no other new programs are being developed at the moment due to the state of the economy (Bratton *et al.*, 2008; and Dunn, 2010).

Sending and Receiving Areas

The county's sending area is known as the Rural Density Transfer Zone, where density is limited to one dwelling unit per 25 acres. One development credit is equal to five acres, and property owners can sell four of five development credits. The fifth development credit can be sold through the BLT program. The TDR program operates within the county's unincorporated lands unless land is annexed from the county to an incorporated community and, following an individual assessment of the parcels involved, an agreement is reached with the municipality that the parcels remain in the program.

TDR is the only way to exceed base zoning in the county, with the exception of the development of affordable housing. The county's use of downzoning and then allocating development rights as per the old zoning provided incentive for development rights to be purchased. To further incentivize growth in receiving areas, the County's capital improvements program ensure that infrastructure such as sewer, water and transportation reach the area. Other than capital improvement incentives, the program relies solely on additional density providing the incentive for development in the receiving areas. Unfortunately, over recent years the market for larger lot subdivisions has increased to such an extent that it is often more profitable for developers to build at lower densities, thus decreasing the demand for credits.

Other Program Details

The County also has an active PDR program which compliments the TDR program. Reflecting the TDR program's main goal to reduce residential density in sending areas rather than preserving natural resources or agriculture like the county's PDR program, Montgomery County's TDR program issues different easements for properties than under their PDR program. The standard TDR easement

focuses on the number of residential dwellings that can be constructed, occupied or maintained on the property, ignoring the elements commonly mentioned in the PDR program such as future subdivision, mining, development of soil, water or forestry conservation plans, agricultural structures, public access, and use of property. Unlike the PDR agricultural easement which contains a clause for termination of an easement if the land is no longer suitable for agriculture after 25 years, the standard TDR easement does not contain such a clause since the development rights have already been used elsewhere.

Noteworthy Characteristics

- Complimentary PDR program (not competing)
- Use downzoning
- PDR preservation easement can be released under certain circumstances

More information:

American Farmland Trust (2001) *Purchase of Development Rights and Transfer of Development Rights Case Studies*. Prepared for Boone County Planning Commission. Cited June 1, 2010 at www.ctahr.hawaii.edu/awg/downloads/rp_AFT_TDRstudies_Boone.doc

Bratton, N.; Eckert, J.; and Fox, N. (2008) *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*. Prepared by the Cascade Land Conservancy July 10, 2008. Cited June 12, 2010 at www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6223&MId=944&wversion=Staging

Knapp, M (2008) "Council Provides Further Protection for Ag Reserve", *The Open Mike Newsletter from Councilman Mike Knapp*, December 2008. Cited August 3, 2010 at www.montgomerycountymd.gov/content/council/mem/knapp_m/newsletters/december2008.asp#ag

Maryland National Capital Park and Planning Commission (MNCPPC), Research and Technology Center (2007) *Tracking Transferrable Development Rights*. Cited June 1, 2010 at www.montgomeryplanning.org/research/documents/TDRstatusreport-finaldraft.pdf

Maryland National Capital Park and Planning Commission (2008) *Rural Areas/ Agricultural Reserve*. Cited June 1, 2010 at www.montgomeryplanning.org/community/ag_reserve.shtm

Maryland National Capital Park and Planning Commission (2010) *Montgomery County Zoning Rewrite*. Cited June 8, 2010 at www.montgomeryplanning.org/development/zoning/interact.shtm

McConnell, V.; Walls, M.; and Kelly, F. (2007) *Markets for Preserving Farmland in Maryland Making TDR Programs Work Better*. HRHCAE Pub 2007-03. Report Prepared for the Maryland Center for Agroecology. Final Draft. February 2007. Cited June 23, 2010 at <http://agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%202007-03.pdf>

Montgomery County Council. Bill 39-07. Repealing and re-enacting Montgomery County Code Chapter 2B Agricultural Land Preservation. Approved November 18, 2008. Cited August 3, 2010 at www.montgomerycountymd.gov/content/council/pdf/bill/2007/39-07.pdf

Montgomery County Zoning Code. Last updated 30 April, 2010. Cited June 8, 2010 at www.amlegal.com/montgomery_county_md/

Correspondence with Pam Dunn, Research and Technology Center, Montgomery County Planning Board. August 2010.

LONG ISLAND PINE BARRENS, NY

Program Goals

The purpose of the Pine Barrens Credit Program (PBCP), as established by the Long Island Pine Barrens Protection Act, is to “preserve the pine barrens ecology and to ensure the high quality of surface and groundwater within the Central Pine Barrens” (Central Pine Barrens Comprehensive Plan. Volume 1. Chapter 6.1). The Plan which accompanies the program also aims to “discourage piecemeal and scattered development”, “accommodate development in a manner consistent with the long term integrity of the pine barrens ecosystem”, and “promote a compact, efficient and orderly plan of development”.

Program Status

The Long Island Pine Barrens (or Central Pine Barrens) TDR program was started in 1993 when the Long Island Pine Barrens Protection Act of New York State was passed. The PBCP is managed by the Central Pine Barrens Joint Planning and Policy Commission which was also created as part of the 1993 Act. As of January 1, 2009 a total of 1,843 acres of land had been protected by easement, with approximately 40% of the credits generated having been redeemed (345 out of 907).

Sending and Receiving Areas

The sending and receiving areas, as well as the operational guidelines for the PBCP are outlined in the Central Pine Barrens Comprehensive Land Use Plan which was first adopted in 1995 and is currently undergoing its fourth update. The program is inter-jurisdictional with the towns of Brookhaven, Riverhead and Southampton hosting the sending areas and receiving areas, and several additional Suffolk County town designating additional receiving areas. While Brookhaven, Riverhead and Southampton Town have both sending and receiving areas, credits cannot be transferred within the same town. There is no restriction on the type of development that can occur in receiving areas according the Pine Barrens Plan, allowing residential, industrial and commercial uses, amongst others.

While in Brookhaven and Southampton a Pine Barrens Credit is equal to one single family dwelling, in Riverhead a Pine Barrens Credit is equal to three hundred gallons of sewage flow per day per acre. Even in Brookhaven and Southampton credit transfers are connected to sewage flow and are tied to the Suffolk County Department of Health Services Sanitary Code. It is the County Sanitary Code that defines that credit transfers must occur within the same Groundwater Management Zone.

Noteworthy Characteristics

- Regional, inter-jurisdictional program
- Some credit transfers connected to sewage flow

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Central Pine Barrens Joint Planning and Policy Commission website. *Pine Barrens Credit Program (Transfers of Development Rights)*. Last updated June 8, 2010. Cited June 9, 2010 at www.pb.state.ny.us/chart_pbc_main_page.htm

Central Pine Barrens Joint Planning and Policy Commission. *The Pine Barrens Credit Program: Transferable Development Rights in Central Suffolk County, NY*. January 2010. Cited June 9, 2010 at www.pb.state.ny.us/pbc/pbc_overview.pdf

Central Pine Barrens Joint Planning and Policy Commission (2004) *Central Pine Barrens Comprehensive Plan. Volume 1:Policies, Programs and Standards. Chapter 6*. Originally issue 1995,

amended to October 20, 2004. Cited June 9, 2010 at www.pb.state.ny.us/cpb_plan/chapter_6.htm

Suffolk County Department of Health Services. Division of Environmental Quality. *Sanitary Code. Article 6: Transfer of Development Rights Standards*. Effective September 30, 1995. Cited June 9, 2010 at www.co.suffolk.ny.us/Health%20Services/TDRStandards.pdf

TOWN OF SOUTHOLD (IN SUFFOLK COUNTY), NY

Program Goals

Adjacent to the Long Island Pine Barrens region, Southold's program also transfers development rights as related to sanitary flow, drawing upon Suffolk County's Sanitary Code. Southold's program has been used to encourage affordable housing goals in addition to land preservation goals. The official goals of Southold's "TDR" program is the "preservation of open space, agricultural lands and recreational landscapes; preservation of the rural, cultural, and historic character of the hamlets and surrounding countryside; preservation of the natural environment and prevention of further deterioration of resources; preservation and promotion of a broad range of housing and business opportunities to support a socioeconomically diverse community; and increased transportation efficiency" (Southold Municipal Code, Chapter 117).

Program Status

Southold's transfer of sanitary flow rights program has been in place since 2005. A sanitary flow credit is "equivalent to a right to develop a single-family residential parcel with an individual on-site sewerage system, or its nonresidential wastewater flow equivalent". One sanitary flow right is allocated per lot or parcel depending on the underlying zoning. Sanitary flow credits are transferred when the Town preserves open space land that it was already intending to preserve and are held in the town's TDR bank. To date about 47 sanitary flow credits have been removed from about 101 acres of land. Only 10 credits have been purchased for an affordable housing project (Spiro, 2010).

Sending and Receiving Areas

The current sanitary flow TDR program has no particular sending or receiving areas. Sending sites are parcels that the town already intended to preserve as open space. Any affordable housing projects are eligible to be "receiving sites" and there are no particular areas within the town where these developments can be located.

Future traditional TDR program

For some time the Town of Southold has been considering implementing a more traditional TDR program. There are several interesting elements to the proposed TDR program which is evaluated in the 2009 Generic Environmental Impact Statement for the program, including transferring rights only within existing school districts, flexible sending areas and having low density receiving sites (in a "hamlet locus"/ "HALO" zone). Dependent on those parcels that are part of the Agricultural District, the sending area of the TDR program would be more fluid than most TDR sending areas, consisting of all parcels in the Agricultural District, which allows parcels to be added and removed over time. To cope with the pressure of altering density on school budgets, the town has considered only allowing development rights to be transferred within a school district (and thus reducing the net impact of the transfer of density) and also relying on the impact of reduction in the size of residential units to control the number of new school children in the area.

Noteworthy Characteristics

- Sanitary flow transfer
- Considering TDR within school districts

More information

Town of Southold (2009) *Final Supplemental Generic Environmental Impact Statement for the Town of Southold Transfer of Development Rights Program*. April 3, 2009. Cited June 21, 2010 at <http://southoldtown.northfork.net/Planning/FSGEIS%204-3-09.pdf>

Town of Southold Municipal Code (2010) Chapter 117 Transfer of Development Rights. Cited June 21, 2010 at www.ecode360.com/?custId=SO0452

Town of Southold. Community Preservation Project Plan. August/ September 2008 Update. Adopted by Local Law No. 13-2008 on September 23, 2008. Cited July 27, 2010 at <http://southoldtown.northfork.net/LandPres/Community%20Preservation%20Project%202008%20Update.pdf>

County of Suffolk Sanitary Code 760-605 Sewage Facilities Requirements for Conventional Single-Family Residential Realty Subdivisions and Developments. Cited July 27, 2010 at www.co.suffolk.ny.us/upload/healthservices/deq_sanitarycode.pdf

Pruetz, R. (2009) "Southold Town, Suffolk County, New York". *Beyond Takings and Givings Book Updates*. Cited July 26, 2010 at www.beyondtakingsandgivings.com/southold_town.htm

Correspondence with Melissa Spiro, Land Preservation Coordinator, Town of Southold NY. August 2010.

TOWN OF WARWICK, NY

Program Goals

The purpose of Warwick's TDR program is to preserve important local resources such as active farmland and significant open space, and relocate development to areas that are already served by public water and sewer or have the potential to do so (Town of Warwick Code, Chapter 164-47.4).

Program Status

The Town of Warwick use one of the broadest formulas to calculate the transferable density in TDR programs. Unlike most programs which draw almost entirely on a set proportion of the assessed value of the property and/or the number of acres, the total number of permitted units (which can be transferred) is calculated using information such as acreage of different soil groups, FEMA one-hundred year floodplains and existing permanent easements. Unfortunately, as of 2008, no transactions related to the TDR program had been completed.

In 2009 an Annexation District Floating Zone was added to the Village of Warwick's code following the establishment of the Town and Village of Warwick Intermunicipal Annexation Policy. Any lands annexed from the Town of Warwick are zoned for the Annexation District in the Village of Warwick. Landowners of the parcel that has been annexed may apply for an increase in base density for the parcel. The new development must meet the Traditional Neighborhood Design standards, 25% of the site must be reserved as common open space and a fee is paid to the Village for each additional development unit over to "as of right" unit count. The money collected is used for preservation of open space.

Sending and Receiving Areas

The sending areas in the town are designated through the Agricultural Protection Overlay District. It is intended that receiving areas in Warwick are either areas adjacent to the Town's three village centers or in the Town's five hamlets, either in areas where water and sewer are already provided, are planned, or have potential to become available. The receiving areas are zoned "Suburban Residential Low Density", "Suburban Residential Medium Density" and "Local Hamlet Business". Receiving zones can also be created in the Traditional Neighborhood Overlay District, in areas which have been designated for more compact development for some time. While the program at present is an intra-municipal program, there are provisions that the three villages located within the town (Florida, Greenwood Lake and Warwick) may become receiving areas for an inter-jurisdictional program.

Other Program Details

The Town also has Agricultural Advancement Districts, where the farm owner in certain areas of the town and the Town "enter into an agreement that provides the Town with a right of first refusal to purchase the property outright or to purchase development rights for a minimum of 10 years" where a sale for non-farm use is proposed (§ 164-47.8). Options that can be explored under this agreement include PDR, TDR, fee simple acquisition and conservation subdivision.

Noteworthy Characteristics

- Number of permitted units calculated dependent on a variety of factors including soil quality and flood zones.
- Payment in lieu option in conjunction with annexation to the Village of Warwick
- Inter-jurisdictional

More information:

Town of Warwick Code. Chapter 164 Zoning. (Particularly §164-47.3 Agricultural Protection Overlay District and §164-47.4 Transfer of Development Rights.) Last Amended January 24, 2002 by Land Law No. 1-2002. Accessed June 21, 2010 at www.e-codes.generalcode.com/codes/1027_A/1027-164.pdf

Village of Warwick Code. Chapter 145 Zoning. 145-27 Annexation District. Adopted in Local Law no. 1 of 2009. February 2009. Cited July 30 at www.villageofwarwick.org/postings/village_zoning_combined.pdf

Pruetz, R (2008) "Warwick, New York." *Beyond Takings and Givings Book Updates*. Cited June 22, 2010 at www.beyondtakingsandgivings.com/warwick.htm

TOWNSHIP OF WARWICK (IN LANCASTER COUNTY), PA

Program Goals

The purpose of Warwick's transfer of lot coverage program is to preserve the Township's farmland and agricultural landscape and economy (Township of Warwick Code, Chapter 340-45).

Program Status

Since it was established in 1991, Warwick Township's TDR program has managed to preserve over 1,318 acres of farmland (Warwick Township, 2010). Since 2001, the Township has also partnered with developers to determine the number of TDRs needed for specific projects within the Campus Industrial Zone, a partnership which has generated over \$685,000 for farmland preservation through the sale of 278 TDRs.

Sending and Receiving Areas

In the program lot coverage is transferred from farmland to a newly designated Campus Industrial Zone (zoned rural residential pre-2001) where the maximum lot coverage is 10%. Through the TDR lot coverage can be increased up to 70%. Every farm within the Agricultural Zone is an eligible sending tract.

Noteworthy Characteristics

- Lot coverage transfer

More information

Township of Warwick Zoning Code. Chapter 340-45 Transferable Development Rights. Adopted 2001. Amended December 17, 1997, April 4, 2001 and February 18, 2009. Accessed June 30, 2010 at www.ecode360.com/?custId=WA2488

Warwick Township (2010) *Transferable Development Rights Program*. Last updated January, 28, 2010. Cited June 30, 2010 at www.warwicktownship.org/warwick/cwp/view.asp?a=3&q=565106&warwickNav=|6702|

KING COUNTY, WA

Program Goals

The purpose of King County's TDR program is to preserve rural, resource and urban separator lands that provide a public benefit. It is also intended to encourage increased residential development density or increased commercial square footage in existing centers (King County Code, Chapter 21A.37). A wide variety of resources are intended to be preserved through this program; in order to qualify as a sending area, a parcel must be within a particular zones and provide at least one public benefit. (Public benefits are agricultural potential, forestry potential, critical wildlife habitat, open space, and regional trail connectors or urban separators.)

Program Status

King County's TDR program is one of the more successful TDR programs, preserving 141,400 acres of rural and resource lands between 2000 and 2010 by relocating subdivisions for 2,284 potential dwelling units in rural areas to urban areas (King County, 2010). Roughly half of the potential dwelling units are in the TDR Bank while the other half are held by private landowners. An average of over 100 TDRs were bought or sold annually until 2008 and about 400 of the dwelling units have been redeemed.

In 2009, as part of the new comprehensive plan, the County increased the options for which TDR credits could be redeemed for to a density increase, floor area ratio increase, an ability to meet traffic concurrency requirements (if used in the same travelshed as the sending site), allowing construction of larger accessory dwelling units in the Rural Area or satisfying carbon offset requirements. It is too early to say which incentives have proved the most attractive for TDR credit buyers (Greve, 2010).

Sending and Receiving Areas

The program operates primarily within unincorporated lands, although there is opportunity for receiving sites within incorporated city limits if there is an intergovernmental agreement with King County, as there been with cities such as Bellevue, Issaquah and Seattle. King County's intergovernmental agreement with Seattle between 1998 and 2008 resulted in over 900 acres of lands being preserved in return for the building of three "TDR Towers" in the Denny Triangle area of the city (King County Executive News, 2010). Proposals for a renewed partnership between Seattle and King County began in June 2010. The County's TDR program also allows some rural areas to receive TDRs if the TDRs originated in a Rural Forest Focus Area and satisfy certain criteria.

Noteworthy Characteristics

- Uses a TDR Bank
- Inter-jurisdictional
- Several non-density related incentives

More information

King County Sustainable Building website (2010) *Transfer of Development Rights*. Cited May 29, 2010 at www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx

King County Code. Chapter 21A.37 General Provisions. Transfer of Development Rights. Last Updated December 2008. Cited July 24, 2010 at www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/~media/environment/stewardship/sustainable_building/transfer_development_rights/KCC_Title_21A37_Dec2008.ashx

King County Executive News (2010) "Executive proposes renewal of innovative Transfer of Development Rights Partnership", *King County Executive News*. June 25, 2010. Cited August 13,

2010 at www.kingcounty.gov/exec/news/release/2010/June/25TDRPartnership.aspx

Long, Katherine (2009) "Bellevue has 'regional deal' in place for future Bel-Red development", *The Seattle Times*. September 7, 2009. Cited August 13, 2010 at http://seattletimes.nwsources.com/html/business/technology/2009818539_bellevuedevelopment07m.html

Sims, R (2000) "King County's innovative Transfer of Development Credits Program receives 'Partnership' award for Issaquah project", *King County Executive News*. October 3, 2000. Cited August 13, 2010 at <http://your.kingcounty.gov/exec/news/2000/1003001.htm>

Correspondence with Darren Greve, King County TDR Program Manager. June 2010.

SNOHOMISH COUNTY, WA

Program Goals

At present Snohomish County's TDR program is designed to "provide for urban development within portions of the Arlington Urban Growth Area" and to "help conserve valuable agricultural lands located in the Stillaguamish River Valley" (Snohomish County Land Use Code, Chapter 30.35A). The program is also a useful tool to combat a "liberal boundary line adjustment and lot status policy" which, in combination with the relatively low minimum lot size of 10 acres, was putting increased pressure to develop and speculate on local farmland (Snohomish County Long Range Planning Division, 2007:8).

Program Status

Part of the Puget Sound region of Washington, the first phase of the TDR program in Snohomish County was adopted in 2004. An expansion to the TDR program was adopted in 2008 to be in line with county's comprehensive plan policies that promote the expansion of the TDR program, and also to allow the county to designate new sending and receiving areas through a particular planning process that, amongst other requirements, includes consultation with landowners and cities. This 2008 update allowed for the establishment of the pilot program in the Stillaguamish River Valley which aims to preserve about 3,300 acres of farmland. Unfortunately, due to the weak economy, only two properties have been preserved in the sending area to date and were funded through public funding rather than through transfers of credits.

Sending and Receiving Areas

Sending and receiving areas are designated through overlay zones. Although the program is designed primarily for transfers between unincorporated lands under the County's jurisdiction, there is an inter-local agreement between the City of Arlington and Snohomish County for the Stillaguamish River Valley Pilot Program which allows some receiving areas to be located within the city's boundaries after they are added to the Urban Growth Area and annexed to the City.

Noteworthy Characteristics

- Inter-jurisdictional

More information

City of Arlington Land Use Code (2010) Chapter 20.26 and 20.37. Cited June 21, 2010 at www.ci.arlington.wa.us/documents/Planning%20Division/Title%2020%20March%202010.PDF

Snohomish County. Planning and Development Services. Long Range Planning Division. (2010) *Transfer of Development Rights Program*. Cited June 18, 2010 at www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR_Planning/Projects_Programs/Agriculture_Resources/Transfer_of_development_rights.htm

Snohomish County. Planning and Development Services. Long Range Planning Division (2007) *Transfer of Development Rights for Farmland Conservation. Model Policy and Regulatory Strategy for Snohomish County*. (Also known as the TDR Demonstration Project). June, 2007. Cited June 18, 2010 at www.co.snohomish.wa.us/documents/Departments/pds/gma_planning/agriculture_resource_lands/tdr/tdrfinalprojectreport.pdf

Snohomish County Land Use Code (2010) Chapter 30.35A Transfer of Development Rights and Chapter 30.35B Designation of Transfer of Development Rights Sending Areas by Council Motion. Cited June 21, 2010 at http://library6.municode.com/7721/home.htm?infobase=16332&doc_action=whatsnew

Correspondence with Mark Beardslee, Senior Planner, Snohomish County Long Range Planning Division. July 2010.

THURSTON COUNTY, WA

Program Goals

The purpose of Thurston's TDR program is "to encourage the conservation of long-term commercially significant agricultural lands by allowing owners of such lands to realize the equity in the land's development potential without conversion to non-agricultural uses" (Thurston County Code of Ordinances, Chapter 20.62.010).

Program Status

Established in 1996, Thurston County's TDR program has not been particularly efficient at preserving the long-term agriculture district; as of March 2010, the last certificate issued to a landowner interesting in selling development rights was acquired in 2007, none of the TDR senders had been able to their their development rights within the municipalities, and if agricultural land had been preserved it had been purchased through public funds rather than through a transfer of development rights.

