Transferable Development Rights

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.

A TDR program is different than a PDR program (Purchase of Development Rights) in that PDRs require public funds to purchase the development rights of a parcel and permanently retire those rights. TDRs strategically transfer those rights, utilizing little-to-no public funds through a voluntary process that affords the land owner in the sending area just compensation for the development rights of the land, and affords developers the opportunity to purchase those development rights as development credits that may be used in the designated receiving area to build at a higher level of development for a higher profit.

TDRs present an attractive growth management tool as they provide:

- the ability to preserve vulnerable, significant lands in quantity;
- the ability to direct growth and development to identified and appropriate growth areas to maximize infrastructure and services;
- adequate incentives for developers that allow for greater development opportunity in the designated areas and higher profit;
- just compensation for individual landowners for the development value of the land, while allowing for continued ownership of the property and the right to earn non-development income from it; and
- landowners and private developers negotiate and transact directly as opposed to public purchase.

Sending area landowners that sell the development rights to their property permanently deed-restrict the land, while retaining ownership and all other associated rights of land ownership, including the continuation of the present land use in perpetuity. Developers purchase the development rights and may use them in the receiving area to exceed the allowable density for that zone, thus increasing potential profit. The relative prices of development rights are determined by market demand, landowners' asking prices and developers' bids.

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.

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.

Many TDR programs have been instituted to protect environmentally sensitive areas, farmland, and historically important sites or buildings. To date, only a handful of programs have been successful, most have never made any transfers, and several no more than one or two. Below are a few examples that illustrate the challenge of designing and employing this regionally-specific and market-based implementation tool.

- State TDR programs:
  - The only example of a state program is in New Jersey, where a TDR Bank was enabled and funded through the Open Space Preservation Bond Act of 1989. A TDR bank can provide a market during slow economic periods, with the ability to purchase development rights and bank the credits for future sale. To date, the New Jersey TDR Bank has not acted as a transfer agent between a landowner and a developer, nor has it purchased any development rights to bank for later sale. The Bank's sole activity thus far has been the provision of grants for the development of TDR-enabling ordinances for two municipalities.
- Successful Regional TDR programs:
  - Montgomery County, Maryland has been the most successful program, having preserved over 40,000 acres of farmland and open space since program inception in 1980. Prime circumstances exist that enable such success, including adjacency to the Washington,

D.C. metro area, high population, intense development pressure and relative wealth. Furthermore, a county comprehensive plan is in place, as well as 26 consistent local comprehensive plans; capital improvement programs provide sufficient infrastructure in growth areas; a public TDR fund helps keep the market active; and an array of complementary planning tools and techniques effectively support the program.

- The New Jersey Pinelands TDR program is the other prominent success story, having saved over 19,000 acres since 1981. Endowed with an international, federal and state mandate due to its ecological import as host of one of the largest aquifers in the northeast, the program enjoys necessary political will. The program labored to get off the ground, suffering the slow development of local land use plans and zoning ordinances, the initial complexity and lack of understanding of program mechanics, and insufficient infrastructure to accommodate higher density development in the growth areas. Modifications to the program included: the institution of the Pinelands Development Credit Bank that effected a crucial public education/marketing campaign, a $30 million bond for the provision of infrastructure improvements in receiving areas, and better incentives to enhance the market.

- Local TDR programs:

  - Rarely have locally-based programs born the intended fruit. Of the few with any activity (such as South Burlington, VT and Lincoln, MA in the northeast), the requisite rudimentary elements were in place, i.e., significant development pressure, appropriate zoning, necessary infrastructure, political will and local money.

- Existing TDR programs in Maine:

  - Brunswick and Cape Elizabeth were unsuccessful in their attempts at applying TDR principles. Brunswick designated a single, undeveloped property as a receiving area that lacked sewer and water, and failed to specify on a map a designated sending area. Cape Elizabeth did not provide adequate incentives or compensation to induce landowners to sell development rights, compared to the profit that could otherwise be gained through subdivision and buildout. No transaction occurred through either program.

In order for a TDR program to be viable and successful, there must be:

- **Development pressure and market demand** to foster transactions and provide incentives to participate on both the sending and receiving ends;

- **Adequate incentives** at both the sending and receiving ends. A down-zoned sending area and effective land use ordinances must be in place to protect strategic, vulnerable land and entice landowners to sell. Receiving areas must offer zoning incentives to developers who wish to build at increased, acceptable densities, requiring them to purchase a certain number of development credits from the landowners in the sending areas;

- **Market acumen and periodic program review** to maintain the essential balance of demand to ensure adequate compensation and participation in the program;

- **A well-conceived preservation plan at the sending end**;

- **A well-conceived plan to guide development at the receiving end** that should include: a **capital improvement plan** to facilitate and accommodate higher density development; a designated **maximum density** available only by furnishing development credits; a **review process** for the approval of higher density projects; and **design criteria** that may reflect or emulate traditional neighborhood principles.

- **Highly-qualified consultants** to design a program of minimum complexity, and **well-trained planning staff** for implementation and public relations to explain and demystify the program for landowners, developers, politicians, the press and the general public;

- **Extensive record-keeping capabilities**. Accountability is crucial, the players change and the market ebbs and flows;

- **Political leadership** to bring the TDR program to bear through commitment and facilitation;

- **Public education and community support** are necessary, as always. The concept of down-zoning can be contentious, and the possibility of higher density development breeds misinformation and NIMBYism;

- **A mix of complementary tools and land use planning techniques** should supplement any effort. The establishment of an alternative entity such as a TDR bank could provide a floor to the market and the ability to buy and bank transferable development credits from vulnerable land during a depressed market toward future sale.