

OUTREACH

DEVELOPMENT



GROWTH



AWARENESS



VISION

**MUNICIPAL IMPLEMENTATION TOOL # 8 :  
TRANSFER OF DEVELOPMENT RIGHTS**



Delaware Valley Regional  
Planning Commission

**AUGUST 2004**

Protecting valuable agricultural and environmentally sensitive land is an important, yet daunting task. Many farmers see the sale of their land as one final "cash crop" before retirement. Developers offer attractive incentives on these flat, open spaces, leaving farmers and communities with very few options. Without protections, this kind of sprawl could conceivably consume all the remaining open space in the region. **Transfer of Development Rights** (TDR) is a tool municipal officials can adopt to conserve high-value agricultural land, environmentally sensitive areas and strategic open space by shifting development to areas where the community deems growth is appropriate - all while providing just compensation to land owners and opportunities for new development.

TDR is a voluntary, market-based implementation process by which development rights of a landowner in the area to be protected (the "sending" zone) are transferred to appropriate, community-designated areas (the "receiving" zone). Since this process does not require local governments to purchase any lands, and since concentrated development in the receiving zone saves money on municipal services, very little public funding is required.

### Why Does DVRPC Care about TDR?

This brochure is part of a series being published by the Delaware Valley Regional Planning Commission (DVRPC) in support of the region's adopted long-range plan, *Horizons 2025*. The Plan provides an integrated land use and transportation vision for the region's growth and development through the Year 2025, and specifically seeks to encourage core city revitalization, stabilization of older townships and boroughs, growth management in growing suburbs, and preservation of rural communities and natural areas. In Pennsylvania and New Jersey, townships, boroughs, and cities have the primary authority and responsibility to implement these policies. This series of brochures introduces local officials and citizens to planning tools that may be useful in their communities and provides introductory information.

Transfer of development rights can be a pivotal tool for rural and suburban communities as they attempt to manage growth in their area. While TDR is a complex procedure, there is a wealth of resources available to guide local efforts through the process. See the "Additional Resources" page for more information on what groups can help.



*By transferring the development rights from existing agricultural areas to community-designated receiving areas, important open spaces can be preserved. At the same time, landowners and developers can still recoup the economic value of the land.*

TDR presents an attractive growth management tool that provides:

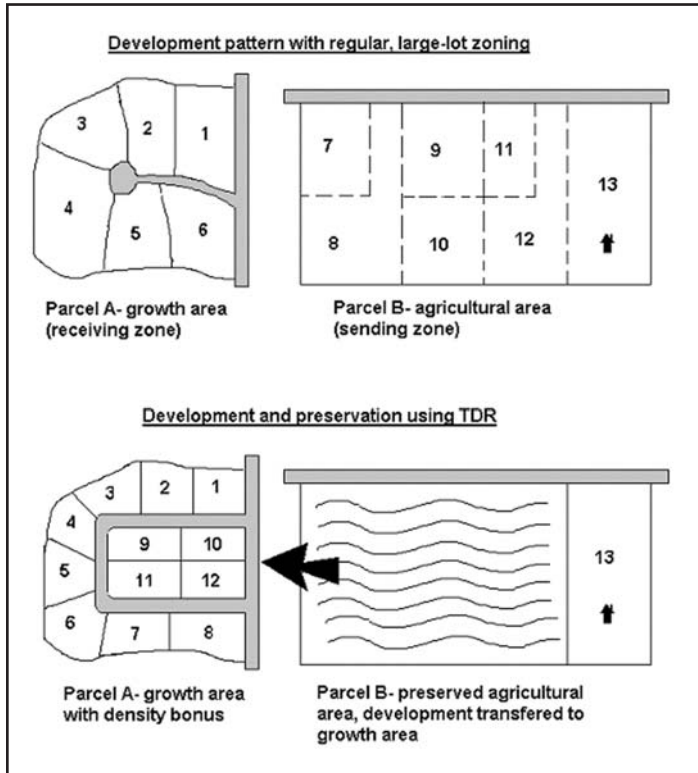
- The ability to preserve large tracts of vulnerable, high value, agricultural and / or environmentally sensitive land from being developed;
- A process to direct development to community-identified, appropriate growth areas to maximize the efficient use of existing infrastructure and services, while minimizing costs of new infrastructure and municipal services;
- Support for comprehensive planning and implementation in the municipality;
- More effective incentives for developers that allow for greater development opportunity, higher than average density and thus, higher profits;
- Just compensation for landowners for the development value of the land, with the added benefits of continued ownership and potential non-development income (i.e. mineral, timber, riparian rights).