The TDR program is currently under significant review with revisions expected to be completed in Spring 2011. Information about the status of the review process can be found at www.co.thurston.wa.us/planning/tdr/tdr_home.html.

Sending and Receiving Areas

The sending area is designated through an overlay long-term agriculture district. At present transfers occur between unincorporated county lands as local city governments have shown little interest in becoming receiving areas.

A notable characteristic of the existing program is the option for transfers that allow developers the option to build at a relatively low density in some receiving areas (3 dwelling units per acre is the lowest base density in the rural residential receiving areas). Unfortunately, there is insufficient market demand for the higher density of 4 to 8 units per acre which are offered through the TDR program.

Other Program Details

The preservation easement that is placed on the sending area parcel once the development rights have been transferred does not allow for any subdivision of the property for dwelling units unless the development right was specifically reserved for the parcel. The transfer of development rights does not affect the landowners rights to subdivide for all other agricultural uses.

Noteworthy Characteristics

- Relatively low density receiving areas

More information

American Farmland Trust (2001) *Purchase of Development Rights and Transfer of Development Rights Case Studies*. Prepared for Boone County Planning Commission. Cited June 1, 2010 at www.ctahr.hawaii.edu/awg/downloads/rp_AFT_TDRstudies_Boone.doc

Thurston County Planning Department. Transfer of Development Rights Program. Stakeholders Minutes and Documents. Receiving Subcommittee. March 22, 2010. Cited May 29, 2010 at www.co.thurston.wa.us/planning/tdr/docs/TDR%20Meeting%20Notes%203_22_2010.pdf

Thurston County Code of Ordinances. Chapter 20.62 Transfer of Development Rights. Includes all ordinances through No. 14343, passed March 3, 2010. Cited July 26, 2010 at <http://library.municode.com/index.aspx?clientId=16720&stateId=47&stateName=Washington>

DANE COUNTY, WI

Program Goals

Some of the key purposes of the TDR program are to “protect high-priority natural or agricultural resources”, “reduce spot development of rural land”, “direct development in rural areas away from areas planned for long-term agricultural use”, “encourage the efficient provision of services by clustering residential units”, “encourage rural housing that is adequate and affordable for persons from a range of incomes”, “facilitate development in rural areas of towns already experiencing or seeking development and “encourage the efficient use of land that has no history of, or is no longer suitable for, agriculture” (Dane County Code of Ordinances, Chapter 10.158 and 10.159).

Program Status

The TDR program in Dane County was only adopted in March 2010.

Sending and Receiving Areas

At present the county TDR program’s overlay sending and receiving area districts can be located in unincorporated areas, but the county is encouraging local towns to become both sending and receiving areas. The sending area overlay district includes lands identified in county and municipal plans as suitable for long-term or permanent agricultural, conservation or natural resource use, and limited or no non-farm development. The County highlights several different options for “bonus” receiving areas that are tied to affordable housing, the Dane County Traditional Neighborhood Design Model Design Ordinance, occurs within a designated Urban Service Area, provides limited multi-family senior housing, or the development qualifies for LEED-ND certification. Unless expressly authorized, all transfers of development rights must occur within the same town or within unincorporated land.

Other Program Details

The county produced two useful guides to TDR in town plans which includes a useful overview of many of the different options that can be chosen in an individual TDR program and part of a model TDR ordinance.

Noteworthy Characteristics

- Several non-density related incentives

More information

Dane County (2010) *Transfer of Development Rights*. Cited June 21, 2010 at www.countyofdane.com/plandev/planning/transfer_rights.aspx

Dane County. Planning and Development Division (2010) “Guide to Transfer of Development Rights in Town Plans”. *Planning Notes, Number 7*. March 30, 2010. Cited June 21, 2010 at http://danedocs.countyofdane.com/webdocs/pdf/plandev/planning/Guide_to_TDR.pdf

Dane County. Planning and Development Division (2010) *Dane County Guide to Incorporating TDR into a Town Comprehensive Plan*. Cited June 21, 2010 at http://danedocs.countyofdane.com/webdocs/pdf/plandev/planning/TDR_Guide.pdf

Dane County Code of Ordinances. Chapter 10 Zoning. Last updated April 30, 2010. Cited August 3, 2010 at <http://danedocs.countyofdane.com/webdocs/pdf/ordinances/ord010.pdf>

ABOUT NEW JERSEY FUTURE

New Jersey Future is a nonprofit, nonpartisan, statewide organization that employs research, analysis and advocacy to drive policies and build coalitions that help revitalize cities and towns, protect natural lands and farm fields, provide transportation and housing choices, generate new jobs and improve opportunities for the impoverished.

Founded in 1987 to support the creation and implementation of the State Development and Redevelopment Plan, New Jersey Future brings together concerned citizens and leaders in government, the community, law and planning, business and education to promote policies that secure economic opportunity, community vitality and quality of life for all citizens of the state by promoting both sustainable growth and environmental preservation.



Topic:	Transfer of Development Rights (TDR); Natural Resource Protection & Conservation
Resource Type:	Regulations
State:	New Jersey
Jurisdiction Type:	Municipal
Municipality:	Township of Chesterfield
Year (<i>adopted, written, etc.</i>):	1997
Community Type – applicable to:	Suburban; Rural
Title:	Township of Chesterfield Transfer of Development Rights Ordinance
Document Last Updated in Database:	May 8, 2017

Abstract

The transfer of development rights program allows for the shifting of development pressure from agricultural, environmentally sensitive, or open space areas of the township to villages designated for limited growth. The program allows the township to maintain its rural character while encouraging planned development. Land is preserved by transferring development rights from “sending areas” in rural parts of the township to three existing villages and one new village that have been designated as “receiving areas” within community development boundaries.ⁱ

Resource

ARTICLE XVII Voluntary TDR Program Procedural Requirements

§§ 130-128. Allocation and transfer of developments rights.

A. Generally. This section sets forth the eligibility standards and credit allocations made of development potential to various parcels of land within the Township of Chesterfield and is authorized pursuant to N.J.S.A. 40:55D-113 et seq. and the Master Plan of Chesterfield Township.

B. Program eligibility. A parcel's eligibility for inclusion under the TDR program is described in the allocation plan which is attached to this chapter and made a part of it by reference. (Chart 1 and 2.)

C. Minimum eligibility criteria. The minimum eligibility criteria for participation in the TDR program are:

1. Sending area. A primary purpose of the Chesterfield TDR program is to conserve the rural, predominantly agricultural resources of the township. Accordingly, the program criteria for participating in the sending area are as follows:

a. The parcel is located within the AG Agricultural District outside of the receiving area as amended and as identified on the Land Use Plan of the Chesterfield Township Master Plan, adopted October 28, 1997. (See Plan A.)

b. The parcel must be at least 10 acres in size on the date that the ordinance is adopted.

c. The parcel must not be deed restricted from further subdivision or further development, except nothing set forth above shall affect the credits created by the County of Burlington under its Farm Land Preservation Program and the right to use these credits in the receiving area. [Amended 7-26- 2001 by Ord. No. 2001-17]

d. The property which shall become the subject of the deed of easement, restriction and enrollment shall contain general reservation language for future rights-of- way and easement areas that may be needed for county and municipal infrastructure improvements, such as future road and drainage improvements, which areas shall be exempted from the restriction against future development required under this chapter.

2. Receiving area. The only criteria for participating in the receiving area is that the parcel is located within the boundaries of the receiving area as amended and as identified on the Land Use Plan of the Chesterfield Township Master Plan, adopted October 28, 1997. (See Plan B.) Should the Approving Authority grant a use variance increasing the development potential of a parcel not in the receiving zone by more than 5%, that parcel shall constitute a receiving zone and the provisions of this chapter for parcels in the receiving zone shall apply with respect to the development potential required to implement that variance.

3. Plans. The locations within the township of the sending and receiving areas are set forth on Plans A and B which are attached to this chapter and made a part of it by reference (Plans A and B).

§§ 130-129. Credit allocation.

A. General principals.

1. Pursuant to N.J.S.A. 40:55D-114, a TDR program must seek to transfer the development potential from areas where preservation is most appropriate to areas where growth can be better accommodated and maximized.

2. Pursuant to N.J.S.A. 40:55D-115, "development potential" is defined as "the maximum number of dwelling units or square feet of nonresidential floor area that could be constructed on a specified lot or in a specified zone under the Master Plan and land use regulations in effect on the date of the adoption of the development transfer ordinance and in accordance with recognized environmental constraints." Therefore, the Chesterfield

Township TDR credit allocation formula seeks to closely estimate the number of dwelling units which could have been built on each eligible parcel given the base zoning density as set forth for the AG Agricultural District, Section 301 of the Chesterfield Township Zoning Ordinance, which zoning is replaced by the adoption of this chapter and the environmental constraints present.

3. The underlying AG Agricultural District zoning requires the use of individual septic tanks for sewage disposal. Accordingly, it has been determined that it is the suitability of soil for septic tank permitting which most directly indicates the development potential of the land and therefore, will act as the basis upon which transferable development rights (TDR's) or credits are allocated.

4. The standard source of information related to the septic suitability of soils located in Burlington County is the USDA Soil Conservation Service (SCS) soil survey (survey). The SCS survey characterizes soil based on numerous factors, one of which is the disposal of septic effluent. The combination of the soils' characteristics result in a septic suitability rating of slight, moderate or severe.

5. The data source utilized for the allocation of development rights is the integrated terrain unit (ITU) data generated by the New Jersey Department of Environmental Protection (NJDEP), of which a primary base layer of information is the SCS soil survey data.

6. In order to allocate credits in a manner consistent with the preexisting zoning but within the context of environmental constraints, the formula set forth in §§ 130-129B below was developed and applied to the computerized soils data generated for each parcel.

B. [Amended 7-26-2001 by Ord. No. 2001-17] Credit allocation formula:

$$\text{TDR Credits} = ((\text{No. of Acres of Slight Soils}/2.7) + (\text{No. of Acres of Moderate Soils}) + (\text{No. of Acres of Severe Soils}/50)) * 1.1$$

C. The product of the above formula is then rounded down to the nearest one-fourth credit to equal the TDR credit allocation.

D. The TDR credit allocation incorporates a ten-percent bonus factor as an incentive for landowners in the sending area to transfer their units rather than construct units on- the site.

E. Allocation plan. AR parcels eligible for participation in the Chesterfield TDR program as set forth in the Master Plan have been identified and a computation of the TDR credits allocated pursuant to the credit allocation formula has been completed. The information is contained in the allocation plan, which is incorporated within this chapter by reference.

F. Procedure. Upon the adoption of this chapter, the Township Clerk shall file with the

County Recording Office a copy of the allocation plan and Zoning Map showing graphically the location of the township's sending and receiving zones. A change in the credit allocation made by the allocation plan by appeal, assignment or transfer to be effective must similarly be recorded in the County Recording Office.

§§ 130-130. Credit allocation appeal process.

A. Purpose. Any landowner eligible for participation in a TDR program who is dissatisfied with their credit allocation may appeal their allocation in accordance with the procedures set forth below.

B. Timing. Any appeal of a credit allocation must occur prior to the recording of a TDR easement. Once a property is restricted through the recording of the TDR easement, the opportunity for an allocation appeal is lost and the parcel's owner shall be irrefutably presumed to have elected to accept the allocation given as an appropriate measure of the development potential of the parcel.

C. Procedure. There are two methods which can be used to appeal the allocation. One relies on the submission of a soils decryption of the subject property prepared by the Natural Resource Conservation Service (NRCS). The second requires the submission of a conceptual plan of development accompanied with representative soil borings. Each is designed to establish a parcel's development potential. The parcel's owner may determine which method to utilize.

1. Soil descriptions. in order to appeal a credit allocation based on soil descriptions, a landowner must procure a revised soil description of the subject property from a licensed soil scientist. Such a soil description shall be verified by the Burlington County Natural Resource Conservation Service (NRCS). The description must include the following information:

a. Landowner's name(s) and address(es).

b. Parcel block and lot number(s).

c. Total parcel acreage (sources may include a Tax Map or property survey).

d. Delineation of the subject parcel on the Tax Map and appropriate map from the Burlington County Soil Conservation Service (SCS) soil survey.

e. A description of the soils present on the property listed by soil name and total acreage of each soil type.

f. A classification of each soil type by acreage into the SCS categories of slight, moderate and severe septic limitations.

g. A recalculation of credit allocations pursuant to the credit allocation formula set forth in §§ 130-129B of this section.

h. The name and signature of the soil scientist who prepared the soils description, the date the soil description was prepared and the date, name and signature of the NRCS soil scientist who verified the findings of the soils described.

2. Conceptual subdivision plan. In order to appeal a credit allocation utilizing a development plan, a landowner may prepare a conceptual subdivision plan for the subject parcel. The subdivision plan is prepared to demonstrate that the number of residential units which could have been constructed on the subject parcel exceeds the number of TDR credits allocated to the property. Such a conceptual plan shall consist of the following information.

a. A map of the property at a scale of no less than one inch equals 100 feet which includes:

i. Property acreage.

ii. Tax lot boundaries.

iii. Stream corridors.

iv. Vegetation (other than agricultural crops).

v. Roads.

vi. High-tension line easements.

vii. Underground easements.

b. A copy of the map described in §§ 130-130C(2)(a) above, upon which the following information has been added:

i. A layout of a hypothetical subdivision, which subdivision meets the bulk and area requirements of the underlying zone.

ii. The acreage of each subdivided parcel.

iii. The location for soil boring performed.

iv. The dimension (width and length) of internal roads.

c. Soil borings. Representative soil borings must be submitted to demonstrate the viability of using septic tanks for the hypothetical development. Prior to performing any soil borings, a plan shall be submitted and approved by the Board Engineer. Soil borings performed to meet this standard shall comply with the following criteria:

- i. Soil borings must be performed on a minimum of 30% of the subdivided lots created by the hypothetical development spaced evenly apart within the subdivision or one per every five acres, whichever results in a smaller number of borings.
- ii. The soil boring must reach a minimum depth of five feet.
- iii. The soil borings must be performed by a New Jersey licensed soils scientist or a professional engineer.
- iv. A report summarizing the findings of the soil borings must be prepared.
- v. A certification signed by the person performing the tests and writing the report which certifies to the accuracy of the soil borings and other data contained in the report shall accompany the report.

§§ 130-131. Steps in credit allocation appeal process.

A. Notice of appeal. The parcel owner shall submit a properly completed notice of appeal and required application and review fees to the Planning Board Secretary. The notice on forms approved by the Township Planning Board shall include the following information:

1. Date of appeal.
2. Name(s) and mailing address(es) of all property owners.
3. Copy of the latest deed to the property.
4. Block and lot number(s) of parcel(s).
5. Acreage of parcel(s) pursuant to Tax Map or property survey.
6. Number of TDR credits allocated to the parcel(s) pursuant to the allocation plan.
7. Number of TDR credits the landowner is requesting as yielded under the appeal provided.
8. Supporting documentation which fulfills the requirements of the selected appeal methodology set forth in §§ 130-130C above.
9. Signature of all property owners.

B. Review by Planning Board engineers. The Planning Board Secretary shall forward the notice of appeal and all related information to the Planning Board Engineer. The Engineer shall review the submission for accuracy and compliance with the requirements set forth herein. The Engineer will advise the Planning Board of his findings.

C. Planning board action.

1. The Planning Board at a regular or special meeting shall, after giving due consideration to the Engineer's report and any additional information which the parcel owner or others wish to submit, grant the appeal if the parcel owner's proof demonstrates that the parcel on the date of this section's adoption had a development potential stated in credits greater than that originally allocated. Otherwise the application should be denied. Public notice of the meeting shall not be required.
2. The Planning Board shall take action on the appeal if all required documents are submitted within 120 days of receipt of the notice of appeal by the Planning Board Secretary, unless this time period is extended by the applicant.
3. Should the Planning Board approve the appeal, it will so direct the Secretary to amend the allocation plan to reflect the number of credits approved.

§§ 130-132. TDR creation, transfer and use.

A. Declaration of enrollment. A landowner seeking to enroll his land within the TDR program and thus create credits which may thereafter be transferred shall follow the following procedures:

1. The landowner, on forms authorized by the Board and obtained from the Township Clerk, shall submit to the administrative officer:
 - a. The original and two copies of a fully completed enrollment application.
 - b. Review fees.
 - c. The original and two copies of the TDR easement.
 - d. Clear proof of tide.
2. The administrative officer shall, within 95 days of receipt, determine that the application:
 - a. Accurately specifies the number of TDR credits available to the parcel.
 - b. Covers a parcel of land eligible for inclusion within the TDR program.
 - c. Accurately sets forth the block and lot description of the parcel seeking enrollment.
 - d. Reserves sufficient credits for the existing and proposed uses on the site.
 - e. Contains all other information required by the enrollment form.

3. The administrative officer, upon receipt, shall forward to the Board Solicitor for review:

a. One copy of the enrollment application

b. The original and one copy of the TDR easement.

c. Clear proof of title.

d. A copy of each of the foregoing documents shall also be sent by the administrative officer to the Burlington County Planning Board so that the Board can determine the nature and extent of any areas which should be withheld from the easement for future infrastructure purposes. The County Planning Board shall have 14 days from receipt of the same to advise the administrative officer and Board Solicitor of its concerns and comments.

4. The Board Solicitor shall determine within 14 days of receipt that:

a. The TDR easement is in a proper legal form for recording in the County Clerk's office.

b. The applicant for enrollment holds legal title clear of any encumbrances to the parcel or that the holder of any lien, mortgage or other interest has agreed in writing to subordinate their interest in the parcel to the public interests set forth in the TDR easement.

5. Upon determining the facts set forth in §§ 130-132A(4) above, the Board Solicitor shall certify to these facts by:

a. Signing the TDR easement at a space provided.

b. Returning the original TDR easement to the administrative officer for processing.

6. Upon return of the original TDR easement signed by the Board Solicitor, the administrative officer shall:

a. Assign serial numbers to each TDR credit sought to be created.

b. Sign the TDR easement form, certifying that the application procedures required by this chapter have been followed and that, upon proper recording of the TDR easement, the parcel will contain the number of transferable credits specified within the certification, provided that the TDR easement is recorded within 90 days from the date that the certification is signed. If unrecorded, the enrollment shall be null and void and the landowner must reapply.

c. Return the original and signed TDR easement to the Board Solicitor for recording. The township will record the easement.

7. If the administrative officer or Board Solicitor shall fail to act within the time periods specified, unless these time periods are extended by the applicant, the application shall be deemed denied.

8. After the TDR easement has been recorded, the landowner shall file proof of the recording with the administrative officer prior to the approval of any transfer of any transfer of any credit created under the easement.

9. Upon receipt of proof that a TDR easement has been recorded, the administrative officer shall:

a. Record the fact of recordation upon the records of the township. This record shall include the Clerk's assigned book and page of recording, if known.

b. Forward a copy of the recorded TDR easement to the Planning Board for its information.

10. A landowner shall be responsible for all costs associated with the review of the enrollment application, including professional fees authorized by the ordinance.

11. The administrative officer shall act on all applications submitted in order in which they are submitted.

B. TDR credit assignment. A landowner against whose land a TDR easement has been recorded may assign any of the credits created through the use of the following procedures:

1. The landowner, on forms authorized by the Planning Board and obtained from the

Township Clerk, shall submit to the administrative officer for review:

a. An original and two copies of the application for assignment.

b. An original and two copies of the proposed assignment.

c. Appropriate review fees.

2. The administrative officer, within 95 days, shall determine that the application:

a. Contains all of the information required by the form.

b. Seeks to assign no more than the maximum number of credits available and not already assigned or extinguished.

c. Provides the recording information about the TDR easement.

d. Accurately reflects the information contained in it.

e. Reflects no material change in the title of the parcel has occurred since the TDR easement was recorded.

3. If the administrative officer determines that the application and supporting documentation establishes the criteria set forth in §§ 130-132B(2) above, the administrative officer shall sign the assignment, certifying that upon recording the assignment will transfer the number of credits contained within it to the party named, provided that if the assignment is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, the assignment shall be null and void.

4. If the administrative officer shall fail to act within the time period provided, the application shall be deemed denied.

5. Upon signing, the assignment shall be returned to the landowner for recording.

6. The assignee of the credits shall, upon filing of the assignment, file proof of recording with the administrative officer prior to the approval of any credit use.

7. Upon receipt of proof that the assignment has been recorded, the administrative officer shall:

a. Record the fact of recordation upon the records of the township. The record shall include the Clerk's assigned book and page of recording, if known.

b. Forward a copy of the recorded assignment to the Planning Board for its information.

8. A landowner shall be responsible for all costs associated with the review of the assignment application, including professional fees authorized by the ordinance.

9. The administrative officer shall act on all applications in the order in which they are received.

C. TDR residual credits on lands within the receiving area. At the time a final plan for the first section of an approved subdivision plan is signed by representatives of the township or the signing of an approved plan by the Municipal Engineer of a final site plan which utilized or effects, in the opinion of the Board solicitor, the operation of the TDR program in the receiving area, the person or entity submitting the application for development cited shall record against the land to be developed a deed of dedication on forms approved by the Township of Chesterfield which dedicate the entire site for use in the TDR program. The residual credits existing on the land covered by the development shall be deemed created only upon the filing of the deed of dedication cited. Filing the deed of dedication shall entitle the land owner to use the credits created on the land effected by the application of development at the density or for the uses permitted by the TDR provisions of this chapter. Until the deed of dedication is recorded, the land is subject to the density and use restrictions otherwise controlling within the district.

D. TDR credit use; extinguishment. An owner or developer of land located within the receiving zone may utilize credits held by a landowner of land located within a sending zone or his assigns to increase the number of units that may be developed by utilizing the following procedures:

1. The owner/developer of land within the receiving zone must first obtain final approval for the development of a project within the receiving zone contingent and conditioned on the acquisition and extinguishment of TDR credits.

2. To meet the condition of approval, the owner/developer, at or prior to the signing of a subdivision plat or the issuance of the first building permit, whichever occurs first, on forms approved by the Planning Board and obtained from the Township Clerk, shall submit to the administrative officer.

a. An original and two copies of completed application for TDR credit use which indicates the source of credit to be used within the development.

b. An original and two copies of a deed of credit transfer.

c. An appropriate fees for review.

3. The administrative officer shall, within 95 days of receipt, determine that the application:

a. Accurately specifies the number of TDR credits need for the development of the parcel sought to be developed.

b. Demonstrates that the developer owns, by assignment or otherwise, all, credits needed for the proposed development.

c. Accurately specifies by reference to assigned serial numbers or otherwise which credits are being used by the development.

d. Accurately provided such other information required by the application.

e. Demonstrates that the parcel from which the credits arise are subject to a recorded TDR easement.

