



FACT SHEET

TRANSFER OF

DEVELOPMENT

RIGHTS

DESCRIPTION

Transfer of development rights programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally, TDR programs are established by local zoning ordinances. In the context of farmland protection, TDR is used to shift development from agricultural areas to designated growth zones closer to municipal services. The parcel of land where the rights originate is called the “sending” parcel. When the rights are transferred from a sending parcel, the land is restricted with a permanent conservation easement. The parcel of land to which the rights are transferred is called the “receiving” parcel. Buying these rights generally allows the owner to build at a higher density than ordinarily permitted by the base zoning. TDR is known as transfer of development credits (TDC) in California and in some regions of New Jersey.

TDR programs are based on the concept that property owners have a bundle of different rights, including the right to use land, lease, sell and bequeath it, borrow money using it as security, construct buildings on it and mine it, subject to reasonable local land use regulations. Some or all of these rights can be transferred or sold to another person. When a landowner sells property, generally all the rights are transferred to the buyer. TDR programs enable landowners to separate and sell the right to develop land from their other property rights.

TDR is most suitable in places where large blocks of land remain in farm use. In communities with a fragmented agricultural land base, it is difficult to find a viable sending area. Jurisdictions also must be able to identify receiving areas that can accommodate the development to be transferred out of the farming area. The receiving areas must have the physical capacity to absorb new units, and residents of those areas must be willing to accept higher density development. Often, residents of potential receiving areas must be persuaded that the benefits of protecting farmland outweigh the costs of living in a more compact neighborhood.

TDR programs are distinct from purchase of agricultural conservation easement (PACE) programs because they involve the private market. Most TDR transactions are between private landowners and developers. Local governments generally do not have to raise taxes or borrow funds to implement TDR. A few jurisdictions have experimented with public purchase and “banking” of development rights. A TDR bank buys development rights with public funds and sells the rights to private landowners.

HISTORY

TDR is used predominantly by counties, towns and townships. The 1981 National Agricultural Lands Study reported that 12 jurisdictions had enacted TDR programs to protect farmland and open space, but very few of these programs had been implemented. In the 1980s and 1990s, many local governments adopted TDR ordinances. A survey in the spring of 2000 identified 50 jurisdictions with TDR ordinances on the books. Three programs had been revoked. Despite the widespread adoption of TDR, only fifteen programs have protected more than 100 acres of farmland and only eight programs have protected more than 1,000 acres of farmland. Twenty-two programs, or 44 percent, have not protected *any* agricultural land. Since 1980, Montgomery County, Maryland, has protected 40,583 acres using TDR, or 60 percent of the national total (67,707 acres).

FUNCTIONS & PURPOSES

TDR programs can be designed to accomplish multiple goals including farmland protection, conservation of environmentally sensitive areas and preservation of historic landmarks. In the context of farmland protection, TDR programs prevent non-agricultural development of farmland, reduce the market value of protected farms and provide farmland owners with liquid capital that can be used to enhance farm viability.

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict devel-



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January 2001

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For additional information on transfer of development rights and other farmland protection programs, the Farmland Information Center offers publications, an online library and technical assistance.

The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources.

It can be reached at <http://www.farmlandinfo.org>.

For additional assistance on specific topics, call the technical assistance service at (800) 370-4879.

opment of farmland. Landowners often oppose agricultural protection zoning (APZ) and other land use regulations because they can reduce equity. APZ can benefit farmers by preventing urbanization, but it may also reduce the fair market value of their land. When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

ISSUES TO ADDRESS

In developing a TDR program, planners must address a variety of technical issues. These issues include:

- Which agricultural areas should be protected?
- What type of transfers should be permitted?
- How should development rights be allocated?
- Where should development be transferred, and at what densities?
- Should the zoning in the sending area be changed to create more of an incentive for landowners to sell development rights?
- Should the zoning in the receiving area be changed to create more of an incentive for developers to buy development rights?
- Should the local government buy and sell development rights through a TDR bank?

One of the most difficult aspects of implementing TDR is developing the right mix of incentives. Farmers must have incentives to sell development rights instead of building lots. Developers must benefit from buying development rights instead of building houses according to the existing standards. Thus, local governments must predict the likely supply of and demand for development rights in the real estate market, which determines the price. TDR programs are sometimes created in conjunction with APZ: New construction is restricted in the agricultural zone, and farmers are compensated with the opportunity to sell development rights.

Because the issues are so complex, TDR programs are usually the result of a comprehensive

planning process. Comprehensive planning helps a community envision its future and generally involves extensive public participation. The process of developing a community vision may help build understanding of TDR and support for farmland protection.

BENEFITS OF TDR

- TDR protects farmland permanently, while keeping it in private ownership.
- Participation in TDR programs is voluntary—landowners are never required to sell their development rights.
- TDR promotes 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.

DRAWBACKS OF TDR

- 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.

Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, MA 1997)

LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2000

State/County	Date Ordinance Enacted	Acres of Farmland Protected	Total Acres Protected	Notes
California				
Marin County	1981	670	670	Multi-purpose program
*San Mateo County	1986	40	40	Bonus rights awarded for development of agricultural water storage
San Luis Obispo County	1996	0	0	Multi-purpose program, appraisals used to allocate development rights
Colorado				
Boulder County	1995	~2,800	~3,200	Multi-purpose program, mandatory program, bonus development rights awarded for available agricultural water rights
Connecticut				
Windsor	1993	0	0	Multi-purpose program
Florida				
Hillsborough County	1985	0	0	Multi-purpose program
Palm Beach County	1992	0	6,573	Multi-purpose program, original program created in 1980, substantially revised in 1992
Idaho				
Fremont County	1991	0	200	Multi-purpose program
Maine				
Cape Elizabeth	1982	0	0	Multi-purpose program
Maryland				
Calvert County	1978	8,000	8,000	
Caroline County	1989	NA	NA	
Charles County	1992	1,183	1,183	
Harford County	1992	NA	NA	Sending and receiving areas must be within 500 feet of each other
Howard County	1992	1,438	NA	Multi-purpose program, county purchases and retires development rights
Montgomery County	1980	40,583	40,583	Mandatory program
Queen Anne's County	1987	2,000	2,417	Multi-purpose program, rights can be used to increase residential density or to increase square footage or impervious surface area in non-residential applications
*St. Mary's County	1990	0	6	Multi-purpose program
Talbot County	1989	500	580	Multi-purpose program
Massachusetts				
Groton	1980	50	292	Multi-purpose program
Hadley	2000	0	0	Rights can be used to increase commercial and industrial square footage and reduce parking requirements. An alternate mechanism allows developers to make cash payments into a farmland protection fund in lieu of buying development rights to receive the density bonuses
Sunderland	1974	NR	NR	
Townsend	1989	0	0	Multi-purpose program
Minnesota				
Blue Earth County	1977	~3,000	~3,000	
Montana				
Springhill Community, Gallatin County	1992	200	200	Mandatory program
New Jersey				
Chesterfield Township, Burlington County	1998	0	0	Multi-purpose program
Hillsborough Township, Somerset County	1975	0	0	Multi-purpose program
Lumberton Township, Burlington County	1996	563	563	Multi-purpose program
New Jersey Pinelands	1981	5,722	19,238	Multi-purpose program, mandatory program

State/County	Date Ordinance Enacted	Acres of Farmland Protected	Total Acres Protected	Notes
New York				
Eden	1977	31	38	Multi-purpose program
*Perinton	1993	56	82	Multi-purpose program
Central Pine Barrens (Long Island)	1995	NA	307	Multi-purpose program, mandatory program, rights can be used to increase residential density, commercial square footage or permitted sewage flow
*Southampton	1972	0	232	Multi-purpose program
Pennsylvania				
Birmingham Township, Chester County	1978	0	0	Multi-purpose program
*Buckingham Township, Bucks County	1975	280	280	
Chanceford Township, York County	1979	0	0	
Codorus Township, York County	1990	40	40	PROGRAM REVOKED
East Hopewell Township, York County	1984	NA	NA	
*East Nantmeal Township, Chester County	1994	0	0	
Hopewell Township, York County	1988	NR	NR	
London Grove Township, Chester County	1995	0	0	Point system used in allocation of development rights
*Lower Chanceford Township, York County	1990	200	200	Transfers between adjacent parcels in common ownership only
Manheim Township, Lancaster County	1991	190	190	PROGRAM REVOKED
Shrewsbury Township, York County	1991	NA	~100	TDR bank under discussion
Springfield Township, York County	1996	0	0	Multi-purpose program
*Warrington Township, Bucks County	1985	0	0	Rights can be used to increase commercial/industrial building coverage and impervious surface area
Washington Township, Berks County	1994	0	0	
Utah				
*Tooele	1995	0	0	
Vermont				
Jericho	1992	0	0	Multi-purpose program, mandatory program point system used for the allocation of development rights
South Burlington	1992	50	250	Multi-purpose program, mandatory program
Williston	1990	NA	NA	Multi-purpose program
Virginia				
Blacksburg	1996	23	23	Multi-purpose program
Washington				
Island County	1984	88	88	PROGRAM REVOKED
Thurston County	1995	0	0	Mandatory program
TOTALS		67,707	88,575	

* Information from 1997 survey

“NA” means that the program’s contact person reported that the data either was not available or was not tracked.
 “NR” means that the program’s contact person did not reply to the 1997 or the 2000 survey.

The terms “voluntary” and “mandatory” can be confusing when used in reference to TDR. For the purposes of this fact sheet we categorize TDR programs as “mandatory” if land use regulations (e.g., APZ) are adopted at the time the program is created to reduce the amount of development that can occur in the sending area. Under “mandatory” programs landowners who want to realize their full equity based on the old regulations must sell their development rights. For example, Thurston County, Wash., imposed APZ on more than 12,000 acres decreasing maximum residential density from one unit per five acres to one unit per 20 acres. Landowners in the agricultural zones can develop their land under the new zoning rules, or if they choose to participate in the TDR program, can sell one development right per five acres. TDR programs in Montgomery County, Md., and the Pine Barrens of New Jersey, use the same approach. Boulder County, Colorado, made the criteria for non-urban planned unit developments (NUPUDs) stricter at the time the TDR program was enacted. Previously, any landowner with 35 acres qualified for a NUPUD. Now, landowners are required to own 320 acres to qualify. NUPUDs allow development at the same rates as the TDR program.

Surveys were sent to programs identified by staff and profiled in farmland protection and planning publications, including *Saved By Development* by Rick Pruetz, AICP. The table is meant to be comprehensive. If you are aware of other TDR programs that protect farmland, please contact AFT’s technical assistance service.