Communities with an interest in conserving environmental and agricultural resources have a limited number of options available for doing so. Purchase of development rights can be very costly to the municipality, and does little else than stymie development on that protected parcel.

Transfer of Development Rights provides incentives to land owners, developers and the community. Developers can build at higher densities than typically allowed in the "receiving area," which translates to higher profits and better infrastructure service to their developments. Landowners not only receive fair compensation for their land, but also benefit from non-development uses (for example, farmers can continue farming, mineral rights can be claimed, etc). The municipality gains by avoiding controversy (since TDR is a voluntary, market based program), and being able to guide development in the manner defined in the community's comprehensive plan.



*Development pressure causes farmers and landowners to abandon the traditional use of their land in order to make way for building. TDR can preserve open space, provide incentives to developers to build elsewhere and adequately compensate both buyers and sellers.*



Transfer of development rights occurs just like traditional property sales; individual landowners sell the development rights of land in the sending area to developers building in the growth area. The following example simplifies and illustrates the exchange:

The developer / landowner of Parcel A (in the township's growth area) can, under current zoning, develop six, one-acre lots. He would like to build more, but the only way he can get approval for higher density is by purchasing development credits from Parcel B (in the township's preservation area).

Parcel B is located in a rural part of the township that the community would like to see preserved. Under regular zoning the landowner would be able to subdivide her property into seven, one-acre lots. With TDR, she could transfer the development rights of six properties to the developer so he could increase his total units to twelve, half-acre lots. Her former six acres would be deed restricted from future development, while she could continue farming and could retain her residence on parcel 13.

While TDR can be a great help for municipalities looking to manage growth, it remains a complex process in which success is never a guarantee. Setting up a proper incentive structure and designating adequate Sending and Receiving districts requires an open dialogue among planners, the community and the landowners being affected. The following issues must be addressed when planning for TDR in your community:

**Market Demand.** In order for a TDR program to work, there must be steady development pressure on landowners. This provides market support for the incentive structure, allowing development at increased densities.

**Local Flexibility.** An effective TDR program can be technically complex; however, legislation should not constrain the municipality's traditional power to plan and zone land. Equally important, local governments should work to streamline the approvals process so that developers are not dissuaded by delays and administrative expenditures.

**Comprehensive Planning.** While TDR can be developed in a single jurisdiction, it is even more effective when multiple municipalities coordinate TDR language into their Comprehensive Plans. In New Jersey, TDR's effectiveness stems from Municipal Plans that are consistent with the State's Development and Redevelopment Plan. Multi-municipal coordination means a wider market for successful development trades.

**Adequate incentives, both at the Sending and Receiving ends.** The value of development rights should be predictable and reflective of the market value of the land so that farmers have adequate incentive to sell. Also, receiving areas must offer zoning incentives or density bonuses to developers who purchase development rights to encourage development in receiving areas

**Capital Facilities Planning.** To create a viable TDR market, towns should include recommendations in their comprehensive plans for a capital improvement plan to meet predicted infrastructure needs in receiving areas. This is a valuable incentive to builders who wish to develop in the prescribed growth area.

**TDR Bank.** TDR banks are an option used by some communities to provide a market during slow economic periods, guaranteeing landowners a base price. These banks can also broker transactions between buyers and sellers more efficiently than individual transactions.

**Public outreach.** Program administrators must work to minimize complexity and foster public relations to demystify the program for landowners, developers, elected officials, the press and the public.