4. If the administrative officer determines that the application and supporting documentation establishes the criteria set forth in §§ 130-132D(3) above, the administrative officer shall sign the deed of credit transfer, certifying that upon recording the deed of credit transfer will permanently transfer the number of credits contained within it to the parcel of land cited, provided that if the deed of credit transfer is not recorded within 90 days of the date that the certification is signed, unless this time period is extended by the applicant, the deed of credit transfer shall be null and void.

5. If the administrative officer shall fail to act within the time periods provided, the application shall be deemed denied.

6. Upon signing, the deed of credit transfer shall be returned to the Board Solicitor for recording.

7. The owner or developer of the, land using the credits shall, upon filing of the deed of credit transfer, file proof of recording with the administrative officer prior to the issuance of any building permit for development of the land upon which the credit is to be used.

8. Recording the deed of credit transfer shall extinguish the ability to use any credit transferred except upon the parcel to which the TDR credit has been transferred.

9. Upon receipt of proof that the deed of credit transfer has been recorded, the administrative officer shall:

a. Record the fact of recordation upon the records of the township. The record shall include the Clerk's assigned book and page of recording, if known.

b. Forward a copy of the recorded deed of credit transfer to the Planning

Board for its information.

10. A landowner shall be responsible for all costs associated with the review of the assignment application, including professional fees later authorized by the ordinance.

11. The administrative officer shall act on all applications in the order in which they are received.

12. Any person, firm or entity who purchases or otherwise acquires, encumbers or utilizes any development potential under this chapter shall record that fact with the State Transfer of Development Rights Bank Board of Directors and shall do so within 10 business days thereof, pursuant to N.J.S.A. 4:1C-53, Subdivision b.

Source of code: Delaware Valley Regional Planning Commission (www.dvrpc.org)

ⁱ New Jersey Conservation Foundation, *Buying Time for Farm Land Preservation*, available at <www.njconservation.org/html/state/041900.html> (last visited April 29, 2003).

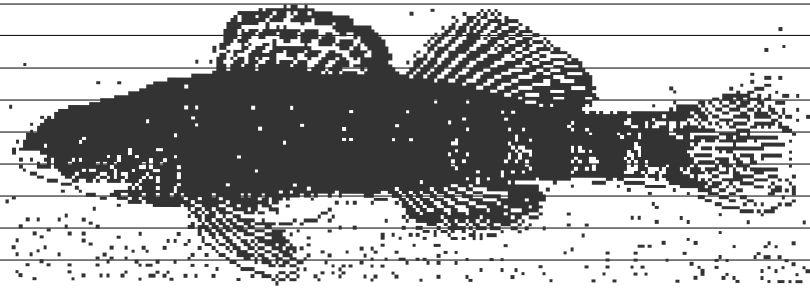


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INTRODUCTION

In 1998 the state of Georgia passed enabling legislation which authorizes local jurisdictions to implement transferable development rights (TDR) programs in their communities. This report offers an introduction to transferable development rights and presents a series of case studies of TDR programs around the United States. These experiences should be helpful to local governments in Georgia that are considering creating their own TDR programs.

The Purpose of a Transferable Development Rights (TDR) Program

The concept of transferable development rights (TDRs) is a recent innovation in land use control that allows communities to:

- ◆ preserve ecologically sensitive lands and historic landmarks,
- ◆ preserve important agricultural and forested areas,
- ◆ stimulate economic growth,
- ◆ manage urban development by targeting growth to desirable areas, and
- ◆ revitalize downtown districts by attracting new businesses and industries.

How TDR Programs Work

Under a TDR program, the development rights from a naturally or historically significant parcel of land are separated from the land and are sold for use on another tract. TDR programs channel development away from sensitive areas and into areas where such growth is sustainable and desirable. TDR programs allow communities to regulate land use and protect valuable resources while compensating landowners for the loss of development potential. TDR programs work through the free market at a significantly lower cost to taxpayers than many other regulatory systems.

TDR programs require the establishment of two designated regions: the sending area and the receiving area. Sending areas are sites in which development is limited, while receiving areas are sites where increased development is encouraged. Property owners in the sending site can voluntarily give up the right to develop their land and receive TDR credits in return. These credits can be freely sold or traded to anyone; the price for



this transaction is left up to the participants and the free market, just as if the land itself were being sold. The sending site is then placed under a conservation easement which is a legal agreement to restrict development. When a property owner in the receiving area purchases the development rights, he is allowed to expand development beyond current zoning limitations up to a specified maximum. Typically, the buyer is either a residential developer, who can build houses on smaller lots with TDR credits, or an industrial developer who can increase the floor size of the work area on the lot as dictated by the number of credits purchased.

In a successful program, the TDR credits are worth more to the seller than the unused development potential on the land. This is essential if the TDR program is optional to encourage participation in the program. The system must also be economically beneficial to the buyer, whose profit from the increased development must exceed the cost of the TDR credits.

An Example of a TDR Program

The following example illustrates how a local government in Georgia can use transferable development rights to achieve land use goals:

After several years of steady residential growth, a mostly rural county outside Atlanta decides it would like to manage further development to encourage balanced economic growth while preserving the natural and agricultural resources that make the area such a desirable place to live. Most of the remaining agricultural lands and natural areas are concentrated in the eastern half of the county. Most of the development is currently occurring in a haphazard, sprawl fashion along highways in the west, which is inconsistent with the county's goal of concentrating growth in designated centers to save on infrastructure

costs. The county has instituted zoning and developed a comprehensive plan with a map that shows the desired future land use. Using the future land use map as a guide, the county designates the most valuable portions of the eastern half of the county as TDR sending areas. Areas of the western half of the county that lie within designated growth centers, for example, new towns and cities, are identified as TDR receiving areas. Growth is restricted in the sending areas, but the landowners may obtain compensation by selling TDR credits to landowners in the receiving areas. When these credits are applied to a parcel in the receiving area, the owner may develop that parcel more densely, within established limits, and increase profits.



BUILDING A SUCCESSFUL TDR PROGRAM

This section offers a step-by-step discussion on how counties can create a transferable development rights program.

Legal Authority

To avoid challenges, a local government should have clear legal authority to develop and implement a TDR program. Local governments can exercise only those powers that have been granted to them in express terms or are necessarily implied or absolutely essential to the declared goals of state legislation. The force of this rule is significantly lessened in states such as Georgia where the state Constitution provides broad authority (known as home rule powers) to municipalities and counties. Home rule powers are generally construed liberally and would seem to include the power to implement TDR programs. However, explicit authority to create TDR programs was provided by the General Assembly of Georgia through the passage of House Bill 1540, which was signed by Governor Zell Miller on April 24, 1998. This law (attached as Appendix 1) specifically authorizes local governments to develop TDR programs and establishes guidelines for the program's operation. Programs established in accordance with this law should withstand legal challenges. Additionally, courts have recognized that local governments have wide latitude to zone for the public welfare. In so holding, the courts have upheld innovative land use techniques such as planned unit developments and cluster subdivisions even in states where no specific language in the state zoning enabling act authorized these innovations.

To meet the requirements of the TDR enabling law and to ensure due process, a local government should pass an ordinance outlining the process for the establishment

of and the use of TDRs. A sample ordinance is included (Appendix 2). The ordinance should specify the public purposes of the program, such as preservation of agricultural lands or urban renewal. Multiple purposes can and should be identified because it allows for flexibility in defining the sending areas. These purposes should be consistent with local governments' mandate to conserve and promote the public health, safety and general welfare.

Local planning changes may also be necessary. These can include:

- ◆ zoning and planning amendments,
- ◆ establishment of TDR sending and receiving areas in local comprehensive plans,
- ◆ creation of TDR overlay zones for receiving areas,
- ◆ adjustments to zoning maps,
- ◆ requirement of preliminary subdivision plans involving property in receiving areas accepting TDR credits,
- ◆ proper recordation of TDR transactions in land records,
- ◆ and the establishment of a coordinating body if the program is to serve more than one jurisdiction.

Legal documentation that may be a necessary part of a TDR program includes but is not limited to:

- ◆ a deed of transfer of development rights to purchaser,
- ◆ a partial release applicable to any outstanding mortgage,
- ◆ and a conservation easement on land from which TDR credits have been removed.



In sum, clear authorization to create a TDR program, combined with adequate planning, will head off legal challenges to the program's implementation.

Mandatory versus Optional Programs

Any successful TDR program is the product of intensive foresight and planning. After the public purpose is established, it is necessary to determine whether downzoning will be *mandatory* or *optional*. Under a mandatory TDR program, the local government restricts the land use in the sending area beyond current zoning limitations. The landowner is then compensated for the loss of development potential with TDR credits that he may sell. Ideally, the credits will be worth more than the development potential under the previous zoning restrictions. A mandatory program ensures that development will be restricted in the sending areas.

For example, current zoning in the sending area may allow development of one dwelling unit per acre. Under the TDR program, the sending area may be downzoned to allow development of one dwelling unit per five acres. An owner of a five-acre parcel would be given five development credits. He may use one credit to build a dwelling unit and sell the remaining four, or he may sell all five credits and permanently prohibit development on his five-acre tract.

Under an optional TDR program, the local government does not mandate downzoning, but only designates the sending areas. Landowners in those sending areas may continue to develop their property at the current zoning level, or they may sell their development credits and permanently restrict development on their land. Most optional programs allow the landowner to sell the development credits from a portion of his land. Ideally, the value

of TDR credits would be greater than the value of the development potential of the land to encourage landowners to sell their credits. An optional program does not ensure that development will be restricted in the sending areas and the program must be carefully designed to garner sufficient participation from the landowners.

In addition, the local government must decide whether increased development in the receiving area can only occur through the TDR program, or whether the local government will continue to allow increased development through petition to the planning board or other means. If the only way to achieve denser development is through the TDR program, it should ensure a demand for TDR credits. Moreover, mandated use of TDR credits for increased development does not require the additional effort and expense of persuading developers to use TDR credits. Developers with other options may choose more traditional and familiar methods, even if purchasing TDR credits would ultimately be more profitable. Although giving developers the option to increase density without using TDRs is less controversial, it may undermine the effectiveness of the TDR program. Interestingly, most of the TDR programs reviewed here have not required developers to use TDR credits to increase development in the receiving areas.

Establishing the Receiving Area

Determining the geographic boundaries of the receiving area is often quite challenging. The receiving areas may be defined parcel by parcel or much more broadly; however, the designation of all receiving areas must be consistent with the purposes of the program.



When a TDR program is established to channel development into a specific area, for urban renewal for example, the choice of receiving areas is obvious. More often, the choice of receiving areas is not obvious. There are two principle types of receiving areas: industrial and residential. Finding the appropriate area for residential development largely involves determining which area can best bear the hidden costs of infrastructure. Increased residential development requires sufficient roads, schools, sewer capacity, police protection, etc. Increased industrial development puts a lesser burden on an area's infrastructure but it must be accounted for nonetheless. Additionally, the receiving and sending areas should not be so far removed that the population in one region suffers a net loss in economic development while the other is burdened with excessive development. However, to adequately preserve sensitive areas, the sending and receiving areas must be separate.

Establishing the Sending Area

Selecting the sending area is often quite simple, since many TDR programs are created for the protection of specific geographic regions. It is important not to make the sending area too large, or the market will be flooded with TDR credits for which there is no market. Programs with mandatory downzoning must be especially careful to avoid a situation where the value of TDR credits is far below the lost development value of the land. Note, however, that downzoned sending areas pay reduced property taxes to reflect the loss of development value. This can provide at least partial compensation for the loss of development potential.

Land in the sending area must be assigned a value in credits. In many programs, this is a fixed per-acre value, such as one

credit per acre. This is effective when all land has roughly the same conservation value, as may be the case for some agricultural areas. Alternatively, a TDR program could assign a higher number of credits for more sensitive or valuable lands. For example, forest might be valued at one credit per acre while wetlands are valued at 1.5 credits per acre. There is no inherent right or wrong way to assign credits, but the method will influence the supply and demand for the credits both from landowners (when downzoning is optional) and from developers. It can be a balancing act between fairness, effectiveness, and simplicity.

Some TDR programs allow landowners of sending properties to repurchase development rights at a later time. The option of "buybacks" may help obtain participation from some landowners, but it removes the guarantee of permanent protection for sending areas.

Balancing Supply and Demand of TDR Credits

When establishing the sending and receiving areas, it is essential to balance the supply and demand of TDR credits. The demand from the receiving area will help determine the value of TDR credits. Moreover, it will set a limit as to how many credits could reasonably be placed on the market at one time.

In establishing a TDR program, the local government should try to avoid flooding the market with TDR credits, which will result in the devaluing of TDRs. For example, a local government would not want to establish sending areas that would produce far more TDR credits than could be used in the receiving areas. Moreover, when an area is zoned for a particular use there is, of course, a limited amount of demand for that use. Under a TDR program, a receiving area is zoned to allow



denser development of a particular type, for example, denser industrial development. But, if current zoning regulations satisfy the demand for development in that area, there may be no demand for TDR credits to provide additional development.

If downtown is zoned for industrial development and there is no demand for increased industrial development in that area, there will be no demand for TDR credits. The value of TDR credits would decrease, and landowners in the sending area would not be fully compensated for the loss of their development potential. It is of critical importance to ensure that supply and demand are well balanced when establishing a TDR program or at least some of the credits will be without value.

Development Potential of TDR credits

In establishing a TDR program, decisions must be made as to the development potential attached to each TDR credit. For example, one TDR may allow a developer to increase density by one dwelling unit per acre. If there are multiple receiving areas then it must be determined if credits will provide equal development increases for each of these areas. It is easier if a development credit allows the same amount of density increase regardless of the tract on which it is to be used, but it may result in uneven demand if one receiving area is substantially more attractive than others to developers. For example, to encourage development in receiving area A, a TDR may allow an increase of two dwelling units per acre, whereas in receiving area B, where demand for denser development is already high, one TDR may allow an increase of only one dwelling unit per acre.

The local government must also decide the upper limit of development density. This results in a two-tier zoning structure for receiving areas. The base zoning level is

that level of development permitted without TDR credits. The upper zoning tier reflects the maximum development density allowed with the purchase of TDR credits. Generally, this upper tier should be the development density indicated in the future land use map created for the government's comprehensive plan. A local government may also choose to add an intermediate level that specifies the minimum increase in density with TDR credits.

For example, an area has a base zoning allowance of one dwelling unit per acre. By purchasing TDR credits, a developer could develop six dwelling units per acre, using one TDR credit for every dwelling unit above the base allowance of one. To build six dwelling units, a developer would need to purchase five TDR credits. The local government may specify that in order for the TDR transaction to be worth while, the developer must use TDR credits to build at least four dwelling units per acre. Therefore, the developer would have the option of using four, five, or six TDR credits on the acre.

Valuation of TDR Credits

The valuation of TDR credits is left up to the free market. Price is generally determined by the number of credits assigned per acre in the sending area, the number of acres in the sending area, the demand for increased development in the receiving area, and the amount of development in the receiving area that each credit permits. If TDRs are not the only method of increasing density in the receiving area, then the value of these credits will also be influenced by developers' preference for TDRs versus other methods.

Encouraging Participation

Education is critical to the success of TDR programs. The operation and function



of TDR programs are not well known and may be intimidating to potential participants. This is particularly problematic in programs without mandatory participation. Education is the first way to encourage participation. The more a prospective participant knows the less time he or she should have to invest in order to become active in TDR exchanges. Realtors are important partners in TDR exchanges. They can aid in promoting TDR transactions to potential developers.

The American Planning Association (APA) recommends that, initially, the planning department engages in extensive efforts to ensure community awareness of the program. The planning staff must then monitor the program to identify stakeholders' concerns and work to rectify any procedural problems. These officials should regularly report to elected community officials and the public at large about the success of the program. The APA also recommends that agencies specifically identify both the actors in the real estate market who will be affected by the TDR program and understand their economic motivations. Typically there are four essential parties to any TDR transaction:

- ◆ the developer of land in the receiving zone,
- ◆ the owner of protected land in the sending zone,
- ◆ the units of local government, and
- ◆ the mortgage lenders.

There will be no transfers if there is no market for increased development. Developers must be anxious to buy and use TDR credits, while the owners of sending parcels must be presented with adequate compensation for loss of development potential. Support of the local government must be apparent to the community. Planners and

city officials must work together to determine the effect of a TDR program on property taxes, to determine other possible problems and solicit full community discussion, and to rally support for the program before implementation. According to the APA, there are several major benefits to developers:

- ◆ Decreased cost to produce subdivided lots
- ◆ Increased profit per unit sold
- ◆ Increased certainty of planning and zoning approval, or faster approval timetable

TDR Banks

Temporary and permanent TDR banks have been established to provide reassurance to landowners in sending areas that they will recoup lost development potential and to catalyze the sale of TDR credits. Generally, a TDR bank is a governmentally funded agency with the power to purchase TDR credits from landowners in sending areas if they are otherwise not able to sell them. If a program is properly established, a TDR bank will provide peace of mind to landowners but ideally should not have to be used as a buyer of last resort. Because the bank will facilitate the sale of TDR credits through the open market, participants should get more money from developers in the receiving area than from the TDR bank. TDR banks can serve as centers for contact between landowners and developers and thereby catalyze the sale of TDR credits. They can put interested landowners in touch with interested developers. Some form of catalyst to encourage this communication is important to a TDR program and real estate agents should also be able to aid in the sale of TDR credits.

The APA has concluded that TDR banks instill confidence in the community



that credits will be bought for resale at a later date. In addition, it may act as a stabilizing force by controlling supply when the prices for credits becomes too low or too high. However, for communities that are considering TDR banks, it is recommended that appropriate legislation authorize the establishment of this bank. In addition, local government must decide how much funding to allocate to this bank.

In some TDR programs, the government or non-profit organizations may also purchase TDR credits for the purpose of retiring them, rather than applying them to other properties. These programs essentially pay landowners to place conservation easements on their properties.

Administrative and Procedural Issues

The agency or department given the responsibility of establishing the TDR program must have the *capacity* both to design and to implement the program. The administrative system should be as fair and simple as possible. Streamlining the system so that there is a quick response time will help garner voluntary participation in the program. The administration of the program should reside within a single department, although input regarding the legal, economic, scientific and planning aspects should be sought from other departments and outside sources, when necessary. Scientific input is especially important for programs designed to protect ecologically sensitive areas.

Finally, it is necessary to establish a *recording mechanism* for TDR transactions to validate the transactions and prevent abuses. Without such recordation the system cannot be evaluated and, worse, cannot hope to function properly.

The Takings Issue

One of the areas of greatest concern among local governments regarding land

sue control is the issue of "takings." The Fifth Amendment in the Bill of Rights guarantees that government can not take physically take property for public purposes without paying for it. This clause permits the government to physically appropriate private property for government or public use, such as taking land for a public highway, by compensating the landowner. In some circumstances, the court has held that the government has regulated the use of property to protect the public health and welfare in such a manner that it is equivalent to a physical taking. In determining whether a taking has occurred, courts inquire whether the owner is left with a reasonable economic use of the property. A regulation that denies the most the most lucrative use of a property does not give rise to a taking if the landowner still has a reasonable economic use of the property.

Regulations have also been struck down as takings when they are found to serve no legitimate public purpose. Courts consistently recognize that the goals of TDR programs, such as the protection of open-space and agricultural lands, historic landmarks and environmentally sensitive areas, are valid public purposes.

The United States Supreme Court has upheld the TDR program as a valid legal tool for historic preservation and environmental conservation. In the landmark 1978 *Penn Central v. City of New York* case, the Court held that the city could prevent development of a 70-foot office tower on top of the Beaux Art Grand Central Station. The Court said that by prohibiting development on top of the station, the city had not denied the landowner of all reasonable economic use of the property. In reaching its conclusion, the court found that the landowner had not exercised his right to transfer the development rights to the space above the station. The potential to sell the development rights above the



station was a reasonable economic use of that property. This decision validated the use of TDR programs as a conservation tool.

Although the Supreme Court has indicated that TDR credits constitute a significant part of the determination of whether a taking has occurred, it has not decided whether TDR credits alone can be sufficient to ward off a taking. In dicta, i.e. non-binding discussion, the court acknowledged that TDR credits could be a factor in a takings analysis but did not discuss what weight this factor could carry. Justice Scalia, in *Suitum v. Tahoe Regional Planning Agency*, indicated that TDR credits could speak only to the determination of whether the landowner was adequately compensated to thereby avoid a taking. In a few cases TDR programs have been challenged on technical grounds. A well-crafted ordinance, backed by state enabling legislation and the local comprehensive land use plan, should withstand legal challenge on technical grounds.

The question of when a party can sue for a taking was also addressed in *Suitum v. Tahoe Regional Planning Agency*. The court held that a plaintiff need not attempt to sell TDR credits before suing for a taking. A two-pronged test was established to determine the "ripeness" of the claim. The plaintiff must receive a "final" decision from the agency running the TDR program concerning the affected property and the plaintiff must exhaust the State's procedures for compensation. In *Suitum*, the agency running the TDR program downzoned the property and had no more control over the value of the TDR credits so the State's procedures were exhausted. The plaintiff did not have to go to the free market for compensation before suing under a takings theory. The Court decided that the value of the TDR credits could be

gleaned from an estimation of their market value without actually conducting the transaction. The Court's decision might have been different if the state had provided a TDR bank as a purchaser of last resort because in that situation, the State would, to an extent, control the value of the TDR credits.

In sum, TDR programs have withstood legal challenge under a takings theory. A well-constructed TDR ordinance created under state enabling legislation or through a municipality or county's home rule powers is likely to withstand legal challenge. The true challenge is designing a TDR program tailored to the needs of the county that will be well supported by landowners and developers.

Sources

Richard J. Roddewig and Cheryl A. Inghram, *Transferable Development Rights Programs: TDRs and the Real Estate Marketplace*, American Planning Association (APA) (1985).

Transferable Development Rights, <<http://www.patuxent-tidewater.org/TDR.html>>

Dennis J. McEleney, *Using Transferable Development Rights to Preserve Vanishing Landscapes and Landmarks*, 83 Illinois Bar Journal 636 (1995).

Norman Marcus, *Transferable Development Rights: A Current Appraisal*, 1 Probate and Property 60 (1987).

