
Social and Economic Education for Development



Transfer of Development Rights: A Strategy for Agricultural Lands Preservation

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Introduction

Transfer of Development Rights (TDR) programs seek to manage growth and protect agricultural lands and open spaces by allowing landowners in protected areas (*sending areas*) to sell the development rights associated with their property to developers who use them to increase the density of a new developments in designated growth areas (*receiving areas*). Thus, through the sale and transfer of development rights, growth is moved from areas that a community seeks to protect because they are environmentally sensitive or highly productive agricultural lands to areas that provide the infrastructure to support new growth. The development rights allow a developer to build at higher densities than currently permitted by existing zoning in the receiving area. Property owners in the sending area retain full ownership and control over their land, except future development is limited or may be prohibited. The amount paid for the development rights is a negotiated price based on the difference between the land's current use value and its development potential. TDR programs are funded by the private land market, that is, the value that developers are willing to pay landowners and the price that landowners are willing to accept. When development rights are sold on a property, the transaction is recorded and is enforced with a deed restriction.

In theory, a TDR program should provide a low cost alternative to preserving agricultural lands. In practice, but experience has shown that not all TDR programs accomplish what they set out to do. The American Farmland Trust has identified six criteria that must be present for a TDR program to work effectively.

1. The overall area should have a strong demand for growth and an active housing market.
2. The size of the sending area must be limited to control the supply of development rights. A sending area that is too large will reduce the value of the development rights. The size of the sending area can increase as development rights are sold.

3. The program must be designed so that the only way to increase densities is for developers to purchase development rights from the sending area.
4. The zoning authorities must be committed to preventing rezoning (or other zoning changes) by developers as a means of avoiding the purchase of development rights.
5. The receiving area must have a low base density to begin with so that there is ample opportunity to increase densities without placing a burden on existing property owners in the receiving area.
6. Local authorities may facilitate the process by establishing a TDR bank to hold development rights. This allows landowners to sell some development rights without waiting for developers to initiate the purchase. It also makes the transfer easier on developers by creating a central entity from which development rights can be purchased.

Designing a TDR Program

Transfer of Development Rights programs can be approached in several different ways. The most common form, the agricultural TDR, involves rezoning the minimum lot size in the entire sending area, while allowing transfer of development rights at the previous density. *The rezoning would affect everyone in the sending area, regardless of whether they sell their development rights.* Landowners may then sell their development rights to developers, who in turn, transfer the rights to the receiving area. This transfer enables the developer to build within the receiving area at higher densities than allowed under existing zoning.

A TDR program still permits the landowner to build other housing units on their property (e.g., for a family member), but it limits the use of the land for development. For example, suppose the current zoning allows one dwelling unit per acre. An initial condition of the program is an increase of the lot size to one dwelling unit per 30 acres within the sending area. Landowners in the sending area are

permitted to sell their development rights to the receiving area at the previous zoning density (e.g., 1 dwelling unit per acre) and still develop their land at the new density (e.g., 1 dwelling unit per 30 acres). In the receiving area, where previously, developers could build three dwelling units per acre, they may now build six units per acre if they have acquired three development rights from a landowner in the sending area. The specific increase in density permitted in the receiving area with the acquisition of development rights will vary from one community to another, but the key to the success of a TDR program is that developers must acquire development rights in order to increase the density of their new development.

How an Agricultural TDR Works

1. Sending and receiving areas are identified and designated. The sending area must be small enough to control the supply of development rights. The receiving area must be one that can accommodate growth (i.e., there are sufficient urban services available) and one in which demand is high (i.e., people will want to move there).
2. The land in the sending area is rezoned to a lower density. For example, land formally designated at 1 dwelling unit per 10 acres would now be listed as 1 dwelling unit per 30 acres. This change affects all landowners in the sending area, not just those who wish to sell their development rights.
3. All land in the sending area is assigned a given number of development rights. For example, if the sending area once permitted development at 1 dwelling unit per 30 acres but is rezoned to one per 30 acres, development rights might be allocated to property owners on the basis of one development right per 10 acres of undeveloped land.
4. Developers wanting to build in the receiving area at a higher density than currently permitted, would seek landowners in the sending area from which to purchase development rights. This process can be encouraged with a TDR bank, or incentives for residential development in the receiving areas. Incentives could include provision of desirable public improvements (e.g., parks, bike paths) or density bonuses when TDRs are applied to a particular development.
5. The value of the transfer of a development right is a negotiated price between the developer and the landowner. All things being equal, the less development rights made available (i.e., the

smaller the sending area) the higher the cost of a development right. Similarly, the more demand for housing in the receiving area, the higher the price a developer is willing to pay for a development right.

Strengths of an Agricultural TDR

- Encourages higher density in targeted areas resulting in lower infrastructure and public service costs per unit.
- Most costs of a TDR program are paid by new development through the operation of a free market in land exchanges.
- Landowners are compensated for limitations on the use of their land through the sale of development rights. Farmers then, receive a return for keeping their land in agricultural production rather than developing it.
- Increases likelihood that more agricultural lands will be preserved.
- Insures that preserved land will be more concentrated rather than scattered throughout a community, thus reducing likelihood of incompatible land uses.
- Landowners can sell the land, though the limitation on future development remains with the deed.
- Landowners can still build farm buildings and a limited number of family dwellings.

Challenges of a TDR Program

- The exact value of development rights cannot be predicted prior to initiating the program, but it is possible to estimate a likely range of values.
- There is a loss of development density in the sending area.
- Defining the sending and receiving areas may cause conflict within the community.
- The program requires strong will and a continued commitment by county government to make it work.
- Landowners in sending areas have restrictions on the development of their land, but gain more options on how to benefit from its development potential of their land.