The legal framework for TDR is the concept that development rights can be separated from property rights. The development right becomes a separate article of private property that can be shifted from one area to another and can have economic value.

### **Pennsylvania**

In Pennsylvania, Transfer of Development Rights is enabled by specific provisions in Pennsylvania planning law. Section 603(c)(2.2) of the Pennsylvania Municipalities Planning Code (MPC) provides for transfer of development rights as part of municipal zoning, and Section 619.1 of the MPC creates development rights as an interest in land that may be severed and conveyed separately from the specific property to which the rights apply. Municipalities may enact ordinances authorizing the conveyance of development rights by deed, which, like deeds of fee title, are then recorded in the appropriate county office of the Recorder of Deeds.

Pennsylvania law enables TDR as a voluntary and optional alternative for property owners. Initially, development rights could only be transferred within the municipality.

Amendments to the MPC (Acts 67 and 68 of 2000) have subsequently changed those rules such that development rights may be transferred across municipal boundaries if an intergovernmental agreement has been executed.

### **New Jersey**

New Jersey's use of TDR began with their efforts to preserve the Pinelands in southern Burlington County. The initial legislation, "Pinelands Protection Act" P.L.1976,c.50 (C.4:1B-1et seq) passed in 1979; the subsequent "Burlington County Transfer of Development Rights Act," L.1989,c86,s.1 enacted in 1989, gave municipalities the ability to prepare ordinances establishing single-jurisdictional TDR programs in Burlington County towns.

In 1993, the creation of a TDR bank was legislated through the "State Transfer of Development Rights Bank Act," P.L.1993,c.339 (C.4:1C-49 et.seq). This opened the door to state-wide transfers of development rights. Most recently, in 2004, through the "Municipal Statewide Transfer of Development Rights Authorization Act," the New Jersey State Legislature authorized trading development rights between municipalities throughout the State, creating new opportunities for multi-municipal coordination and helping to implement the State Development and Redevelopment Plan.



*Chesterfield Township, Photo credit: Clarke Canton Hintz*

Chesterfield Township, Burlington County, has utilized an award-winning TDR program to preserve its rural, agricultural heritage while still allowing for growth.

Located in the "farm belt," Chesterfield (pop. 5,955) is also situated in close proximity to Trenton and the crossroads of I-295, Route 130 and the New Jersey Turnpike. Between 1980 and 1990 the population grew by 39 percent; this growth pressure threatened to swallow the rural open spaces that define the Township's character.

In 1989, with the passage of the Burlington County Transfer of Development Rights Demonstration Act, Chesterfield began fashioning a TDR program of its own. The township's 1997 Master Plan describes a compact, mixed-use town center in the "Receiving zone" with a variety of housing types (including affordable housing), shops and services and a school within walking distance. The "Sending zone" would be the rural area surrounding the town.

A decade later, the Township adopted a new land development ordinance enabling TDR and changing the underlying zoning in the agricultural districts from 3.3-acre lots to 10-acre lots. A clustering option gave developers a density bonus in exchange for preserving 50 percent of the property as open space. Chesterfield invested \$4 million of its own funds into the construction of a sewer system in the Receiving area that would be able to accommodate the higher densities necessary for the success of the TDR program.

A recipient of a New Jersey Future "2003 Smart Growth Award," and a 2004 National American Planning Association Award, Chesterfield's hard work is paying off. Major residential developers control 85 percent of the land in the receiving area and several have purchased development credits that will preserve 243 acres. Through the careful planning process that involved members of the public, developers, the consulting planners and others, Chesterfield has shown that TDR can balance development pressure with the desire to preserve a town's heritage.



Transfer of Development Rights can be on a broad scale to protect significant natural resources. In the New Jersey Pinelands, development credit trading has preserved over 30,000 acres over the past ten years.