American Farmland Trust Report, *Transfer of Development Rights: What Works* (1997).

World Wildlife Fund Report, *Statewide Wet Land Strategies: Protecting and Managing the Resource*.



CASE STUDY

Montgomery County Program (Maryland)

Purpose of the Program

The Montgomery County TDR program was created in 1978 in an attempt to control and manage urban encroachment from its southern neighbor, Washington, D.C. Montgomery County still has valuable rural and agricultural land in need of protection and sustainable development.

Synopsis of the Program

The program is highly successful and touted throughout the country as a model TDR program. As of November 1997, 6,000 TDRs have been purchased and approved for use in receiving areas, protecting 43,000 acres of farmland.

History of the Program and Characteristics of the Area

Montgomery County has a population of roughly 580,000 and a land area of 323,000 acres and is bordered by the Potomac River and Frederick and Howard Counties. Urbanization of the county has proceeded at a rapid pace. In 1973, the county adopted a five-acre minimum lot-size requirement in an effort to stem residential development in prime agricultural areas. That failed to prevent urban encroachment, which continued to devour prime agricultural land. During the 1970s, Montgomery County lost 18 percent of its farmland.

The Montgomery County Planning Commission's concern about further loss prompted the appointment of a task force to explore methods of preserving agricultural uses in the county. Three alternatives were considered: downzoning, outright purchase of agricultural land, and a TDR program. The task force concluded that

downzoning would be unfair to property owners and the public acquisition of farmland would be too costly. It settled on a TDR program to preserve both farmland and the viability of agricultural enterprise in the county.

Prior to the enactment of the TDR program, about 3,500 acres of farmland were converted to urban use each year. Since its enactment in 1980, only 3,000 total acres have been converted, an undeniable result of the TDR program combined with the county and state easement purchase programs.

How does the TDR Program Operate?

In 1980, the county approved and adopted the agricultural and open space preservation plan, designating an Agricultural Reserve of 110,000 acres (more than a third of the county) and downzoning and classifying it as a Rural Density Transfer Zone. Planners determined that a farm needed at least 25 acres in order to operate profitably; thus, the maximum allowable density within the Agricultural Reserve was reduced from one dwelling unit per five acres to one unit per 25 acres. Property owners within the Agricultural Reserve were given one development right for every five acres of farmland they owned. In 1981, an initial receiving area was established for up to 3,000 development rights, large enough to receive transfers from 15,000 acres of Agricultural Reserve land. Thirty-five to fifty additional receiving areas have since been identified.

The Maryland-National Capital Park and Planning Commission, a regional planning agency, worked closely with Montgomery County to provide both the



land-use planning and economic analysis to ensure that the program would work effectively. Planners and economists recognized that unless their program design was based on the realities of the private real estate market, the program would fail. Although the program is mandatory in that downzoning occurred, property owners are not required to sell their development rights.

By purchasing development rights, developers in the receiving districts can increase the base density of building sites by varying amounts, depending on the zoning classification. For example, where the underlying zoning classification permits five units per acre, the TDR program allows an increase of two units per acre to a total of seven units per acre.

The density increase on the receiving parcels must be at least two-thirds of the possible maximum density in order to both:

- 1) ensure that receiving areas are developed to a density sufficient to sustain market demand for TDRs and
- 2) avoid spreading a few TDR rights across a large number of receiving parcels.

For example, on a 20-acre site with base zoning permitting a total of 100 units and a density option of an additional 40 units, the developer must purchase at least 27 TDRs and construct at least 127 units ($100 + (40 \times .667)$).

The procedure for a development rights transfer is as follows. First, the farmland owner sells his rights or an option to a developer who plans to build in a receiving area. The developer then files a preliminary plan of subdivision for the property with the Montgomery County Planning Board, using at least two-thirds of the possible development rights transferable to that

property in accordance with a specific designation on the Approved and Adopted Area Master Plan. Once the preliminary plan is approved, the developer files a site plan. Following site plan approval, the developer prepares a record plat and submits it to the Montgomery County Planning Board along with proof of TDR ownership.

An easement restricting the number of one-family dwellings and other development that can be constructed on the farmland in the sending area is prepared. This restrictive easement is conveyed to the County and filed with the deed prior to recording the plat for the receiving area. It is binding on all future owners of the property.

Realtors list TDRs and earn a commission on transactions; appraisers are using comparable sales of TDRs to value the rights. Development rights are valued in the private market, without government involvement; the price is established between buyer and seller.

Activity

As of November 1997, 6,000 TDRs have been purchased and approved for use in receiving areas. About 43,000 acres of farmland have been preserved. (In 1985, these figures were 1,145 TDRs protecting 5,725 acres of land.) A one-acre lot in the Agricultural Reserve currently is worth \$5,000; the value would rise dramatically if the restrictions on the land were removed.

Incentives to Use the TDR Program

There were many incentives that contributed to the success of this program. The sending areas had enough development potential to make the sale of development rights financially attractive to the farmers who owned the land, and the receiving sites were in areas where development demand was strong enough to create a



market of willing buyers. Because there has been a soft market for multifamily housing in the county, the rights can be applied only to single-family and townhouse development, to ensure that prices and demand for TDRs will be high. The provision of water and sewer services to properties where TDRs are applied is a priority of the county government. Furthermore, the County launched an extensive educational effort to sell the program to both buyers and sellers.

Education Efforts

The county's educational program included comprehensive reports to the public on the Montgomery County Master Plan and a Questions & Answer booklet for property owners.

Purchase of Development Rights (PDRs)

A County Development Rights Fund was established to act as buyer of last resort and to provide guarantees for loans that used the value of development rights still attached to farmland as collateral. The fund was designed to "bank" TDRs, then sell them at auction to the highest bidder. Loan guarantees are available for up to 75 percent of the market value of the farm for a term not to exceed five years. Because the private market has been strong enough to support the TDR program, the county fund has not been used.

Buybacks

TDRs cannot be recaptured or bought back. When TDRs are sold, they are permanently removed from the property described in the easement.

Administrative Costs

The initial effort required the allocation of staff resources. Montgomery County

reports that ongoing administrative costs are negligible as the TDR process is incorporated into the subdivision review and approval process.

Montgomery County has full legislative control over both sending and receiving areas, having omitted incorporated areas from the TDR program. Consequently, developers do not have to cope with a multi-tiered review and approval process, and the county does not have to be concerned about compatibility with other local governments' planning and zoning requirements.

Litigation

In the first case against Montgomery County, the court ruled that the downzoning necessary to implement the TDR program was legal. The court said that the zoning ordinance substantially advanced legitimate government goals, and the economic impact was not so severe as to amount to a taking of property. In so ruling, it was not necessary to examine the legality of the TDR program.

In *West Montgomery County Citizen's Association v. Maryland National Capital Parks and Planning Commission* (1987), Maryland's highest court ruled against the county's TDR plan because it designated receiving zones by amendments to the master plan instead of amendments to the zoning ordinance. The court ruled that there are substantial differences between the planning and zoning functions. The court said it was necessary to amend the zoning ordinance and the zoning map, which was subsequently done.

The final case against Montgomery County's TDR program challenged the county's policy that TDRs could not be transferred outside the area covered by a given master plan. The court ruled that the county could not restrict TDR transfers to a given master plan area.



Why was the program successful?

Montgomery County's TDR program succeeded because it fulfilled the following critical conditions for a workable program:

- ◆ There were sufficient restrictions on sending areas to give rise to TDR sales.
- ◆ Receiving sites were designated that had infrastructure capability and sufficient development demand to make additional density increases attractive to developers.
- ◆ There was a recognition of the economic and financial conditions that underpin a TDR market and determine the value of TDRs to both sellers and buyers.
- ◆ The program design is simple and understandable and does not require complex approvals.
- ◆ The local government had a commitment to an educational effort to inform landowners, developers, realtors, and attorneys about the program. The emphasis is on the TDR program as "working in conjunction with the housing market" rather than as a "no growth scenario." "Market forces are not stopped, but are redirected."

Sources

Interview with Dennis Canavan, Maryland-National Capital Park and Planning Commission, 8787 Georgia Avenue, Silver Spring, MD 20910-3760. Phone (301) 495-4595; Fax (301) 495-1306.

Evaluating Innovative Techniques for Resource Lands, Part II: Transfer of Development Rights. State of Washington, Department of Community Development, Growth Management Division, 1992.

Fehr, Stephen C. "Montgomery's Line of Defense Against the Suburban Invasion." *The Washington Post*, page A01, Tuesday, March 25, 1997.

Heiberg, Dana E. "The Reality of TDR." *Urban Land* 34 September 91.



CASE STUDY

The Pinelands Commission Program (New Jersey)

Purpose of the Program

The Pinelands Commission's goal is to preserve and protect the natural resources of the Pinelands region. This objective is obtained by transferring development credits from designated preservation areas to designated growth areas. The transfer achieves the goal of conserving the Pinelands natural resources, compensating the property owners, and allowing developers to increase density where appropriate.

Synopsis of the Program

The Pinelands program is multi-jurisdictional, encompassing seven counties. It has been very successful, protecting over 100,000 acres of land. The vast scope of the program coupled with its overwhelming success has made the Pinelands a national model for transferable development rights programs. The history of the Pinelands program exemplifies the cooperation needed between the state and the various counties and municipalities to commence a successful and long lasting land management program.

History of the Program and Characteristics of the Area

In the 1970's the expansion of Atlantic City combined with the growth of the gambling industry, retirement housing, and other development threatened the Pinelands region, which is an ecologically significant area in southeastern New Jersey. The Pinelands Commission was formed in 1979 to develop a plan to protect the forests, wetlands, creeks and rivers of the area.

Federal legislation was passed establishing the Pinelands Preserve and a regional

planning body. State legislation—the Pinelands Protection Act—endorsed the planning process and also promulgated Transferable Development Rights as one possible method of controlling growth and development.

A unique aspect of the Pinelands plan is that it encompasses seven counties (Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, and Ocean) and fifty-three municipalities. These seven counties were required to prepare local land-use regulations consistent with the comprehensive plan. The region was divided into management districts to aid in rezoning and the allocation of development rights based upon the land type. The management districts include: Preservation (for the most sensitive land—wetlands), Forest, Agricultural, Rural Development, Regional Growth, and Pinelands Village and Towns District.

How does the TDR Program Operate?

The Pinelands Development Credit (PDC) program is a major component of the comprehensive management plan. It creates development rights that are given to property owners in regions that are designated as preservation areas. The property owners in these areas are then able to sell the rights to developers in areas that have been designated as regional growth areas. Once the property owner sells the PDCs they are required to deed restrict their land through conservation easements to insure that future development is prohibited. Thus, the property owners are compensated for the loss of future development, developers are allowed to increase densities in



specified growth areas, and the land is preserved for generations to come.

The PDC program operates in 39-acre increments. Woodlands, for example, are given one development credit per 39 acres. Farmland, because it is more valuable than woodland, is given two development credits per 39 acres. Because wetlands have the least development potential, they have been assigned 0.2 credits per 39 acres. Each development credit allows the purchaser to develop four extra residential units in the designated growth areas.

A recent key addition to the PDC program has been the institution of the Pinelands Development Credit Bank, authorized by the New Jersey legislature, which has helped to bring interested parties together and also to acquire credits and preserve particularly sensitive regions. The bank was created with \$1.5 million in bonds with the goal of stimulating the private market and acting as a buyer of last resort. In its first years the bank purchased 91.75 PDCs and sold 8.75. The program has subsequently provided for the preservation of over 100,000 acres of land. The sale price has typically been \$10,000 for one Pineland Development Credit. Since the creation of the bank there has been an appreciable increase in the amount of trading. The Bank's role in the future will likely be to identify sellers of PDCs and then inform developers who are willing to purchase the credits, but who may have problems identifying and contacting sellers. It is likely that there would have been a much more active trading market had the bank, acting as the middleman, been in place since the start of the program.

Activity

Over 85,000 acres of the Pinelands have been transferred to state ownership under the PDC program. In 1996 the Com-

mission handled over 1,287 development applications. There was a definite increase in the program's activity once the PDC bank was established to facilitate the transactions between developers and property owners. With a greater demand for PDCs than available PDCs, interest in the Pinelands program should remain strong.

Incentives to Use the TDR Program

The major incentive is the requirement that developers must purchase PDCs in order to increase density. In other words, the Pinelands Commission created the incentive by eliminating other methods of increasing density. This insures that the program will have a potential user base and therefore increases the likelihood of activity. It has made the purchase of PDCs relatively easy with little or no transaction costs.

Education Efforts

The Pinelands Commission has one staff member in charge of educating the public about TDRs and the Pinelands project. It also has a web page that provides information about the history of the Pinelands and explains how to obtain newsletters and other information. From its inception, the Commission made the community aware of the program's goals and how it would operate.

TDR Banking

The Pinelands Commission has set up a PDC banking system that facilitates the transfer of development credits from the property owners to the developers. The bank will also act as a buyer of last resort and will purchase development credits to preserve land that it deems critical.

Buybacks

Buybacks are not allowed under the Pinelands TDR Program.



Administrative Costs

The 1997 operating budget of the Pinelands Commission is \$3,358,392. Because of the enormous breadth of the Pinelands operation there is a great deal of administrative cost. A large portion of the money, approximately \$2,700,000, comes from the state of New Jersey. The additional money is acquired through the federal government, the accumulation of interest, and other sources. The largest expense is personnel. Other categories of expenses include: supplies, services, maintenance, capital improvements and acquisitions, debt service, and local grants.

Litigation

Though there have been challenges to the Pinelands Commission, they have never been successful in part because the Commission's power is derived from both federal and state enabling legislation.

Why was the program successful?

It is important to understand why the Pineland PDC program has been so successful:

- ◆ The counties and municipalities cooperated to make their individual plans and zoning ordinances consistent with the comprehensive Pinelands plan.
- ◆ The Pinelands Commission is involved in all potential development changes that the various communities propose.
- ◆ The Pinelands Commission has a permanent staff with expert knowledge in technical problems, economics and the law.
- ◆ The development exchange is the primary mechanism for developers to increase their zoning density. It is difficult to upzone, so the easiest

way to increase density is by using the Pinelands Development Credits. The Commission has control over both the PDC sending and receiving sights.

- ◆ The Commission has clearly spelled out the objectives and operation of the program.
- ◆ There is a strong regional interest in protecting the New Jersey Pinelands.
- The Development Credits may be applied within a wide area. The Pinelands are in close proximity to Atlantic City, Philadelphia, New York City/Northern New Jersey. This leaves a large market in which the development credits may be used, and there is a perceived need for increasing the density of development in these areas.
- ◆ The program is set up so that property owners know the category that their land falls within and the number of PDCs that they will receive for their land.
- ◆ The Pinelands Development Credit Bank has helped reduce transaction costs so that they are now minimal.

Sources

Pinelands Web Page: www.burlco.lib.nj.us/pinelands.

Thurston County, Washington Transfer of Development Rights Feasibility Study.

Transferable Development Rights Programs: TDRs and the Real Estate Marketplace. Richard J. Roddewig and Cheryl A. Inghram.



"New Jersey's Special Place: Pinelands National Reserve." Terrence D. Moore. *New Jersey Lawyer, the Magazine*, April 1995.

Impact of Regional Land-Use Controls on Property Values: The Case of the New Jersey Pinelands. W. Patrick Beaton. *Land Economics*, May 1991.

Recent Developments in Environmental Preservation and the Rights of Property Owners. Linda Bozung and Deborah J. Alessi. *Urban Lawyer*, Fall 1988.

Institutional Guidelines for Designing Successful Transferable Rights Programs. James T.B. Tripp and Daniel J. Dudek. *Yale Journal on Regulation*, Summer 1989.

Interviews with Betsy Carpenter (609) 894-9342 and Larry Liggett: (609) 894-9342 of the Pinelands Commission.



CASE STUDY

Calvert County Program (Maryland)

Purpose of the Program

The purpose of Calvert County's transferable development rights program is to offer incentive for the preservation of the remaining agricultural and forested land within the county and to guide development to more suitable areas. The TDR program allows the county to benefit from the conservation of these lands without burdening taxpayers with acquisition costs. Finally, the transfer of development rights can help maintain the rural atmosphere that attracted so many of the current residents to the area.

Synopsis of the Program

A landowner within an Agricultural Preservation District (APD) may sell their development rights while maintaining the right to continue farming or engaging in forestry activities. These transferred development rights can only be applied to the construction of family or tenant housing with no allowance for commercial or industrial use. Free market forces determine valuation of all development rights. The county's major role in these transactions is to qualify lands for participation (for both sending and receiving areas), to officiate the actual transfer of development rights, and to approve the language of the conservation easement placed on the sending site.

History of the Program and Characteristics of the Area

This program was enacted in 1978 with the goal of preserving the remaining farm and forested land in the county through the development of Agricultural Preservation Districts (APDs). Calvert was the first county in Maryland to establish an APD

program.

After several years of successful development right transfers, Calvert County amended the TDR program. The first change was the designation of receiving areas to streamline the process. Prior to 1993, receiving areas were designated on an as needed basis which slowed the transfer process. The designation of receiving areas was accomplished via the creation of a Transfer Zone Districts Overlay for the county zoning plan. Another change was the creation of the Purchase and Retirement Fund (PAR) whereby the county can purchase and retire a certain number of development rights each year (see more on PARs in the Purchase and Retirement section below). The final amendment was the Mandatory Clustering Provision which requires that 50-80% of the land within all new subdivisions be preserved as open space. Three new zoning overlays that assist in the preservation of rural and farming communities as well as other significant natural resource areas were added.

The TDR program has resulted in the preservation of one-third of Calvert County for agricultural or forestry production.

How Does the TDR Program Operate?

For a landowner to qualify to sell development rights, their property must be enrolled within an Agricultural Preservation District. They may apply to either the state or county APD program or both, but the landowner cannot gain financial benefit from both. If an application is successful, it is recorded with either the state or county.



Once the property is enrolled, the landowner prepares a plan documenting land use (agricultural or forest). The number of development rights accompanying the land is certified and a covenant restricting the land's use to farming or forestry activities is recorded. Finally, a development option agreement is negotiated. At this point, the rights may be transferred.

If the owner has chosen the state APD, the rights can be sold to the state in the form of a conservation easement. The transfer of an easement involves (1) the implementation of a soil and water conservation plan; (2) a calculation of the value of the easement; and (3) acceptance of the application by the Maryland Agricultural Land Preservation Foundation which makes decisions on a biannual basis.

Both the state and county programs are driven by a free-market system in which buyers and sellers make all decisions regarding the price paid for development rights.

Activity

By all accounts, the Calvert County program has achieved its target goals. Of the desired 20,000 acres for preservation, nearly 18,000 have been enrolled in either the County or State Agricultural Preservation Districts.

Within a recent two-month period approximately \$900,000 of development rights were transferred via the programs. For the year 1997, development rights sales averaged \$2,400 per acre.

Incentives to use the TDR program

There are incentives for both landowners and developers who use the TDR program. Once a tract is enrolled within an APD the owner does not pay property taxes on the land itself though taxes are still assessed on houses and house lots. Land in an APD is protected from condemnation by

the county for public facilities and utilities. The most obvious benefit from having one's land in an APD is the potential of selling the development rights.

For developers, the main incentive for using the TDR program is the ease with which it allows for the densification of a property. The developer does not have to submit a time-consuming application for increased development with its attendant meetings with the Planning Commission. Although it is possible to petition the Planning Commission for increased density, it is easier to receive a density increase through the TDR program. In fact, there have not been any applications for upzoning since the TDR program began in 1978. The Transfer Zone District Overlay created in 1993 makes use of the TDR program even easier than before.

Education efforts

This program has been so overwhelmingly supported by the landowners and developers in Calvert County that very little outreach was necessary to generate interest in the program. Recently, a part-time employee was hired to inform the remaining landowners of the TDR program's existence and benefits. The new education coordinator conducts group and individual meetings.

Purchase and Retirement Fund

The county annually purchases development rights through the Purchase and Retirement Fund (PAR). This is a program operated with county funds matched by state funds from the Agricultural Transfer tax. The rights are permanently retired rather than made available for re-sale to developers. The PAR has funded the preservation of approximately 2,000 acres.

Additionally, there is a conservation easement program at the state level. Through this program, the state purchases



conservation easements from farmers. The value of an easement, which is paid by the state, is the difference between the land's value for development and its value as farmland. The state retires the development right permanently.

Buybacks

The Calvert County system does not provide an opportunity for landowners to repurchase development rights they sold in the past. Instead land from which development rights have been sold is permanently committed to agriculture or forestry. Landowners are permitted to construct tenant housing so long as the density does not exceed one house per 25 acres.

The state system allows for a rights buyback. However, this can occur only after the development rights have been sold for 25 or more years. This option has not been used by landowners in Calvert County.

Calvert officials feel that a buyback provision would substantially weaken their TDR program. They suggest that a TDR should be like most other forms of real estate transactions (i.e., outright sale of land, sale of mineral rights, etc.) which are permanent in nature.

Administrative costs

Throughout the history of this program, the administrative costs have been very low. The only staff necessary to process applications and file transfers are a full-time secretary and the deputy director, who spends approximately one tenth of his time administering the program. Recently, the

county added a part-time employee to assist in landowner education.

Litigation

There is no litigation pending against Calvert's TDR plan, nor has there been any in the past. The program seems to be well accepted by all parties.

Why was the program successful?

The Calvert County TDR program was successful because of the valuable incentives for landowners and developers to use the program. Moreover, the program was designed to preserve the rural nature of the county which attracted many landowners to the area in the first place.

Sources

Chesapeake Bay Program Webpage, Case study on Calvert County
<www.epa.gov/r3chespk/old/cbp_home/localgovold/mtc/mtc033.htm>

Interview with Gregory Bowen, Deputy Director, Calvert County Department of Planning and Zoning, 176 Main Street, Prince Frederick, MD 20678, (410) 535-2348

Agricultural Preservation Rules and Regulations, Prepared by the Calvert County Agricultural Preservation Advisory Board, July 1, 1996.

Calvert County Agricultural Preservation Program Brochure, Prepared by the Calvert County Agricultural Preservation Advisory Board, January 1995.



CASE STUDY

San Luis Obispo County Program (California)

Purpose of the Program

San Luis Obispo (SLO) County developed a transferable development credit (TDC) program in order to retire rural lots in areas of the county where infrastructure is lacking. In addition to reducing development in the outlying rural areas, the program preserves agricultural and other natural resources.

