

A Brief Introduction to Transfer of Development Rights (TDR) Programs

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AS URBAN SPRAWL CONTINUES TO ENCROACH on open space in the Hudson Valley, communities are turning to different methods of protecting special areas of undeveloped land and encouraging growth in urban centers through programs such as purchase of development rights (PDR), conservation overlay districts, outright land acquisition, and promoting voluntary conservation on private lands. *Transfer of development rights* (TDR) is another tool that can help protect environmentally important areas such as riparian corridors, large forests, sensitive habitats, farmland, and historic landscapes while at the same time encouraging development in and near population centers.

LANDOWNERS HAVE A SUITE OF RIGHTS associated with their ownership, and these rights can be sold or traded independently of each other and of the land. *Development rights* are one of these. TDR programs permit the movement of development rights from one parcel of land to another by transferring them from a parcel in an area deemed less suitable for development—called the “sending parcel”—to another parcel in a location deemed more suitable for development—the “receiving parcel.” Once development rights are removed from the sending parcel a conservation easement is placed on it,² prohibiting future development.

TDRS HELP CONCENTRATE DEVELOPMENT by allowing developers who buy the rights to receiving parcels to build at higher densities than usual. The receiving parcels should be in previously-selected areas in that can absorb those densities and where residents are tolerant of compact neighborhoods.² Many TDRs have been set up to “send” development from ecologically important habitats, such as pine barrens, stream corridors, and farms on the outskirts of towns to receiving parcels within or bordering a village. Unlike PDR programs, TDR programs usually involve the landowner and developer making transactions among themselves; some programs, however, use public funds or donations to buy development rights and bank them until they can be sold.^{1,2} In those cases, TDR banks serve as “middlemen” between landowner and developer.

DEVELOPMENT RIGHTS, OR TRANSFER CREDITS, ARE THE EXCHANGE MEDIUM between building units in sending parcels and building units in receiving parcels. Usually one development right is equal to one housing unit, a specified amount of floor space, or the amount of floor space that creates, for example, a specified amount of wastewater.¹ Credit values are determined in negotiations between landowner and developer and are a function of supply and demand. Where a TDR bank is involved, the minimum price of a credit is established by the bank.⁴

A SUCCESSFUL TDR PROGRAM SHOULD HAVE SEVERAL BASIC COMPONENTS. First, TDR programs are best implemented as part of a larger agenda such as a comprehensive plan.³ A TDR program works best if it is addressing issues that the community has previously agreed are important, such as regional resource conservation or environmental problems such as pollution. Goals for sending parcel resources need to have scientific (or historic) backing

and community support if the program is to be ultimately successful. Also, contracts should be in place so that the leading agency has the legal ability to create transferable rights and can implement and enforce the program without hindrance. Rights should be allocated to landowners using fair yet simple methods such as a formula based on total acres, type of land, and/or location.

RECEIVING AREAS SHOULD HAVE THREE ATTRIBUTES in order for the transfer credits to be absorbed. They need to be areas of planned growth; they need to have demand for and be able to sustain more development; and the right to increase development density in these areas must be valuable. So that developers will use the program voluntarily, the only way for development density to exceed normal limits should be through the transfer of development rights. Incentives for using the program could also be employed to raise demand for development rights which will in turn increase their value. Finally, to preserve economic value of the rights, only minimal transaction costs should be associated with buying and selling them. Running a successful TDR program requires a dedicated, knowledgeable staff and many hours devoted to program administration, design, and implementation.

MANY THINGS CAN HINDER A TDR PROGRAM from being adopted by a municipality or from working properly. One major reason for the failure of TDR programs is that receiving areas are sometimes not well defined. For example, many TDR programs are initiated without the receiving areas having been designated—a situation that ultimately renders the program useless. Another reason for failure is that the TDR program is poorly designed and developed. Sometimes elected local representatives and planning boards lack leadership and prefer to avoid any situations that could jeopardize their re-election or pose the risk of a lawsuit. Many planning boards also find it difficult to work with large landowners, who can play a critical role in land conservation.³ Public support is essential for TDR program success,³ but is sometimes difficult to obtain. While one of the goals of TDR programs is to concentrate development into receiving zones, and allowing higher density development than normal in those areas, many communities are opposed to this high-density living.

TDR PROGRAMS ARE COMPLICATED TOOLS, and designing a program that is both simple to administer and fair to the landowner and the developer can be difficult. Because of the complexity of the programs, community education is important. Moreover, the community must understand it as a long term investment, because the program can take many years to start producing results. Impatience may become a problem if administrators and the public are not prepared.

A Case Study: Long Island Pine Barrens

One TDR success story in New York is the program for the Long Island Pine Barrens. The pine barrens straddle three towns—Southampton, Brookhaven, and Riverhead—and comprise the largest undeveloped area on Long Island.⁴ In the TDR program, development rights were called “Pine Barrens Credits” (PBCs). Formulas were established for sending and receiving areas to determine how credits should be allocated depending on the size of the property and its underlying zoning. In the receiving areas, developers are able to build at 10 times the baseline density. The Pine Barrens Credit Clearinghouse—an agency created by

the program—issues, monitors, and sells the credits.³ Although this is perhaps the most successful TDR program in New York, two drawbacks are that 1) most of the land in sending areas does not have high potential for development, and 2) the credits cannot be transferred between towns. The TDR program was established in 1995. By 1997 104 acres of land were protected,³ and by 2007 a total of 1,300 acres were protected on 601 parcels; this represented one-third of the total 759 credits available.⁴

RESOURCES

Several TDR program feasibility studies can be viewed online. Some examples are:

Madison Village and Township, Ohio. 2002. Demonstration TDR Feasibility Study.
http://urban.csuohio.edu/forum/events/04_13_07_tdr.html#resources

Grant Dehart, H and Rob Etgen. 2007. The feasibility of successful TDR programs for Maryland's eastern shore. Eastern Shore Land Conservancy, Inc.
<http://www.agroecol.umd.edu/files/Dehart%20Full%20Report%20HRHCAE%20Pub-2007-01.pdf>

Orange County, North Carolina, has a website dedicated to educating residents about its proposed Strategic Growth and Rural Conservation (SGRC) Program:
http://www.co.orange.nc.us/planning/TDR_files/body_index.html

The Central Long Island Pine Barrens has a website for their Pine Barrens Credit Program:
http://pb.state.ny.us/chart_pbc_main_page.htm

This document is for general information only. Consult an experienced TDR professional if you are considering designing or adopting a TDR program.

REFERENCES

1. Abeles Phillips Preiss & Shapiro. 2002. Transfer of Development Rights Fact Sheet. Chapter 3 *in* Tools for Towns, Best Practices Manual: Livable Communities Toolkit. Capitol Region Council of Governments, Hartford, CT.
2. Farmland Information Center. 2001. Fact Sheet: Transfer of Development Rights. American Farmland Trust (AFT). www.farmlandinfo.org (accessed January 2009)
3. Lincoln Institute of Land Policy and Regional Plan Association. 1998. Transfer of Development Rights for Balanced Development. Summary report of conference held May 1998. Regional Plan Association, New York. 52 p. www.rpa.org/pdf/transferdevelopment.pdf (accessed January 2009)
4. State of New Jersey Highlands Water Protection and Planning Council. 2007. DRAFT: Transferable Development Rights Technical Report. State of New Jersey Highlands Water Protection and Planning Council, Chester, NJ. 74 p. www.nj.gov/njhighlands/master/rmp/draft/tdr_tech_report.pdf (accessed January 2009)