The 1996 amendments to the TDC legislation characterize the primary purpose of the TDC program as one designed "to promote appropriate settlement patterns while maintaining an overall level of development within the capacities of transportation and other public service systems. As a countywide program it endeavors to:

- ◆ protect both land with agricultural capability and the business of agriculture itself;
- ◆ reduce development potential within land divisions or other areas that do not have adequate services for residents;
- ◆ protect important or extraordinary natural areas, habitats or cultural resources; reduce development potential in areas that may have the potential for landslides, fires, or other hazards;
- ◆ and reduce air quality impacts associated with locating residential development distant from jobs, schools, shopping and recreation." (Amendments to Framework for Planning-Inland Adopted October 8, 1996 Resolution No. 96-385)

Synopsis of the Program

The program is voluntary, incentive-based, and market driven between willing sellers and willing buyers. Landowners are not obligated to use this technique to request an amendment to the general plan or to subdivide property in conformance with existing regulations.

History of the Program and Characteristics of the Area

In 1989, the Board of Supervisors of San Luis Obispo County appointed a Blue Ribbon Committee to study the county's growth patterns. Rural areas were of particular concern. The resulting *Rural Settlement Pattern Strategy* suggested a phased approach whereby the county surveyed available lots and growth patterns and then issued recommendations on how to cope with the effects of growth on environmental resources. It concluded that a TDC program would best achieve these aims.

The county's resources as outlined by the *Strategy* are presented below:

- ◆ A large number of existing vacant lots in the rural areas of the county would support development without the need for further subdivision.
- ◆ The overall pattern of development (as seen in building permit activity, creation of new lots and certificates of compliance) had shifted into the outlying rural areas. New development was occurring farther away from the edge of existing rural communities.



- ◆ The historical pattern of land use decisions and new development, as projected by the existing general plan, was putting pressure on prime agricultural lands.
- ◆ Many "rural" areas of the county were committed to residential home sites.

The *Strategy* also determined that the outlying rural areas of the county, where parcels were larger than 160 acres, contained a majority of the county's agricultural and natural resources. Serving residential uses of those areas would be expensive as adequate infrastructure did not exist. Therefore, those areas were deemed to be the most suitable for protection. The *Strategy* determined that land adjacent to existing urban areas was the only suitable area for increased development.

The *Strategy* outlined, in order of priority, the following objectives for land use planning in SLO County:

- ◆ Concentrate development in urban areas.
- ◆ Locate new development in close proximity to existing urban areas.
- ◆ Look carefully at the "critical transition area" surrounding the urban areas. This is where there is a fragmented pattern of development and where the county could lose its rural character.
- ◆ Hold the line in outlying areas. Protect the existing agricultural and rural character of the areas by retaining existing uses and lot sizes.

In order to further these objectives, the *Strategy* recommended the TDC program.

It noted that the acceptance of a TDC program in a community was going to depend upon the acceptability of the specific areas to be protected and the manner in which additional development would be designated and developed.

In 1993, the Transfer of Development Credit Technical Advisory Committee (TAC) began to review the issues associated with the development of a TDC program. TAC was comprised of citizens ranging from ranchers to real estate brokers. This committee documented settlement patterns on a regional basis and suggested criteria for sending and receiving areas. However, one of its most salient recommendations was a pilot project that the Board of Supervisors approved.

TAC changed some aspects of the program based on the results of this trial run. First, it determined the program should run countywide instead of on a regional basis. Second, TAC designated more sending and receiving sites. TAC has subsequently issued a number of project reports summarizing the experiences of the two-and-a-half years of the pilot.

How Does the TDC Program Operate?

To be eligible for the TDC program, the sending tract must meet criteria for either agricultural land, resource land (wetlands, oak wetlands, etc.), or antiquated subdivisions. Antiquated subdivisions are defined as lots without adequate infrastructure or services that if developed, would result in growth above that anticipated by the general plan. Both specific and general criteria have been established; the specific criteria are designed to be clear and easy to understand while the general criteria provide flexibility when the area does not satisfy specific standards.

Development potential of a tract may be limited by easement in one of two ways.



One easement removes the potential for any residential use. This easement is used for sites that qualified using the agricultural criteria. A second easement is even more restrictive. As an incentive to encourage landowners to enter into more restrictive easements, bonus credits are available for any natural resources that will be protected on the land.

The landowner submits an application along with a deed to the county. The application will designate the sending parcel as eligible for either full or partial development rights. If the owner wishes to reserve some development potential (aside from residential development), he/she must apply for a partial development credit. If the owner wishes to give the entire property to a public or non-profit (tax-exempt) agency, he/she will receive TDCs based upon the full value of the property. The number of credits that will be assigned to a specific tract will be based on the value of the land as determined by a professional appraiser.

The TAC formally reviews the application and sends a "Notice of Eligibility" notifying the owner of qualification as a sending site and the amount of credits the land will receive.

The owner then enters into a permanent conservation easement to run with the land. After this easement is recorded, the TDC Administrator issues a TDC Certificate of Sending Credits. The county then amends the General Plan to mark this property as a sending site. At this stage, the owner may also apply for a review of the property tax assessment. The degree of the local property tax relief is dependent on the facts of the particular situation.

In order to use the TDCs on a particular receiving site, the developer may file either for a "Preliminary Determination" or a "Determination with Tentative Map". A

Preliminary Determination does not guarantee that the property will be eligible as a receiving site. It is a simplified review process for those owners curious about the potential for TDCs.

The planning staff reviews the application and submits a recommendation to the applicable Review Authority (in the case of a tentative map) or the TDC Review Committee. The county decides if the site is eligible and how much of a density bonus should be granted.

The buyer may then shop for TDCs. The buyer and seller fix the price for the credits. There are no specifications on the kind of financial arrangement made between the two parties. A seller may participate as an equity participant in the project where TDCs are used.

In addition, the buyer is not required to show proof of ownership (or spend any money on TDCs) until he/she is ready to record the final map. When the map is ready to be recorded, the seller and buyer go to the TDC Administrator to obtain legal title to the TDCs. If all credits are not desired by the buyer, the seller receives a new certificate for the remainder. Once the buyer purchases the TDCs, they must be used on the project. The ordinance has been written to prevent speculation by private individuals. However, non-profits may purchase TDCs to permanently retire the lots. The definition of a non-profit is any tax-exempt organization and may include churches, libraries, and environmental organizations.

After the Receipt of Transfer is recorded with the county, the map is recorded with the additional densities allowed by the TDCs.

Until a TDC Administrator is hired, the planning department is performing the Administrator's functions. These include keeping track of how many TDCs are as-



signed to a property, which TDCs have been used, to whom TDCs were transferred, and how many TDCs are available for sale. The Administrator typically would be a title company charging a fee for its services.

The county is not involved in buying credits to retire them. However, the ordinance is designed to allow non-profit and government agencies to buy credits for that purpose.

Activity

There has been no transfer of TDCs to date due to pending litigation. (See the section on Litigation, below.) However, there have been two applications for sending sites. The first site is a ranch owned by an elderly man who wishes to leave to his daughters the development credits, and his son the actual land. The land is extremely valuable. The rancher wants to ensure that his son will not be forced to pay enormous inheritance taxes, thus he is severing the development rights to decrease the land's worth. The second site is also a ranch whose owner is interested in decreasing development potential in order to decrease both property and income taxes.

Incentives to Use the TDC Program

The ordinance attempts to provide incentives to both sending and receiving site owners to use the program. Sending sites are awarded credits based upon the development worth of the land. The landowner may determine this value through a professional appraisal by subtracting the "before and after" values of development. However, for those who would prefer to avoid the cost of an appraisal, the ordinance allows the use of a figure of 50% of the worth of those properties that have been recently assessed. The credits themselves are a valuable asset to many farmers. For those who wish to remain on the land

and farm, selling the TDCs may result in enough funding to retire outstanding loans.

Receiving sites may be developed more densely than normally allowed when the owners purchase TDCs. The criteria for bonus densities are based on the distance from urban areas and the availability of services. In addition, planning staff will prioritize the processing of applications for those sites that have qualified for density bonuses based upon protection of natural resources.

Under current regulations, the owner is not obligated to use TDCs when applying for denser development of their property and can obtain approval for denser development through a General Plan Amendment or subdivision of their property. However, planners hope that the TDC program will be a more attractive option than amending the General Plan. California law dictates that the plan may only be amended three times per year in coastal zones and four times per year in inland zones. This requirement makes applications tedious and slow for developers wishing to exceed current density regulations. There have been no amendments to the General Plan since the TDC program was implemented, indicating that upzoning has not contributed to the program's inactivity.

Education Efforts

The county has prepared a question and answer brochure to assist the public. The members of the TAC also present the ordinance to civic organizations and answer questions. The ordinance provides for the early notification of neighbors of potential receiving sites so they may comment upon the request.

When the program was first implemented, the planning staff organized a conference to educate potential participants about the program. In addition, the



TDC program was covered extensively in the media, as it is an innovative program and the first of its kind in the area. The planning staff has been reluctant to continue advertising efforts until it resolves the issues associated with the pending litigation.

Some Amendments Resulting from the Pilot Project

- ◆ Environmental review is required of all actions, even a sending site designation. The ordinance emphasizes timeliness and prompt response from the county to the landowner.
- ◆ Criteria (general and specific) are used instead of mapping sending sites. There were two reasons for this decision. First, the county determined that pre-designation of sending sites might adversely affect the owner's ability to borrow money on the land. Second, a landowner may have better knowledge of important natural resources than the government does. In addition, the specific criteria make it easy for landowners to determine if they qualify, and the specific criteria allow for more flexibility.
- ◆ The TAC developed bonus credits for sending sites to preserve natural resources as a further incentive. For each wetland, woodland, etc., listed in the existing documentation criteria in the ordinance, the county awards an extra ten percent of the total credits for which the land was eligible.
- ◆ The ordinance also requires that buyers of TDCs search for credits within a three-mile radius. This ensures that those who live near a receiving site will also benefit from

the decreased development of the sending site nearby. However, if the buyer can demonstrate that there are no TDCs available, the buyer may search for credits within a broader geographic region.

- ◆ The TAC established a TDR Review Committee to make decisions regarding the eligibility of sending sites, sending site bonuses, and preliminary determinations for receiving sites. This committee is comprised of eight people from the community with a variety of experiences.
- ◆ To instill confidence in the system, there is a three-step process to confirm that the county has a record of all TDC transactions. First, the Final Map incorporates a note indicating which TDCs were used by specifying their registration numbers. The Administrator will also be notified that the TDCs have been released to the county. In addition, the landowner turns over the Receipt of Transfer to the county.

Buybacks

In order to receive TDCs, the owner of the sending parcel must enter into a conservation easement. California law dictates that only a court proceeding can dissolve an easement. The county planner explained that the only feasible way for the owner of a sending area to repurchase development rights is to later qualify as a receiving site. However, this is improbable in most cases. Currently, county planners direct landowners concerned about permanently selling the development rights to subdivide the parcel before applying for credits, thereby only placing the easement on part of the land.



Litigation

The county is currently involved in litigation concerning the TDC program. Citizens for Rural Preservation, a group comprised of county developers, has challenged the program, asserting that the receiving sites will generate environmental impacts and under the California Environmental Quality Act, the county must prepare an environmental impact statement (EIS) for each of these sites. The county's defense is that by its very definition increased development of an acceptable receiving site will not create an environmental impact. A court date has not yet been set.

Why hasn't the program been successful?

Because of pending litigation, the program has stalled. Moreover, the election of a pro-development Planning Board may jeopardize the time and resources the staff devotes to the success of the program.

Sources

Transfer of Development Credits: The San Luis Obispo County TDC Program.

Interview with Kami Griffin, Senior Planner, San Luis Obispo County Department of Planning and Building, 805-781-5193.



CASE STUDY

Thurston County Program (Washington)

Purpose of the Program

Thurston County is committed to preserving its natural and scenic resources. Ordinance No. 11069, 01/01/96 states, "The purpose of this chapter is to encourage the conservation of long-term commercially significant agricultural lands by allowing owners of such lands to realize the equity in the land's development potential without conversion to non-agricultural uses."

Synopsis of the Program

The Transfer of Development Rights (TDR) program is a voluntary program whereby property owners may sell county-awarded TDR credits to other parcels of land. There is no expenditure of public funds as the system is market-driven. The county designated a "Long-Term Agricultural District" in which all areas of land receive one credit per five acres.

History of the Program and Characteristics of the Area

In the 1990s, the county began to focus upon agricultural preservation issues. While researching strategies, the Board of Supervisors conducted a TDR feasibility study to determine if the community would support such a program. After extensive research, the county adopted the program and enacted an ordinance effective January 1, 1996.

How Does the TDR Program Operate?

In order to sell TDRs, the property owner must complete an application with the following pieces of information:

- ◆ A map of the proposed Sending Area parcel (based on a field survey) prepared by a registered land surveyor

- ◆ Legal description and parcel numbers of the Sending Area parcel
- ◆ A title report showing that the applicant is the owner of the subject sending area parcel
- ◆ Number of non-family member units and non-farm housing units on parcel
- ◆ Number of family member units and farm housing units on parcel
- ◆ A review fee

After the county reviews this information, it awards the property owner a Certification of Transferable Development Rights. The landowner records an easement with the Thurston County Auditor. Thurston County holds the easement.

When the landowner is ready to sell the TDRs, he/she presents the Thurston County Auditor with a Deed of Transfer form that the Auditor will record, along with the easement. Applicants pay recording, application and transferring fees.

Although a developer may petition for denser development, the county planner stated that it is not used very often, as it requires an amendment to the General Plan which is only permitted once per year.

Anyone may purchase TDRs; however the county does not purchase credits to permanently retire the development rights. The ordinance allows for sellers of TDRs to transfer credits to an intermediate transferor or broker who may hold them for a period of time before they are used on a receiving area parcel.



Activity

Since the program was enacted in 1996, there has been no activity. The county planner attributed inactivity to skepticism of county government. In addition, she stated that the requirement that owners of sending areas present the county with a survey in order to receive certificates was another hindrance. Many farmers do not have the funds available to hire professionals to survey the land. On the receiving side, she noted that the market has not been such that developers are anxious to exceed current density levels.

Incentives to Use the TDR program

Besides awarding development credits, the county has not created additional incentives for preserving sensitive land. The county planner explained that the feasibility study recommended several tiers for awarding credits, but county officials decided this system was too complex for landowners to understand and would hinder their willingness to participate in the program. As a result, all agricultural land receives the same amount of credits.

Education Efforts

At the beginning stages of the program's implementation, the county held a public forum where thirty potential program participants were able to ask questions and voice concerns. There have been few subsequent educational efforts, although most citizens are aware of the program through media exposure. The county has compiled a folder with easy to read, color-coded sheets detailing steps for applying for credits or receiving site status. Planning staff appealed to the Board of Supervisors for permission to devote more time to educational efforts, but the Board decided that the staff had other priorities.

Buybacks

The easement placed upon the sending areas is perpetual. TDRs may not be bought back at a future time.

Administration Costs

The county planner estimated that the county spends \$10,000 and 10 days of staff time per year on administrative costs related to the program.

Litigation

There has been no litigation in Thurston County related to the TDR program.

Why wasn't the program successful?

The Thurston County program did not have adequate incentives for landowners to sell TDR credits. In addition, there was little or no demand for denser development in the receiving area.

Sources

Thurston County Transfer of Development Rights Program Information Kit

Interview with Jacqueline Kettman, Associate Planner, Thurston County Community and Environmental Programs.



CASE STUDY

Collier County Program (Florida)

Purpose of the Program

The TDR program in Collier County was intended to protect more than 40,000 acres of environmentally sensitive land, including barrier islands, mangroves, salt-water marshes, coastal beaches, and cypress stands, especially lands important to water storage and recharge in areas of cypress growth. The concept is to offer an alternative method of protecting these environmentally sensitive areas through the transfer of residential development permitted on these lands to properties better suited for development.

History of the Program and Characteristics of the Area

Collier County, on the west coast of Florida, is the state's second-largest county in land area and one of its fastest growing. Naples, the principal city, has a population of about 20,000 out of a total county population of 117,000. Of the county's 1.3 million acres, fully 40 percent is under federal or state ownership, and governmental acquisition of sensitive Everglades and Big Cypress Preserve lands continues.

Collier County passed its first TDR ordinance in 1974 and substantially amended it in 1979. Modifications eliminated a requirement that transfers occur between parcels of contiguous, environmentally sensitive land and parcels of non-sensitive land. They also streamlined the review and approval process. Somewhat surprisingly, however, more TDR activity occurred prior to the 1979 amendments than after them.

How Does the TDR Program Operate?

The ordinance created an overlay zoning classification for environmentally sensitive lands known as the Special Treatment Overlay District. The initial designation was not accompanied by downzoning (downzoning of the overlay districts did occur some years later in 1982) but new development was regulated and could not occur without review of site development plans by the planning commission and approval by the board of county commissioners.

The development rights are considered as interests in real property and can be transferred in portions or as a total. Once used, the residential development rights shall not be used again and the residential development rights of the subject lands providing them shall be severed forever.

Landowners with two or more acres, excluding submerged land, in the overlay zone may elect to transfer up to one-half (.5) of a residential unit for each acre owned. Upon approval of the transfer, the ordinance encourages property owners to donate the land to a private not-for-profit conservation or environmental organization, but gives the option of entering into an agreement with the county to maintain the land as undeveloped open space. The county must approve the transfer, although the TDRs do not have to be committed to a particular receiving site at the time they are severed from the parcel.

The development rights may be transferred to residential multifamily and residential tourist districts. Depending on the zoning classification of the receiving site, density increases of 10 percent or 20 percent over the underlying zoning may be



achieved. Only lands with an "ST" designation can be sending areas; these include lands that are environmentally sensitive or have historical or archaeological significance and that are not adequately protected by the underlying zoning district regulations. However, a concern of planners in Collier County is that by limiting a TDR program to ST lands, many other properties are precluded from using the TDR program.

Any owner of eligible land may apply for a TDR either separately or concurrently with rezoning, zoning ordinance amendments, preliminary subdivision plat or development plan. Prior to the approval of any TDR or the issuance of any building permits in connection with the use of any transfer of development rights, the petitioner submits the following information and data to the development services director for review and action by the board of county commissioners.

1. Name and address of property owner of sending land.
2. Name and address of property owner of receiving land.
3. Legal description of sending land from which transfer of residential development rights is petitioned.
4. Survey of sending land from which transfer of residential development rights is requested.
5. Legal description of receiving land which receives the transfer of residential development rights.
6. Survey of the land that receives the transfer of residential development rights.
7. Three copies of an executed deed of transfer of ownership of the sending property to the county or a state or federal agency, or to a private not-for-profit conservation or environmental organization.

8. The owner of the sending land will provide a guarantee, agreeable to and approved by ordinance of the board of county commissioners, that the sending land will be utilized only for one or more of the following purposes:

- ◆ increasing public recreational and/or educational opportunities,
- ◆ creation of linkages between public and private open space,
- ◆ protection of critical habitat/ecosystems,
- ◆ or other public purpose as specified in the ordinance of adoption.

Such a guarantee should be recorded with the clerk of the circuit court of Collier County, Florida as a recorded restriction of the use of such land and shall be binding upon all present and subsequent owners, heirs, or assigns of such property. Such restriction may not be amended, deleted, or otherwise altered, except by a majority vote of the board of county commissioners.

Status of the residential units may vary depending on when they were constructed. Upon the issuance of any permit for the construction of residential unit(s) upon the receiving land, the first residential units built thereon are considered the residential units approved for the TDR. The succeeding residential units constructed will be considered the residential units permitted under the basic zoning district regulations. This provision eliminates confusion as to which particular construction on the receiving land has been approved to supersede the zoning development or density allowances.



Activity

Collier County has had only one major transfer in 15 years. Over 350 rights were transferred in a single transaction from land owned by the Deltona Corporation to another site owned by it on Marco Island. The developer subsequently donated the environmentally sensitive land to the county. One developer transferred 960 development credits from an estuarine area to the upland portion of a site. A number of such intrasite transfers have occurred, but the county does not include them in its TDR transaction count.

Incentives to Use the TDR Program

Requirements for landscaping, off-street parking, and open space are waived as necessary to accommodate the additional density.

Education Efforts

There have been minimal education efforts.

Buybacks

Buybacks are not allowed; once the development potential is severed, there can be no more development in the future.

Administrative Costs

Projected administrative costs are minimal.

Litigation

There has been no litigation thus far.

Why has there been limited use of the program?

New construction in the overlay zone is only regulated, not prohibited, so many properties in the environmentally sensitive area have been developed. In addition, there is an option to include unbuildable or environmentally sensitive areas in the density

calculation for the entire site and therefore shift the density from one portion of the same parcel to another without using the TDR program. There has not been adequate demand for increased density because developers in Collier County normally do not build to the density permitted by the underlying. The approval process reportedly deterred some developers. Prior to the 1979 amendments, the process involved a technically detailed application and required the review and approval of seven advisory boards and governmental agencies.

Collier County is on the coast and residents of coastal areas perceived little direct benefit from a program to preserve interior lands. Moreover, there has been some resistance from property owners in the designated receiving areas to the additional density that transfers would impose. The county has been unable to overcome the negative perception of the TDR program. Lack of sufficient staffing in the county planning office has prevented the county from promoting the program to landowners and developers who might use TDRs.

Sources

Interview with Barbara Cacchione, Collier County Government, Community Development and Environmental Services Division, Planning Services, 2800 N. Horseshoe Drive, Naples, FL 33942. Phone (941) 403-2300; Fax (941) 643-3266.

Roddewig, Richard J. and Cheryl A. Inghram. *Transferable Development Rights Programs: TDRs and the Real Estate Marketplace*. Planning Advisory Service Report No. 401. Chicago: American Planning Association, 1987.

Siemon, Charles, Lee Worsham, and Bruce McLendon. *Marketable, Transferable or Purchasable Development Rights*.

Transfer of Development Rights

What is it?

Transfer of Development Rights (TDR) is a voluntary, market-based implementation tool that promotes the conservation of high-value agricultural land, environmentally sensitive areas and strategic open space by shifting development to areas communities deem appropriate for development.

The development rights of areas to be protected (referred to as “sending areas”) are transferred to appropriate, community-designated areas (“receiving areas”) that can accommodate growth through existing and/or planned provision of infrastructure.

In the context of farmland protection, TDR is often used to shift development from agricultural land to designated growth zones located closer to municipal services. TDR is also known as transfer of development credits (TDC) and transferable development units (TDU).

Establishing a TDR program includes:

At the sending end:

- The priority sending area(s) is defined, and a clear set of preservation goals articulated;
- A basic formula establishes the amount of transferable development credits allotted to properties in the sending areas based upon the number of acres;
- Allowable density is adjusted to a range of one dwelling per 25-50 acres to protect the lands and provide incentive for the landowners to sell development rights.

At the receiving end:

- The receiving area is identified and defined;
- A maximum density that exceeds current allowable density is established for the TDR program, based upon existing and planned infrastructure;
- Developers who wish to build at an increased density in the receiving areas are required to purchase a certain number of development credits from landowners in the sending areas.

Benefits

TDR programs offer a unique balance of land preservation, financial compensation, incentives and opportunity, and regional strategic growth and development using little or no public funding:



- Most TDR programs protect farmland permanently, while keeping it in private ownership.
- Participation in TDR programs is voluntary—landowners are never required to sell their development rights.
- TDR can promote orderly growth by concentrating development in areas with adequate public services.
- TDR programs allow landowners in agricultural protection zones to retain their equity without developing their land.
- TDR programs are market-driven—private parties pay to protect farmland, and more land is protected when development pressure is high.
- TDR programs can accomplish multiple goals, including farmland protection, protection of environmentally sensitive areas, the development of compact urban areas, the promotion of downtown commercial growth and the preservation of historic landmarks.

Challenges

- TDR programs are technically complicated and require a significant investment of time and staff resources to implement.
- TDR is an unfamiliar concept. A lengthy and extensive public education campaign is generally required to explain TDR to citizens.
- The pace of transactions depends on the private market for development rights. If the real estate market is depressed, few rights will be sold, and little land will be protected.

TDR light version: A Density Transfer Charge

The community can enact an ordinance that identifies an overlay zone on the growth area, where densities may be increased in exchange for the payment of a density transfer charge (DTC). The DTC would then be used to acquire (either directly or through leveraging other dollars) easements on farmland the community has designated in its comprehensive plan. The amount of the charge and the density credit would be calculated based on a methodology established in the ordinance.

Resources

[Introduction to Transfer of Development Rights \(Maine DACF\)](#)

[Fact Sheet: Transfer of Development Right \(Maine Farmland Trust\)](#)

[TDR Presentation \(APA PA\)](#)

[Example Zoning Ordinance with TDR, New Gloucester, ME](#)





Department of State
Local Government

Transfer of Development Rights

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TRANSFER OF DEVELOPMENT RIGHTS

Transfer of development rights (TDR) is an innovative and complex growth management technique. TDR is often used to ensure that the municipality's open space planning goals are met without causing a financial burden on landowners or the greater community. With a TDR system, landowners are able to retain legal title to their land, but sell its development rights for use on other properties. Stated differently, TDR allows the owner to disconnect the right to develop the property from the property itself and sell or transfer it for use on a different parcel of land in the community.

TDR is based on the concept that ownership of land gives the owner a “bundle of rights,” each of which may be separated from the rest. One of the “bundle of rights” is the right to develop the land. A transferred development right is a development right that has been moved (transferred) from its parent parcel to another. The development potential is removed from the parent (sending) parcel and legally transferred to the receiving parcel whereby additional incremental development is allowed. The buyer of the development rights is then permitted to exceed the maximum height or density restrictions set forth in the local zoning regulations when using the transferred rights.

TDR has often been applied to preservation of farmland in New York. Under typical TDR systems, farmers are able to keep their land for agricultural production and sell the property's development rights, which are then used on non-agricultural land.

Legal Authority for TDR Program

Local governments can use their traditional zoning authority or a State statute to create a transfer of development rights program. In 1916, New York City's first zoning ordinance authorized a simple TDR mechanism which allowed owners of adjacent lots to combine their air rights to erect a tower exceeding the height restrictions established in the zoning regulations. Since that time, courts have upheld the TDR concept as an exercise of a municipality's basic zoning power. In 1989, the State Legislature enacted statutes authorizing the use of the TDR technique for local governments (General City Law § 20-f, Town Law ' 261-a and Village Law ' 7-701). It must be remembered that, at root, TDR is a zoning technique and as such, must be implemented in accordance with a municipality's comprehensive plan.

Reasons for TDR

In a remarkable law review commentary, Joseph Stinson explained:

Transfer of Development Rights is a direct response to changing priorities. There are three concerns that have been primarily responsible for the development of TDR. First, many historical landmarks do not fully utilize the density allocation permitted by zoning. As a result, there is enormous economic incentive for the owner to take down the landmark and construct a new building capable of exploiting the economic potential of the site. Unless landmark preservation is made a priority, architectural treasures risk oblivion. Second, the congestion of metropolitan and suburban areas has created a demand for open space. Third, there are economic incentives to develop in ecologically sensitive areas. Until land use regulation is employed to protect these vulnerable areas, clean air, clean water, and farm land have to compete against land uses that provide higher short-term yields for the property owner. Transfer of Development Rights goes to the heart of the problem by restructuring the economic incentives in land use. Development is funneled into areas where it will have the least deleterious effects, and away from properties whose high social and/or biological value might otherwise be overcome by the pressure to develop.

Transfer of Development Rights diverts economic incentive away from critical areas through the use of “sending” and “receiving” districts. The sending district is the area being protected. The receiving district is the area that has been determined to be suitable for development. By designating these districts, the governing authority is performing the traditional use restriction aspect of zoning. Density restrictions in the receiving district are relaxed to accommodate the development being transferred from the sending district.

Joseph D. Stinson, *Transferring Development Rights: Purpose, Problems, and Prospects in New York*, 17 Pace L. Rev. 319 (1996)

How Does TDR Work?

TDR programs are workable in specific situations. Under the State statutes, when a municipality has through the planning process identified areas in need of preservation (e.g., farm land or historic buildings) or where development should be avoided (e.g., shorelines at risk from sea level rise, storm surge or flooding), these areas are established as “sending districts.” Owners of land in these sending districts may sell the rights to develop their lands; those development rights will be transferred to lands located in “receiving districts” or to a development rights bank. In short, the sending district is the area being protected. The receiving district is the area that has been determined to be suitable for denser development.

After selling the development rights, a landowner still retains title and all other rights to his or her land. Land devoid of development rights can still be used for farming, forestry, passive recreational uses, or other non-intensive uses. In addition, the owner may sell or exchange the title to the land just as if the development rights had not been transferred.

The development rights to be transferred usually take the form of units per acre, gross square footage of floor area, or an increase in building height. The rights, when transferred to land in the receiving zone, are used to exceed the maximum density or height limits established in the zoning regulations of the receiving district. Some municipalities establish incentives to use TDR including the provision for “by-right” or “shovel ready” permitting in receiving districts.

Receiving districts are those areas which the municipality has determined are appropriate for increased density or height based upon a study of the effects of such increases. Parcels within the receiving districts “receive” TDR credits, therefore allowing development to occur at a density greater than would normally be allowed, with a minimum of adverse consequences. For example, a town may determine that it is appropriate to preserve prime agricultural land, which it designates as a sending district. The town may also determine that its unincorporated hamlet area may be developed at a higher density, and designate it as a receiving district, where development rights can be used to increase density above what is ordinarily allowed. (See section on Valuing Development Rights)

In this manner, owners of land in sending districts are able to realize a level of economic return while the municipal goal of preserving the land is achieved. The TDR system will be successful, however, only where there is a demand to increase development in the receiving districts, and where the municipality does not undermine the incentive to purchase development rights by rezoning receiving districts to higher densities -- a move which of itself might satisfy market demand and thus defeat the incentive mechanism.

An example of how TDR operates is as follows: Land in a rural zoning district is zoned to permit one dwelling per acre. Land somewhere else in the municipality, such as a certain residential district, is zoned to permit one dwelling per quarter-acre. Under TDR, rights to develop 20 dwellings on 20 acres in the conservation district could be transferred to other land. (If it is, then, under the most common TDR model, the 20 acres in the conservation district could not be developed at all B its economic use value would have been realized by sale of the right to develop it.) The 20 dwelling unit density could be added to the density already allowable in a tract in the specified residential zone. In that district, a 15-acre parcel would permit, under the quarter-acre zoning, 60 dwellings. But with the added development rights acquired from the

conservation district (20 dwellings in this example), a total of 80 dwellings could be constructed on the parcel in the residential zone.

TDR can also give owners a way of realizing a greater economic return on property that is occupied by a historic or landmark structure. Compensating owners with transferable development rights is a way of furthering the preservation of historic landmarks and properties. In urban areas, the TDR method is a valuable landmark preservation tool.

Valuing Development Rights

TDR involves an exchange of development rights (or TDR credits) from a sending parcel to a receiving parcel or to a development rights bank (more on this later). A 1-to-1 exchange of TDR credits would be an equal exchange, so that purchasing 1 TDR credit would gain a developer the right to build 1 additional unit in a receiving district.

A 1-to-1 ratio may not always result in equivalent values for both areas. The market value of one dwelling unit on a 10-acre parcel in a rural area is often worth more than the value of one additional unit in an urban apartment building to a developer. Developers might be unwilling to pay the rural value for one right, and landowners might be unwilling to sell their rights at urban values. To correct the imbalance in value between development rights in sending and receiving districts, some communities include a multiplier that allows an increase in the density eligible for transfer to a receiving site and the value of the TDR credits. This also serves to induce developers to build in the receiving district. For instance, each TDR credit in the sending district could secure two or more additional units when applied to an eligible site in a receiving district. Once transferred, TDR credits may be used to construct more intense development within that receiving district. The multiplier can be used to advance other local planning objectives, such as creation of affordable housing.

TDR Distinguished from Cluster Development

As can be seen from the above discussion, TDR involves the transfer of the right to develop land from one parcel to another parcel. The parcels are usually not contiguous and actually could be separated by some distance. Most often they are under different ownership.

Cluster development, on the other hand, is a subdivision plat technique which involves the transfer of allowable development density within a single tract of land which is being developed, thus enabling structures to be clustered on a site in a manner that does not otherwise comply with lot size requirements of the applicable zoning law. The goal of clustering is to “increase

dwelling densities on specific locations of a development in order to leave other locations free of dwellings.” (Ahearn v Zoning Bd. of Appeals of Town of Shawangunk, 158 AD2d 801 Fn. 1 (3d Dept. 1990) lv denied 76 NY2d 706.) There is specific statutory authority for the use of the cluster development power by planning boards when approving subdivision plats in municipalities that have zoning regulations (Town Law § 278; Village Law § 7-738; General City Law § 37). These statutes empower the municipal governing body to authorize the planning board to allow (or to require) the use of the cluster technique by developers seeking approval of subdivision plats.

How can municipalities be sure that sending districts are not developed in the future?

The State zoning enabling statutes require that land from which development rights are transferred are subject to a conservation easement limiting the future development of the property. The statutes also require that the assessed valuation of properties be adjusted to reflect the change in development potential for real property tax purposes. TDR is a sophisticated land use management tool that requires a high degree of municipal staff experience and resources to initiate and maintain. It should be considered in that light, and only after a municipality has undertaken a thorough study of its implications.

TDR Prior to the Enactment of the TDR Statutes in 1989

Two Court of Appeals decisions, one decided in 1976, the other in 1977, provided a legal basis for TDR and gave some indication as to how the courts view its use. The 1976 case of Fred. F. French Inv. Co., Inc. v. City of New York, 39 N.Y.2d 587, appeal dismissed, 429 U.S. 990 (1976) will be discussed at length in the section on “Variations of TDR Programs.”

In 1977, the New York City Landmark Preservation Law became the first TDR legislation upheld by the courts. In Penn Central Transportation Company v. City of New York, 42 NY2d 324 (1977), affd., 438 US 104 (1978), the designation of Grand Central Terminal as a protected landmark was at issue. The Court of Appeals sustained the designation of the terminal over claims that the owners of the structure were deprived of a reasonable economic return because of the development restrictions applicable to the landmark. The specific issue involving TDR concerned a provision of the city regulation which granted to the owner of the landmark the right to transfer the development rights above the terminal to other parcels of land in the vicinity. The Court held that the value of these rights may be considered in determining whether the owners were able to receive a reasonable return on their investment.

The Court recognized that development rights, once transferred to other land, might not be worth as much as on the original site:

“But, that, alone does not mean that the substitution of rights amounts to a deprivation of property without due process of law. Land use regulation often diminishes the value of the property to the landowner. Constitutional standards, however, are offended only when that diminution leaves the owner with no reasonable use of the property.

The situation with transferable development rights is analogous. If the substitute rights received provide reasonable compensation for a landowner forced to relinquish development rights on a landmark site, there has been no deprivation of due process.”

The US Supreme Court upheld the constitutionality of New York City=s regulations.

The Court noted that the regulations permitted continued productive use of the property as a railroad terminal and permitted use of the development rights in a less contingent fashion: “These substitute rights are valuable, and provide significant, perhaps ‘fair,’ compensation for the loss of rights above the Terminal itself.”

The Penn Central case is significant both for its recognition of the concept of transferable development rights and for its utilization of their value in determining whether land use restrictions are valid.

Statutory Authority for TDR

The TDR statutes - General City Law ' 20-f, Town Law ' 261-a and Village Law ' 7-701 - provide a detailed procedure for local governments to follow in creating and implementing TDR programs. These statutes define TDR as “the process by which development rights are transferred from one lot, parcel, or area of land in a sending district to another lot, parcel, or area of land in one or more receiving districts.” The statutes provide that the municipal governing body, in adopting or amending TDR procedures, must follow the procedure for adopting and amending the zoning regulations. (General City Law § 20-f(3); Town Law § 261-a(3); Village Law § 7-701(3)). Thus, all procedures required for adoption or amendment, as the case may be, of a zoning ordinance or local law, should be scrupulously followed.

The specific enabling authority for TDR is examined here in some detail. In general, the statutes define key terms used in TDR and contain specific provisions in addition to those found in locally-adopted TDR regulations.

1. Purposes

“The purpose of providing for transfer of development rights shall be to protect the natural, scenic or agricultural qualities of open lands, to enhance sites and areas of special character or special historical, cultural, aesthetic or economic interest or value, to protect lands at risk from sea level rise, storm surge or flooding and to enable and encourage flexibility of design and careful management of land in recognition of land as a basic and valuable natural resource.” (General City Law ' 20-f(2); Town Law ' 261-a(2); Village Law ' 7-701(2)).

This language is very broad. The planning objectives which TDR might be used to achieve can include preservation of open space, agricultural lands, or lands at risk due to sea-level rise, storm surge or flooding. In addition, these objectives might also call for protection of historic sites, districts or groupings of historic structures that are part of a community's cultural heritage.

2. “Development Rights”

The enabling statute defines the term “development rights” to mean the rights which are allocated to land and which may, under TDR, be transferred. A TDR program usually establishes some method of valuing the development rights that are to be transferred. Thus, for example, a local TDR provision may define development rights in units per acre, or in square feet of floor area, or in units of height of structures, among others. It may establish rights in terms of credits that may in turn be sold.

It is important for a local government to quantify an appropriate value for the development rights that are to be transferred in order to create a viable market for them in the districts that the local officials wish to be developed.

3. Designating “Sending Districts” and “Receiving Districts”

“Sending districts” are defined to mean one or more designated districts or areas of land in which development rights may be designated for use in one or more “receiving districts.” In short, they are the areas from which development rights may be transferred. Often, the zoning regulations applicable to the sending districts will be amended to reduce or eliminate further

development. The sending district must consist of “natural, scenic, recreational, agricultural, forest, or open land or sites of special historical, cultural, aesthetic or economic values sought to be protected or lands at risk from sea level rise, storm surge or flooding” (General City Law ' 20-f(2)(a); Town Law ' 261-a(2)(a); Village Law ' 7-701(2)(a)).

There is also guidance in the statute concerning the designation of “receiving districts.” These are defined to mean one or more designated districts or areas of land to which development rights generated from sending districts may be transferred, and in which increased development is permitted to occur by reason of the transfer.

The receiving districts are the areas to which development rights are transferred, and great care must be taken with their designation for two reasons. First, there should be a market for development rights in the receiving district (this is a basic premise of the whole TDR system). Second, the transfer will necessarily result in an increase in the density or intensity of development in the receiving area, which means that municipal services must be available to support it; consequently, there must be an awareness of the potential impact of such development. The statute recognizes this, providing that:

“Every receiving district . . . shall have been found by the [municipal governing body], after evaluating the effects of potential increased development which is possible under the transfer of development rights provisions, to contain adequate resources, environmental quality and public facilities including adequate transportation, water supply, waste disposal and fire protection, and that there will be no significant environmentally damaging consequences and such increased development is compatible with the development otherwise permitted by the [municipality] and by the federal, state and county agencies having jurisdiction to approve permissible development within the district.” (General City Law ' 20-f(2)(a); Town Law ' 261-a(2)(a); Village Law ' 7-701(2)(a)).

A great deal of careful forethought and planning is called for in designating sending and receiving districts. The sending and receiving districts must be designated and mapped with specificity (just like any other type of zoning district). They need not be coterminous with the underlying zoning district(s). They may be mapped as overlays, covering all or portions of existing zoning districts.

Finally, the statute requires the governing body, in considering the designation of sending and receiving districts, to evaluate the impact of TDR on the potential development of low or moderate income housing which would be lost in the sending districts and gained in receiving

districts. The governing body must find that there is “approximate equivalence” between lost opportunities for such housing in the sending district and gained opportunities in the receiving district, or that the municipality has taken or will take reasonable action to compensate for any negative impact on the availability or potential development of such housing caused by TDR (General City Law ' 20-f(2)(f); Town Law ' 261-a(2)(f); Village Law ' 7-701(2)(f)). Clearly, when land is designated as a sending district, the actual development that could otherwise occur on that land would be severely limited, and possibly even prohibited. On the other hand, development in the receiving district will likely occur at higher densities due to the development rights being transferred there. The result could be greater opportunities for affordable housing.

4. Land in the Sending District - Conservation Easements

Development rights assigned to land in the sending district may be transferred to land in the receiving district. When that happens, there is a need to have some indication, recorded in the chain of title, to notify prospective purchasers of the property that development rights have been transferred.

The TDR statute provides that when development rights have been transferred from property in the sending district, the grantor of those rights must execute a conservation easement. Environmental Conservation Law, Article 49, Title 3 provides for conservation easements. Conservation easements are interests in land which limit the use or development of the land. They are recorded in the chain of title so that subsequent purchasers will be aware of the development restriction (Environmental Conservation Law ' 49-0305(4)). Such easements are enforceable by the municipality under the terms of the TDR statute (General City Law ' 20-f(2)(c); Town Law ' 261-a(2)(c); Village Law ' 7-701(2)(c)) and may be enforceable by other entities if the instrument creating the particular conservation easement so provides (*see* Environmental Conservation Law ' 49-0305(3)(a) and (5)).

The municipality must adopt regulations establishing minimum uniform standards for instruments creating conservation easements within a sending district. The statute requires this to be done at the time the sending district is created. In addition, the program must provide for the reassessment, within one year, of the property tax value of any parcel whose development rights have been transferred.

5. Land in the Receiving District

Before development rights can be transferred to land in a receiving district, the local government must do some important planning work. The reason is that development in the receiving district

will occur at a greater density than otherwise would be allowed by the zoning, with the increase attributable to the development rights which were transferred from the sending districts.

First, it is essential that receiving districts are carefully and thoughtfully designated so that the land included in them can withstand the increased density. The statute also provides procedures to be used when specific development occurs in the receiving district.

Second, the TDR statutes require that a generic environmental impact statement be prepared prior to the designation of the receiving district. (General City Law ' 20-f(2)(b); Town Law ' 261-a(2)(b); Village Law ' 7-701(2)(b)). This means that a substantial review of the environmental impact of future proposed projects must occur at the time when the receiving districts are originally designated and general requirements that will apply to development projects using transferred development rights are established. These requirements usually cover such matters as the amount of density to be allowed using transferred development rights, setbacks, height limitations, and parking. When a specific project using TDR is later proposed, the scope of review of its environmental impact will be narrower, looking only at those concerns not addressed when the generic environmental impact statement was done.

6. Variations of TDR Programs

There are several approaches to the TDR idea. TDR can be a voluntary technique conducted between landowners in the sending and receiving district. TDR can also be made mandatory but only if there is a guaranteed market for the development credits in the receiving district or in a development rights bank.

In “voluntary” TDR programs, the owner of the land in the sending district may proceed with development on her land in accordance with allowed zoning or she may elect to transfer development rights to eligible land that she owns in the receiving district or sell the rights to an owner or developer there or even to a development rights bank (discussed below). The municipality does not, necessarily, have to restrict development or allowable density within the sending districts. A purely voluntary TDR program may leave existing zoning within the sending district in place but allow owners the option of detaching development rights from their land and selling or transferring them. Developers in the receiving district may want to buy additional rights for more dense development, and owners in sending districts may be willing to sell their rights and accept a conservation easement on their property.

In mandatory TDR schemes, the land in the sending district desired by the municipality to be kept “undeveloped” is prohibited from utilizing the development rights that it has been assigned

under the zoning. To legally sustain such a scheme, TDR programs must financially compensate landowners for not developing their land. There must be a market ready to purchase those development rights, such as a development rights bank.

In Fred. F. French Inv. Co., Inc. v. City of New York, 39 N.Y.2d 587, appeal dismissed, 429 U.S. 990 (1976), the New York Court of Appeals invalidated a mandatory TDR scheme designed to prevent development of two private parks in the Tudor City apartment complex. When the owners of Tudor City announced plans to develop their private parkland, the city responded by amending its Zoning Resolution to establish a special park district and rezoned the parcels in the residential complex to public parks, effectively eliminating their development potential.

The zoning amendment allowed the owners to transfer their development rights from the parks to a receiving zone on the East Side of Manhattan, but they did not attach to specific parcels. The owners instead challenged the rezoning. The Court of Appeals found for the owners and held the amendment violative of due process of law. Chief Judge Breitel, writing for a unanimous court, found that the city had

“despite the severance of above-surface development rights, by rezoning private parks exclusively as parks open to the public, deprived the owners of the reasonable income productive or other private use of their property. The attempted severance of the development rights with uncertain and contingent market value did not adequately preserve those rights.” 39 N.Y.2d at 591.

The Court was troubled that the city’s mandatory scheme left an uncertain market for the development rights in the receiving zone. It characterized these rights as “floating development rights, utterly unusable until they could be attached to some accommodating real property, available by happenstance of prior ownership, or by grant, purchase, or devise, and subject to contingent approvals of administrative agencies.” 39 N.Y.2d, at 597-598. Because of the uncertainty of future realization of these rights, the Court rejected the contention that the amendment did not deprive the property owner of all rights in his property.

A silver lining for TDR was embodied in the court’s opinion because it provided strong support for and outlined a workable structure for both voluntary and mandatory TDR programs. The Court recognized that land ownership and development rights are severable, development rights are a “transferable commodity” and can be transferred to other parcels in private ownership. 39 N.Y.2d at 597. For mandatory TDR schemes, a “development rights bank” can provide a ready market for development rights and eliminate uncertainty. 39 N.Y.2d at 598-99. In short, well-

structured TDR programs can be a proper exercise of the zoning power and thereby comport with the due process clause.

7. Development Rights Bank

To be effective, TDR depends upon the existence of a ready market for the development rights that are to be transferred. If no market exists in the receiving districts for the development rights, their transfer from the sending districts will not occur. To remedy this situation, the TDR enabling legislation added a very important feature to the TDR concept in New York: development rights banks.

The fully-funded development rights bank ensures that a ready market for development rights will exist at all times. It involves the establishment by the municipality of a “bank” or “account” that acquires and retains development rights when they are sought to be transferred by owners in the sending district. The municipality would purchase or acquire through donation or bequest the development rights and hold them until such time as demand develops for their use in the receiving district. At that time, the municipality may sell the development rights for use on land in the receiving district. Property owners in the receiving districts are eligible to apply for these development rights to increase the densities at which their lands may be developed, and accordingly, may purchase them from the development rights bank. Receipts from the sale must be deposited in a special municipal account “to be applied against expenditures necessitated by the municipal development rights program.” (General City Law ' 20-f (2)(e); Town Law ' 261-a (2)(e); Village Law ' 7-701(2)(e)).

In addition, there is a procedure to place on record the fact that development rights have been acquired. The statute provides that where development rights have been transferred, the municipality is to issue a “certificate of development right” to the transferee or recipient. The certificate must be in a form suitable for recording in the chain of title to particular property (General City Law § 20-f(2)(c); Town Law § 261-a(2)(c); Village Law § 7-701(2)(c)).

Examples of TDR in Use

Town of Eden, New York - The town of Eden, located in western New York State, is primarily an agricultural community. In 1977, before the enactment of the TDR statute, the town board adopted a TDR provision in its zoning code which featured three sending districts - Conservation (C), Agricultural (A) and Agricultural Preservation overlay - designed to preserve rural land uses from development. The land within these three zones represented almost half of the total acreage in the town and served as the sending districts for its TDR program. Property

owners could transfer the right to develop from land in these sending areas to land in three residential zones, Rural Residential (RR), Suburban Residential (SR) and Hamlet Residential (HR). Land in these three receiving districts constituted roughly half of the total area of the town.

To encourage the owners of property in these three sending zones to permanently preserve their land, Eden's TDR provisions allow transfers to occur at the rate of one TDR credit per three acres of land in the Conservation zone and one TDR per two acres of land in the Agricultural zone. The owners of land in the receiving zones can use TDR credits by applying for an Optional Density Permit. Along with the Optional Density Permit application, the applicant must provide a document which grants an open space easement on sending site land to the town. After the easement is recorded, the town planning board must issue an Optional Density Permit; the planning board has no discretion to deny the application if the open space easement is properly recorded. Despite the fact that the use of TDR is not subject to discretionary approval, the Eden TDR program has been used infrequently. According to a former town supervisor, the lack of development pressure in Eden reduces interest in TDR.

Town of Riverhead - Municipalities in Suffolk County, New York have been pioneers in adopting and using TDR programs. Among the most active has been the town of the Riverhead's TDR program, which focuses on the transfer of development rights of farmland properties in the town's Agricultural Protection Zone (APZ) to 10 designated residential and commercial zoning districts. Riverhead's TDR program is voluntary and development rights are removed from a farmland property and immediately transferred to a designated receiving site. Riverhead's designated sending area, the APZ, encompasses approximately 12,500 acres. As of 2014, 121 development rights credits were transferred from the town of Riverhead's designated sending area, effectively protecting 121 acres of farmland from development.

Purchase of Development Rights (PDR)

The use of public money to purchase development rights to private land has become increasingly popular as a way to preserve agricultural land and open space. The General Municipal Law authorizes municipalities to use public funds to acquire interests or property rights for the preservation of open space or agricultural land (General Municipal Law ' 247). The Agriculture and Markets Law provides for a State grant program to help municipalities with approved farmland protection programs to purchase development rights on farmland (Agriculture and Markets Law ' 325). Increasing numbers of municipalities have created such protection programs to purchase the development rights of lands used in agricultural production or open space from property owners who voluntarily choose to offer them for sale. The fund

from which these purchases are made is locally financed by bonds in an amount authorized by the voters in referenda at regular elections.

Purchase of development rights (PDR) involves acquiring the development rights associated with a particular parcel of land. The purchase price is usually determined by appraisal. The price is often the difference between the agricultural or open space value and the development value. For example, if the value of farmland is \$8,000 per acre and a developer would pay \$20,000 to buy the property for development, the value of the development right would be \$12,000 per acre. After a governmental agency or land trust acquires the development rights to a particular property, the development rights are then “retired” through deed restriction.

Town of Southold: Beginning in 1983, the voters of the town of Southold in Suffolk County approved bond issues to finance the purchase of development rights to farmland, as well as open space. The value of the early bonds was \$1.75 million. Every few years thereafter, the voters of Southold approved similar bond resolutions. Southold financed its acquisitions of development rights through two mechanisms: (1) bond issues and (2) the Community Preservation Fund, authorized by State legislation that involves imposing a 2% transfer tax on real property conveyances. From 1983 to 2018, Southold Town has protected a total of 3,351 acres through purchases of development rights.

State funding is also available for purchasing development rights to farmland. Through programs of the NY Department of Agriculture and Markets, the State offers grants to fund county and municipal purchase of development rights programs on agricultural lands. According to Department’s website. “[t]he Farmland Protection Implementation Grants (FPIG) Program provides financial assistance to counties, municipalities, soil and water conservation districts, and land trusts to enable them to implement farmland protection activities consistent with local agricultural and farmland protection plans, including those created through the Farmland Protection Planning Grants Program. *The most frequently funded activity is the purchase of development rights (PDR) on individual farms.*”

Conclusion

Unbridled development can destroy irreplaceable resources in our man-made and natural environments. TDR is one technique which can prevent that from happening. There are four primary benefits of TDR: it permits preservation of lands where further development is undesirable; it does so without loss of new development to the community; it does so without depriving landowners of a reasonable economic return on their property; and importantly, it involves minimal expense to the municipality.

A TDR program demands a greater degree of administrative attention than most other zoning tools. TDR must be administered so that the status of development rights on all parcels in sending and receiving districts is known at all times. If a development rights bank is used, the status of rights in the bank and the proceeds from their sale must be kept track of. Since the assessed value of real property in sending and receiving districts must reflect any transfer, the assessor must keep track of transactions.

As a zoning technique, TDR must be based on sound planning. Planning for the implementation of TDR programs is vital if disruption of the real estate market is to be avoided and if public acceptance is to be achieved. Properly done, these ends can be achieved.

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TDR-Less TDR Revisited:

Transfer of Development Rights Innovations and Gunnison County's Residential Density Transfer Program

By Mike Pelletier, Rick Pruetz, FAICP, and Christopher Duerksen

Transfer of development rights, or TDR, has preserved more than 400,000 acres of land and is now used in over 200 cities, towns, and counties throughout the country. Despite TDR's ability to save land at minimal public expense, many communities remain reluctant to adopt their own TDR programs.

Perhaps these communities assume they must duplicate the components found in traditional TDR programs, which require potentially contentious decisions about the number of transferable development rights or TDRs to be granted when sending-area landowners record approved easements and the amount of additional density that receiving-area developers will be allowed for each TDR they buy. (The sidebar "Traditional TDR 101" below highlights these and other complexities while providing a refresher course on TDR basics.) But in fact, several communities have been experimenting with new varieties of TDR for years in an effort to create programs that are right for local circumstances.

We begin with a brief review of these innovations before focusing on the Residential Density Transfer program recently adopted by Gunnison County, Colorado, which combines many previously developed concepts with a new mechanism for creating parity between receiving-area developments. We are not claiming that any or all of these techniques are necessarily appropriate for every community. But in many places, the use of some of these features will facilitate the adoption of a successful preservation tool that relies on development proceeds rather than tax dollars.

Evolution of TDR Innovations

Traditional TDR Programs

In traditional programs, the TDR ordinance establishes the number of *transferable development rights*, or TDRs, that a landowner will be issued when an approved easement is recorded on a property in the *sending area*, the area where the community would like less or no development. (For a more complete review of TDR jargon, please see "Traditional TDR 101" below.)

Many communities prefer this straightforward approach, particularly when the sending-area parcels are likely to have relatively similar development value. But in some cities and counties, the sending-area landowners express concerns about the fairness of a single TDR-allocation formula. This concern is most likely to appear in programs with large sending areas, such as those that operate county-wide in the West.

Traditional TDR 101

Transfer of development rights is a process that allows extra development in places that a community wants to grow, called receiving areas, in return for preservation of places that a community wants to save, called sending areas. *Receiving areas* are appropriate for growth because they are typically close to jobs, shopping, schools, infrastructure, public services, and other urban amenities. *Sending areas* could include environmental areas, historic landmarks, farmland, open space, and any other important resources that deserve permanent preservation. *Transferable development rights*, or TDRs, are units of measurement created by traditional TDR ordinances. Traditional TDR ordinances allow developers a specified *density bonus* for each TDR purchased, such as one extra residential dwelling unit above the baseline density limit for each TDR purchased.

In successful TDR programs, developers can exceed baseline density only by buying TDRs. Traditional TDR ordinances also stipulate the TDR *allocation rate* or the number of TDRs per acre that a sending-site owner can sell per acre of land. The sending-area owner is able to sell these

TDRs only after recording a conservation easement that restricts future development and specifies the permitted land uses.

To make the program work, the amount that a developer pays for a TDR must be less than the extra profit resulting from the density bonus allowed by that TDR. Consequently, planners typically enlist land-value experts, such as appraisers, to make projections about the extra profit that is likely to be generated from the density bonus allowed by one TDR. They then assume that developers will be willing to pay some fraction of that amount for each TDR. In the sending areas, enough TDRs must be allocated per acre so that the landowners feel adequately compensated for their forgone development potential.

As a hypothetical example, a traditional TDR program might allow a density bonus of one additional dwelling unit per TDR purchased by receiving-site developers. On average, the ability to build one extra dwelling unit might increase receiving-site value by \$20,000. The planner might target TDRs to sell for \$10,000 each, leaving \$10,000 in extra profit per TDR to receiving-site developers who buy TDRs. The land-value expert may also estimate that sending-area landowners want \$2,000 per acre on average to place their land under permanent easement. If sending-area landowners are allowed to sell one TDR per five acres and developers are willing to buy TDRs at \$10,000 each, transactions should occur.

However, the value added by density bonuses can differ because receiving sites and receiving-site projects are not identical. Similarly, when sending areas are large and diverse, the per-acre development value may vary considerably. Traditional TDR ordinances can attempt to reflect some of those differences. For example, they can specify different density bonuses for different types of receiving areas and receiving-site developments. Likewise, they can create various sending-area categories and allocate TDRs differently to land in each category to reflect development-value differences.

Most communities want to keep their TDR ordinances simple in order to promote public understanding and acceptance. However, as this article shows, there may be some communities in which the need for simplicity is outweighed by concerns that traditional TDR can provide significantly more profit to some developers and landowners than others.

Variations on Traditional TDR

These concerns can sometimes be addressed by creating different TDR allocation formulas for lands with distinctly different development potentials. For example, a county could apply one allocation ratio to remote areas and a higher ratio to lands that are near urbanizing areas. This higher ratio would be particularly appropriate if the community wants the TDR option to be similarly attractive to all sending-area property owners despite differences in development potential. However, in the process of trying to level the playing field, communities must be careful not to create so many permutations that the proposed program is perceived as overly complicated.

Of course, alternative allocation formulas cannot reflect all the factors that account for differences in sending-area development, including location, view, natural resources, access to infrastructure, amenities, and development constraints such as steep slopes, soils, floodplains, and wetlands. The difficulty increases as the size and diversity of the sending area increases. Some communities deal with this issue by allowing developers to comply with cash instead of TDRs and using that revenue to preserve land through site-specific appraisals and negotiations with individual property owners. More on this later.

The county-wide TDR program in San Luis Obispo County, California, takes a slightly different tack. San Luis Obispo County covers 3,300 square miles and incorporates a vast variety of land from coastal areas to deserts and from isolated ranches to vineyard areas that are popular with tourists and retirees. In this program, an appraisal of easement value is conducted for each sending site offered by its owner. One TDR is issued for each \$20,000 of appraised easement value. The price that developers ultimately pay for these TDRs is not necessarily \$20,000 each but rather is based on negotiations between the buyer and the sending-area landowner. The key aspect of this program is that the landowners got the tailored TDR allocation that was important to them: The number of TDRs assigned to them reflects the value of the easement and therefore incorporates the entire range of factors that create sending-site development value.



San Luis Obispo County, California, grants TDRs based on appraisals of sending-site easements.
Photo Rick Pruetz.

Just as sending-area landowners can be concerned about comparable treatment, receiving-area developers in some communities are focused on making sure that the amount they spend to receive bonus development is a reasonable portion of the additional value they gain from that bonus development. In most communities, this concern can be addressed with TDR requirements that correspond with the nature of the bonus development. For example, it is common for one TDR to allow one bonus single-family residential dwelling unit or two bonus multiple-family dwelling units. On occasion, different allowance ratios might be used for each different receiving zoning district. But again, programs should generally avoid a level of complexity that could jeopardize program adoption.

Density Transfer Charge Programs

A growing number of communities address both sending- and receiving-site concerns through an innovation referred to here as *density transfer charges* (DTC). Berthoud, Colorado, is credited with popularizing DTC with its Density Transfer Fee option. In 1999, Berthoud wanted to adopt a preservation tool in advance of an approaching growth wave. A traditional TDR program would have taken too long and would have been very difficult to adopt.

So Berthoud simplified the basic TDR mechanism. It did not designate sending areas or adopt a formula for the allocation of TDRs. In fact, the program does not use or need TDRs. Receiving areas are created when the Town of Berthoud approves an upzoning that has the effect of allowing additional dwelling units. For each additional dwelling unit in excess of the maximum allowed under the prior zoning, a developer can choose between two compliance methods: preserve one acre of significant resource land (as identified in the comprehensive plan) or pay a density-transfer fee of \$3,000 per bonus single-family residence or \$1,500 per bonus multiple-family dwelling unit. The ordinance has many appealing features:

- The compliance mechanism relieves Berthoud of having to calculate, issue, track, and retire actual TDRs.
- Adoption was facilitated by avoiding the potentially controversial process of designating sending and receiving areas.
- It was not necessary to craft TDR allocation ratios for sending areas and create bonus density allowances per TDR because the program does not use TDRs as currency.
- Developers know that they will be able to comply with program requirements at a known price without having to negotiate with landowners (unless they want to).
- Berthoud can leverage the revenue from this program and target high-priority parcels for acquisition.

- Compliance with the density transfer fee requirement is not required until a building permit is requested.

Of the 20 DTC programs known to us, 15 are like Berthoud's in that they give developers a choice of compliance by preserving land, buying TDRs, or paying cash in lieu of TDR. As an advantage, a cash-in-lieu option gives developers maximum flexibility. Those developers who have the personnel and time to negotiate directly with landowners may find it cheaper to buy land, easements, or TDRs rather than make the required cash-in-lieu payment.

Conversely, developers with smaller projects, fewer staff, and fewer resources may find that it's easier and ultimately cheaper to simply sign a check for the cash-in-lieu amount. For example, during a two-year period in Charlotte County, Florida, developers of three projects needing only one or two bonus units via TDR used the cash-in-lieu option while six developers wanting an average of 262 bonus units apiece all chose to transfer actual TDRs rather than make cash-in-lieu payments.

Alternatively, in five of the 20 DTC programs that we know of (including the Gunnison County program highlighted below), developers can achieve bonus development only by making a cash payment. The community benefits from this approach because it maximizes the revenue available for matching grant funds and targeting the highest preservation priorities.

However, DTC programs do not necessarily address the concerns of developers who want the cost of TDR compliance to be proportionate to the amount of additional profit that these bonus units generate. Of the 16 DTC communities that document how their cash payments are calculated, six offer a uniform amount regardless of the nature of the receiving-site development. For example, Warwick Township in Orange County, New York, sets its cash-in-lieu option at a flat rate of \$50,000 per dwelling unit.



In Warwick, New York, developers have the TDR compliance option of a \$50,000 cash-in-lieu payment.
Photo Rick Pruetz



In Clifton Park, New York, a \$20,000 cash-in-lieu payment allows one bonus multiple family dwelling or 1,000 square feet of bonus floor area.
Photo Rick Pruetz

Three programs do make distinctions for major differences in receiving-site development. As mentioned above, in Berthoud, Colorado, the cash-in-lieu option is \$3,000 per bonus single-family residence and \$1,500 per bonus multiple-family residence. Similarly, in Clifton Park, New York, a \$20,000 payment allows one bonus multiple-family residential dwelling unit or 1,000 square feet of bonus office floor area while a \$30,000 payment allows one bonus single-family residence or

1,000 square feet of bonus retail floor area.

In four other programs, the payment amount is intended to approximate the cost of preserving the amount of sending-site land needed to produce one TDR. For example, in Charlotte County, Florida, the Real Estate Services Department establishes the in-lieu payment amount based on recent sales of property that would qualify as a sending site for the subject receiving site. Hatfield Township, Massachusetts, bases its charge on the average assessed land-value difference of all improved land versus all unimproved land in the entire township.



In Hatfield, Massachusetts, the density transfer charge is based on average assessed land values throughout the township.

Photo Rick Pruetz

Finally, two programs establish the DTC as a stated percentage in the land-value increase resulting from approval of increased density. In Pierce County, Washington, the cash-in-lieu option is one-half of the increase in receiving-site land value caused by increased development potential as determined by an appraiser. As further detailed below, Gunnison County allows additional development potential only through its Residential Density Transfer requirement, which is set at 10 percent of the land-value increase resulting from subdivision approval as determined by the county assessor.

Building a Better DTC Program

In all but the last two DTC programs mentioned, the required payments do not address the possibility of variable land-value increases resulting from the approval of additional development potential. Because DTC payments must not consume an unreasonable amount of profit amount, setting a uniform DTC payment necessitates a low amount so as not to unduly burden smaller, more modest developments. This can be problematic.

For example, in such a program a subdivision of million-dollar estates would be subject to the same low DTC payment requirement as a starter-home development of bungalows. Developers of those moderately priced houses might get understandably upset that this payment amount represents a larger portion of the profit margin on their smaller units than the portion paid by the developers of the higher-priced mansions. In addition, by establishing a low DTC payment amount, the community is foregoing revenue needed for the preservation of the sending sites and consequently hobbling its ability to achieve all of its land-use goals.

To date, most communities have imposed uniform requirements, and it is likely that many communities will continue to accept this approach. But we also predict that an increasing number of communities will turn to a value-based DTC requirement for the following reasons:

- Communities will want to maximize their resources for preservation as the need for

protection rises, particularly if funding from alternative sources dwindles.

- Communities will want to create programs that adapt easily to changes in the real estate market.
- Developers in some communities will object to the inequities of a uniform requirement regardless of the style of housing being built.

That is one of the reasons why we joined with Tom Maynard to write the August 2002 *PAS Memo*, "TDR-Less TDR: A Transfer of Development Rights Approach That 'Custom Fits' Transactions." In that eight-year-old article, we pointed out that traditional TDR requires planners to make projections about the average property value changes that are expected to occur in the future when development potential is shifted from sending sites to receiving sites. We pointed out that some stakeholders might question the accuracy of these projections or voice concerns about the way in which this unit of measurement assumes similar profitability when actual receiving-site projects feature different types and scales of development.

The article then sketched an alternative approach in which developers would receive bonus development in receiving areas not by buying a specified number of TDRs or making a uniform DTC payment but by buying easements on sending-area land equal in value to a predetermined percentage of the property value increase resulting from the additional development approved through the TDR process.

The 2002 article pointed out that this approach, which we will continue to call TDR-less TDR, was not necessarily superior to other TDR methods or that it would always facilitate ordinance adoption. But we did predict that TDR-less TDR could be the solution when concerns about variable profitability threaten to scuttle adoption of a traditional TDR program.

The approach presented in the 2002 article was conceptual. But in 2007, Pierce County, Washington, adopted a TDR program with a similar cash-in-lieu option that gives developers the alternative of paying half of the land-value increment estimated for the receiving site as estimated by an appraiser.

In 2009, Gunnison County, Colorado, adopted a program called Residential Density Transfer, or RDT, that fully incorporates the land-value concept described in the 2002 article. The following sections of this article describe the Gunnison County program and examine the advantages and disadvantages of this approach.

Residential Density Transfer: Gunnison County, Colorado

Receiving-Area Requirements and Procedures

In the TDR-less TDR approach we described in 2002, developers wanting to exceed baseline density in a receiving-area project would be required to submit two appraisals of the site's land value: one assuming development at base density, and another assuming development with the bonus density made available through TDR. The increase in the value between the two estimates would be attributed to the TDR density bonus and the developer would be required to pay a predetermined percentage of that increase. Eight years ago, we observed that communities might be somewhat conservative in determining this percentage in order to preserve a reasonable profit motive for developers considering the TDR option and as a means of maintaining competitiveness with communities lacking such a requirement.

In Gunnison County's RDT program, a qualifying receiving-site project can include any residential subdivision that creates five or more residential lots or residences. Developers who choose to participate in the RDT program can reduce the on-site open space requirement from 30 to 15 percent of the total project area. This reduction in the on-site open space requirement provides the incentive to use the RDT option since it expands the usable area of the site by 15 percent, which can increase the number of lots allowable. The Gunnison County assessor provides land values of the project site before and after approval of the proposed subdivision using its standard mass appraisal method. The required RDT payment is 10 percent of this increase in land value.



In Gunnison County, Colorado, the Residential Density Transfer fee is 10 percent of the increase in receiving-site land value.

Photo Rick Pruetz

In Gunnison County, the open space reduction amount and percent of land value change amount were determined after reviewing many scenarios. A model allowing decision makers to see how different values would likely have an impact on existing subdivisions provided strong justification for choosing the appropriate values. The analysis determined that a 10 percent RDT payment amount would maximize revenue for preservation while still making the RDT option much more profitable than conventional development. In other words, a 15 percent increase in the usable area of these subdivisions provided a value increase from the sale of additional lots that typically exceeded the additional expense of the RDT payment.

Not all development projects can benefit from the open space reduction because many properties have unbuildable area that covers more than 30 percent of the property. But for those properties that can get extra lot(s) from the open space reduction, the value generated will usually greatly exceed the RDT fee. This difference provides incentive for developers to participate. See the example below.

RDT Program Example

A 20-acre property with a mass appraisal value of \$213,000 prior to subdivision without the RDT program gets subdivided into 11 one-acre lots with a market value of roughly \$130,000 (\$86,000 mass appraisal value) each, plus just over seven acres of open space and right-of-way.

If the developer utilizes the RDT program, the subdivision would receive an additional lot and have one acre less open space. Financially, the developer gets another \$130,000 for the additional lot and pays the RDT fee of \$81,900 [$10\% \times ((12 \times \$86,000) - \$213,000)$] for net gain to the developer of \$48,100. Local land trusts use the \$81,900 and leverage it against other funding sources (historically at an impressive 1:12 ratio). These funds, plus a possible land owner donation, typically conserve hundreds of agricultural acres, which completes the transfer of residential density.

The calculation excludes mobile homes and lots used exclusively for essential housing (Gunnison County's term for workforce housing). In a mixed use receiving-site project, this calculation is performed only for the residential portion of the development. The receiving-site developer

pledges compliance with the RDT-payment requirement by an agreement with the county executed prior to the recording of the final plat. The total payment requirement is distributed proportionately to each lot and payment is due upon the sale of each lot. However, the developer has the option of paying some or all of the required RDT payment upon final plat recordation. All payments made prior to final plat recordation qualify for a 10 percent early payment discount.

Sending Area Logistics

According to the 2002 *PAS Memo* article, developers wanting bonus density would apply the dollar amount of the requirement (the proportion of the receiving-area land-value increment per the method described above) to the acquisition of easements in the sending area.

In contrast, Gunnison County's RDT program requires the developer to simply pay in cash the requirement associated with bonus density as described above. The county must use the revenues from RDT payments exclusively for purchasing land and conservation easements that permanently preserve parcels with significance as open space, agriculture, habitat, wetlands, or watershed protection. This completes the transfer of residential density in the county's RDT program.

The county board of commissioners decides where this money will be spent. As with Gunnison County's long-standing Land Preservation Program, it is anticipated that local private nonprofit land trusts will submit proposals to fund easements using these revenues. Proposals most likely to be awarded funds by the county commissioners will probably contain funding from other sources such as Great Outdoors Colorado (GOCO), a state lottery dedicated partly to open space preservation.

Advantages and Disadvantages

What are the pros and cons of Gunnison County's RDT program?

Ease of Adoption

As discussed above, the stakeholders in some communities may question whether or not the TDR allocation in a proposed traditional TDR ordinance reflects accurate projections of receiving-site profits and sending-site development value. And even if these projections are correct on average, some stakeholders may object to the fact that the one-size-fits-all TDR does not account for inevitable differences. In these communities, the TDR-less TDR option may be easier to adopt than a traditional TDR ordinance.

For example, Gunnison County did not have to estimate the average easement value for all potential sending-area land or evaluate whether different TDR-allocation ratios should be applied to various portions of the sending area to reflect meaningful differences in development value. That's because Gunnison County takes the revenues received when developers use the RDT option and uses it to fund easements offered by individual landowners at prices that are supported by site-specific appraisals of the easements in question.

Alternatively, some communities may find it difficult to agree on the percentage of value increase that developers should pay when they exceed baseline density. The 10 percent requirement adopted by Gunnison County might seem excessive in some communities and deficient in others. Nevertheless, communities may find it easier to make this one policy decision than the multiple decisions needed for a traditional TDR program, which can include sending-area TDR allocations, sending-area easement requirements, and the amount of receiving-area bonus development allowed for each TDR.

In addition to a streamlined compliance requirement, the Gunnison County program facilitates adoption by not designating sending and receiving areas. The designation of receiving areas can be contentious even when receiving areas have already been identified in an adopted comprehensive plan and even if the density allowed via TDR is comparable to that of adjacent neighborhoods. Similarly, the designation of sending areas can delay or even derail TDR program adoption based on which properties are included or excluded. Gunnison County is not unique in refraining from sending and receiving area designation. But we mention the avoidance of sending/receiving area designations here because it can greatly facilitate adoption of a TDR program.

A possible disadvantage to this approach is that it relies on other mechanisms, such as master plans and development codes, to determine where the extra density is granted (receiving sites) or conservation easements (sending areas) are desirable. Bear in mind that these decisions, like all land use decisions, occur within the overall framework of a community's general plan. For example, when the Gunnison County commissioners apply the RDT revenues to the preservation of lands with "value in open space, agriculture, wildlife habitat, wetlands or watershed protection," they will rely heavily on the county's adopted policies and goals. It is our belief, as detailed below, that this approach will achieve improved preservation results. Specifically, the board of county commissioners will decide how these revenues are spent, thereby increasing the likelihood of protecting key open space parcels such as gaps in wildlife corridors or ranchlands contiguous to previously protected open space.

Likewise, the approval of receiving sites occurs within the overall framework of applicable plans, policies, and regulations. This framework guides the location of all development regardless of whether or not RDT is proposed. We recognize that this approach misses an opportunity to establish where RDT versus non-RDT development should occur. But Gunnison County took the position that it was important to adopt a workable preservation tool as soon as possible even though the absence of designated receiving areas may postpone potential controversy from the program approval phase to the project approval phase.

Specifically, residents will not know whether RDT is proposed for a nearby parcel until a developer submits an application. This may increase neighborhood opposition to the proposed project although it may be difficult to determine whether the opposition is focused on the slightly increased development allowed via RDT or the proposed project in general. In other words, by not designating receiving sites in advance, a community may be facilitating adoption of the TDR program but perhaps also increasing the likelihood of opposition when individual projects are proposed that use the TDR option. Each community should consider the relative advantages and disadvantages of receiving area pre-designation when preparing a TDR program.

As a final note, communities may and often do designate sending and receiving sites in the ordinance that creates their DTC programs. In other words, the absence of pre-designated sending and receiving sites is not a defining characteristic of a DTC program. If communities are able to pre-designate sending and receiving sites, we would encourage them to do so because it promotes clarity for developers, residents and the general public. However, in Gunnison County, any attempt to pre-designate sending and receiving sites would have brought the adoption of the RDT mechanism to a halt.

Administrative Complexity

A TDR-less TDR program is easier to administer because TDR-less TDR does not use TDRs as a unit of currency. Consequently, the TDR administrator does not have to issue and track TDRs to ensure that they are properly documented and used only once. When developers propose to exceed baseline density in Gunnison County's RDT program, they simply write a check; consequently, the TDR administrator does not have to confirm the validity of TDRs, as necessary in a traditional program.

On the other hand, TDR-less TDR programs require site-specific evaluations of value changes. At receiving sites, a real estate professional must estimate the increase in value resulting from the additional development potential. The 2002 *PAS Memo* article assumed that this estimate would be performed by an appraiser under contract to the community and noted that San Luis Obispo County, California, uses outside appraisers to determine site-specific easement value, which can be a time-consuming and expensive process. However, not all communities find the use of appraisers burdensome. In fact, Pierce County, Washington, has adopted this approach.

Gunnison County avoids this potential burden by using its own county assessor's office to perform this function with value estimates created by the assessor's office using the methods that are also employed to determine property taxes. The assessor's value estimates have a legal stature and a mechanism for dealing with challenges. Assessor values often seem conservative in relation to appraisal values, which helps remove that part of the equation from controversy. The assessor value, in essence, provides a baseline or level playing field. It then becomes easy to set the amount developers actually pay by choosing an appropriate percentage applied to the value change.

Under the TDR-less TDR approach, appraisers will also be called upon to determine the value of the easement being purchased with the TDR program's revenue. If the community retains this function, it would add to administration. However, Gunnison County plans to fund preservation proposals submitted by land trusts that have already obtained an appraisal and negotiated a price with the sending-area landowner.

Incentives

Traditional TDR programs have the potential to offer extra profit to some participants. That's because these programs are built around the TDR unit of measurement, which reflects an average profit per TDR purchase and an average development value per acre of preserved sending area. The use of these averages may tend to make TDR more attractive to developers who are able to achieve greater-than-average profit per TDR purchased and to the owners of sending-area land with lower-than-average development value. However, as a disadvantage, the traditional approach can create a much higher profit margin than is needed to generate participation, which can result in less conservation than would otherwise be possible.

TDR-less TDR is based on site-specific changes in value. Consequently, it does not provide the extraordinary profit that some communities find acceptable in order to generate participation. However, as discussed throughout this article, TDR-less TDR may be preferred when equitable treatment of landowners and developers is likely to be an issue. Logically, concerns should increase with the variability of value changes. Gunnison County, for example, encompasses 3,259 square miles ranging from land surrounding the world-class Crested Butte ski resort to vast stretches of roadless rangeland. The RDT program allowed the county to craft a preservation tool

that puts developers on a level playing field and gives all owners of significant open space property an equal opportunity to receive reasonable compensation for preserving their land.

Facilitation

The Gunnison County program makes it relatively easy for landowners and developers to use the RDT option. Landowners do not need to conform to predetermined easement requirements, as in many traditional TDR programs. Instead, these property owners can create funding proposals that maximize certain tax advantages and fashion easements customized to their properties.

Likewise, developers in Gunnison County do not have to negotiate with landowners and buy actual TDRs at prices that may be hard to estimate when a project is in the early planning stages. Rather, they can make a cash payment based on a known percentage of the increased value resulting from project approval. And, unlike the program in Pierce County, Washington, developers in Gunnison do not have to hire an appraiser because the RDT payment amount is calculated by the county assessor. Finally, developers in Gunnison County have the option of delaying payment of the RDT until the sale of each individual lot. This feature motivates greater use of the RDT option because developers do not have to carry the RDT payment cost during the months or years that might be needed to sell each lot.

Conservation Effectiveness

In traditional TDR programs, the government establishes the boundaries of a sending area but property owners and developers decide which lands within that larger sending-area boundary will actually be preserved. In Gunnison County, landowners submit land-preservation proposals but the county ultimately decides which proposals will be funded by RDT revenues. This allows the county to take multiple objectives into consideration including the significance of the resources at the proposed site, the potential threat to the property given its location, and whether or not the cost is reasonable given the proposed combination of funding sources. In other words, the Gunnison approach allows the county to carefully target the use of RDT revenues.



Gunnison County, Colorado, uses RDT revenues to fund preservation proposals submitted by ranchland owners.
Photo Rick Pruetz

In addition, the Gunnison approach encourages RDT funds to be leveraged against other funding sources including landowner donations. In the past, land trusts working in Gunnison County have been able to attract \$12 for every \$1 they received from the county. It was important to Gunnison County to have a program that had the potential to continue this impressive trend.

Legal Considerations

Traditional TDR programs have been operating in the U.S. for more than 40 years and have withstood numerous legal challenges. The U.S. Supreme Court noted the efficacy of TDR as a mitigation tool in its 1978 decision in *Penn Central Transportation Co. v. New York City*. When establishing a TDR-less TDR program, a community should first determine whether it has authority from the state to adopt a TDR program. This determination can be relatively easy in states that have enabling legislation expressly authorizing local jurisdictions to use TDR. We have found TDR enabling legislation in 23 states.

States with TDR Enabling Legislation

We have identified statutes in 23 states that authorize some or all jurisdictions to use TDR to implement a broad range of land use goals: Arizona, Connecticut, Delaware, Florida, Georgia, Idaho, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, Tennessee, Vermont, Virginia, Washington State, and West Virginia.

TDR is authorized for limited purposes in three additional states: Illinois, North Carolina, and South Dakota.

In states without TDR-enabling legislation, local governments can nevertheless establish TDR programs using their authority to regulate land use and density unless the locality is in a Dillon Rule state, where all aspects of local regulation must be specifically authorized by the state. It is beyond the scope of this article to address this question on a state-by-state basis. The attorney for each jurisdiction should decide whether that jurisdiction is authorized to use TDR. The State of Colorado does not have TDR-enabling legislation, and we know of 12 TDR programs in operation there. These TDR programs are based on each locality's authority to regulate land use and density.

Assuming that first hurdle is cleared, the locality should then determine whether the mechanism under development is essentially a TDR program even though, as in the case of Gunnison County, it does not use TDRs as its currency. Gunnison County's RDT program is not an impact fee as regulated under the Colorado Revised Statutes (29-20-104.5) and is therefore not subject to the requirements of that section. Gunnison County took the position that the proposed RDT program was well within the land use and police powers impliedly granted to the county by the state. Specifically, even though it uses no TDRs, the RDT program implements the county's land use goals by encouraging and facilitating the preservation of open space funded by monetary payments made by developers who voluntarily choose to use the RDT option in order to achieve greater development opportunity in places that are better suited for it.

Are Nontraditional TDR Approaches Right for Your Community?

Because every community is different, the local context will help determine whether a traditional or a nontraditional TDR approach may be most appropriate in developing a successful program. The following sections provide some guidance to help planners determine what type of TDR approach might be best suited for their community.

Characteristics of Sending Area

While nontraditional TDR programs can work well in communities with various sending area characteristics, their flexibility is particularly helpful in communities with large, diverse sending areas with significant land value variations. For example, Gunnison County compensates sending-site owners with dollars rather than TDRs. This method would be particularly appropriate in communities where stakeholders want all sending-area landowners to be equally motivated to participate.

Traditional, uniform TDR allocation formulas may be appropriate in communities with smaller, homogeneous sending areas, or where stakeholders are willing to accept comparable reimbursement for TDRs that actually represent moderate variations in foregone land value as long as that formula is attractive to enough landowners to make the program successful. In some cases, acceptable allocation can be achieved through a limited number of alternative ratios that grant additional TDRs to land with more significant resources or areas with higher development potential due to location, zoning, or other factors.

Community Preservation Goals

A nontraditional TDR approach may be appropriate if your community wants to target preservation efforts rather than allow property owners and developers to choose which sending-area properties will be preserved. In Gunnison County, for example, the county directs its RDT funds to conservation proposals that best meet a wide range of objectives, including the achievement of specific preservation priorities such as preserving land within an agricultural district or wildlife

corridor. All communities, including Gunnison County, use plans, policies, and regulations to discourage if not prohibit the development of significant lands until the community is able to permanently preserve these lands using various tools including forms of TDR.

Conversely, traditional TDR may be adequate if your community would be satisfied with dispersed preservation anywhere within a designated sending area. Bear in mind that traditional TDR programs can minimize dispersed preservation by reducing the size of the sending area. However, communities sometimes find it difficult to limit sending area size because the uniformity of a larger land area makes it difficult to make distinctions and because landowners sometimes insist on being included in the sending area. In addition, sending areas should be large enough to encompass a sufficient number of potential TDR suppliers to create a healthy TDR market.

Characteristics of Receiving Areas

Traditional TDR approaches can be challenged by diverse receiving areas that offer a wide variety of development styles and prices. In these communities, developers may object to buying the same number of TDRs for bonuses in modest starter-home developments as they would for mansions. A nontraditional receiving-area approach like Gunnison County's — which imposes a uniform requirement of 10 percent of the increase in land value resulting from subdivision approval — levels the playing field for all developers and assures the county of reasonable preservation payments from all participating developments.

However, the traditional TDR approach can work well in communities with smaller, homogeneous receiving areas. In these programs, receiving-area developments may be sufficiently uniform that developers will accept a single allowance ratio, like one bonus dwelling unit per TDR. Sometimes an equitable solution can be achieved by alternative allowance ratios, such as one TDR for one bonus single-family residential unit or two bonus multiple-family residential units.

Community Attention Span

Some communities are able to keep working on preservation issues indefinitely until they ultimately adopt an effective tool. For example, Chesterfield Township, Burlington County, New Jersey, continued refining its TDR program year after year until it finally had a program that is now regarded as a national model and the winner of many awards, including APA's 2004 National Planning Award for Outstanding Planning for a Program.



Chesterfield Township, New Jersey worked with developers, landowners, and the public for years to adopt what became an award-winning TDR program.
Photo Rick Pruetz

This level of commitment can be necessary in developing a traditional TDR program because of the numerous stakeholder groups and the multiple decisions to be made in advance of ordinance

adoption. These decisions include designating sending and receiving areas, determining the contents of an acceptable easement, and agreeing on TDR allocation ratios in sending areas and TDR allowance ratios in receiving areas, as well as dozens of other administrative and processing options. Planners should honestly assess their communities because TDR programs can easily be sidetracked during a lengthy adoption process. If commitment exists, traditional TDR programs can be adopted, as proven by the fact that there are at least 200 traditional TDR programs in effect in the U.S.

On the other hand, if there are concerns about the ability to wrestle with all the variables needed for a traditional TDR program, a nontraditional alternative might be more suitable. In Gunnison County, for example, the RDT ordinance simply states that developers can achieve a 15 percent reduction in the on-site open space requirement by making a payment of 10 percent of the increase in value resulting from subdivision approval. By eliminating the need for several potentially contentious decisions, TDR-less TDR programs can conceivably be adopted in a fraction of the time needed to adopt traditional TDR programs. Due to the fragile nature of consensus building, this speed can often mean the difference between having a workable preservation tool or not.

Staff Resources

Some communities may have adequate staff to handle the administration needed for a traditional TDR program: certifying the number of TDRs available at a sending site, issuing TDRs and reissuing them when they change hands, tracking TDRs in a registry, linking TDR buyers and sellers in a clearinghouse, verifying the authenticity of TDRs presented by receiving-site developers, and finally ensuring that TDRs are permanently retired after use and that all TDR transactions are properly documented and recorded.

If the staff time needed to perform these functions will be a concern, a TDR-less TDR approach may be more appropriate. In Gunnison County, for example, when developers choose the RDT approach, compliance is in cash. This cash is then combined with other funding sources to buy easements directly from landowners. Receiving-site compliance and sending-site preservation occur separately, and there are no TDRs to issue, track, document, and retire during that interim period.

Leveraging Opportunities

Traditional TDR programs do not facilitate leveraging of preservation funds from other sources. However, in places where additional funding is not available, a program's ability to allow leveraging may not be a meaningful consideration.

However, if opportunities to leverage limited preservation funding exist, certain nontraditional TDR approaches can easily help make that limited funding go farther. In Gunnison County, for example, money from the RDT program can serve as matching funds for preservation grants, including money generated by the state lottery. In its older purchase of development rights program, the county has succeeded in attracting an average of \$12 of outside funding for every \$1 of county money.

Carrying Cost Concerns

In some communities, developers may oppose a traditional TDR program partly because the TDR requirement is imposed prior to final subdivision approval or issuance of building permits. This timing means that the developers must carry the cost of TDRs for the months or years needed to ultimately sell the resulting lots or houses. In contrast, Gunnison County allows developers to sign an agreement with the county pledging to remit the RDT payment when the lot is sold, thereby eliminating this carrying cost as a reason for developers to oppose TDR program adoption.

If the developers in a community are not concerned about delays in reimbursement for RDT payments, the compliance timing found in traditional TDR programs is simpler and generates revenues sooner, allowing the money to be used for preservation sooner as well.

Conclusion

TDR programs do not lend themselves to cookie-cutter approaches. A TDR-less TDR program, like Gunnison County's RDT program, is not necessarily ideal for every community. Each community must evaluate its circumstances and goals and find the right combination of traditional and innovative features.

Some communities may prefer a traditional approach, perhaps because they do not have locally active land trusts and do not want to get into the business of negotiating open space easements. On the other hand, some communities may see a TDR-less TDR approach as the best way for them to quickly adopt a preservation tool that maximizes flexibility, targets the preservation of priority properties, and promotes equitable treatment for sending-area landowners and receiving-area developers — even over a large geographic area with diverse land values and varying styles of development.

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Resources

Berthoud (Colorado), Town of. *Land Development Code*. Section 30-10-111. Density Transfer Fees.

www.berthoud.org/documents/code/Chapter10.pdf

Beyond Takings and Givings (website devoted entirely to TDR)

www.BeyondTakingsAndGivings.com

Daniels, T. 2007. "Zoning for Successful Transferable Development Rights Programs." *Zoning Practice*, December.

www.planning.org/zoningpractice/index.htm

Gunnison (Colorado), County of. Residential Density Transfer Program.

<http://www.gunnisoncounty.org/rdt.html>

McConnell, V., M. Walls, and F. Kelly. 2007. *Markets for Preserving Farmland in Maryland: Making TDR Programs Work Better*. Queenstown, MD: Maryland Center for Agroecology.

www.agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%202007-03.pdf

Pruetz, R., T. Maynard, and C. Duerksen. 2002. "TDR-Less TDR: A Transfer of Development Rights Approach That 'Custom Fits' Transactions." *PAS Memo*, August.

Pruetz, R. 2003. *Beyond Takings and Givings: Saving Natural Areas, Farmland and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*. Marina Del Rey, Calif.: Arje Press.

Pruetz, R., and E. Pruetz. 2007. "Transfer of Development Rights Turns 40." *Planning & Environmental Law*, June.

www.planning.org/pel/commentary/2007/jun.htm

Pruetz, R., and N. Standridge. 2009. "What Makes Transfer of Development Rights Work? Success Factors from Research and Practice." *Journal of the American Planning Association*, 75(1): 78–87.

www.planning.org/japa/

Roddewig, R.J., and C.A. Inghram. 1987. *Transferable Development Rights*. Planning Advisory Service Report Number 401. Chicago: American Planning Association.

Walls, M., and V. McConnell. 2007. *Transfer of Development Rights in U.S. Communities: Evaluating Program Design, Implementation, and Outcomes*. Washington, D.C.: Resources for the Future.

www.rff.org/Publications/Pages/PublicationDetails.aspx?PublicationID=9578