The New Jersey Pinelands is the largest tract of open space on the mid-Atlantic coast, yet it is found in the most urbanized state in the nation. Approximately 1.1 million acres, this reserve represents 22% of the state's total land area. Development pressure on three fronts - New York Metro, Philadelphia / Camden, and Atlantic City - threatened to encroach upon the Pinelands. In 1978 and 1979, federal legislation was passed to protect its unique natural resources. The Pinelands Protection Act created the Pinelands Commission—a body charged with creating a Comprehensive Management Plan, monitoring the level and types of development that occurs, the acquisition of land, planning, research and education.

Through the Comprehensive Management Plan, different regional zones were established for the Pinelands: 'Preservation' areas, 'Agricultural Production' areas, and 'Regional Growth' areas. These zones seek to balance preservation with economic activity and development.

Pressures on landowners in protected areas forced the Commission to rethink how to balance the economic utility of the land with the desire to preserve it. Pinelands Development Credits (PDCs) were designed to reconcile this situation by allocating development credits to landowners in 'Preservation' and 'Agricultural Production' zones. As described by the Commission, "The credits can be purchased by developers owning land in Regional Growth Areas and used to increase the densities at which they can build. A landowner selling credits retains title to the land and is allowed to continue using it for any non-residential use authorized by the Plan."

The Pinelands Development Credit works like a traditional TDR program in that it offers incentives to both the buyer (through increased density) and seller (higher price for credits as land values increase). It also ensures that appropriate land uses are observed. As of August 17, 2001, 3,800 development rights had been severed. The severance of these rights has resulted in the preservation of 31,465 acres, making the New Jersey Pinelands one of the most successful TDR programs in the country.

While the concept of transferring development rights may seem relatively straightforward, executing the process requires intense planning and dedication from all parties involved. These are the basic steps in creating an effective TDR program.

- **Apply TDR Concepts to Your Community:** Does growth pressure exist? Is there a consensus on conservation? What about the feasibility and availability of infrastructure for a receiving zone? These are the initial considerations when brainstorming TDR as a possible land use tool.
- **Find Support and Organize for TDR:** Sending Area stakeholders like the farm community, landowners and environmental groups should be involved as well as Receiving Area groups like neighbors, builders and realtors. Ultimately, maximizing support means strategizing in ways both top-down and bottom-up.
- **Establish the Receiving Zone:** This area will reflect the development goals of the local community and the master or comprehensive plan. Density bonuses can entice development, but the ultimate aim is to create an attractive and inviting community that is marketable because of its mix of uses and density. These areas should be more attractive to builders than conventional Greenfield development.
- **Establish the Sending Zone:** There is usually community consensus regarding what areas should be preserved, although there should be a substantive rationale for these designations, should they be challenged in court.
- **Establish Market Realities:** There must be strong incentives available to buyers and sellers in order for development rights to be traded. Maximizing TDR effectiveness is based on the broker's ability to respond to the needs of the transacting parties, while working with local officials on issues like zoning and infrastructure.
- **Facilitating and Implementing:** Establishing a TDR Bank is a good way to keep the process viable during trading slumps. Administrative time and money spent facilitating the TDR program can be minimal, so long as everyone is committed to the TDR process.

### **American Planning Association (APA)**

The APA is the leading organization for planners across the nation. They publish several periodicals each month to keep planners and other professionals up to date with new trends in the planning field. For more information, visit [www.planning.org](http://www.planning.org) or call 312.431.9100.

### **New Jersey Future**

New Jersey Future is the state's largest smart-growth advocacy group. This nonprofit organization is leading the fight for better-managed growth under the State Plan, and for sustainable development: a strong economy, a healthy natural environment and a just society for future generations. For more information, visit [www.njfuture.org](http://www.njfuture.org) or call 609-393-0008.

### **The Brandywine Conservancy**

The mission of the Brandywine Conservancy's Environmental Management Center is to conserve the natural and cultural resources of the Brandywine River watershed and other selected areas with a primary emphasis on conservation of water quantity and quality. For more information, visit them on the web at [www.brandywineconservancy.org](http://www.brandywineconservancy.org) or call 610.388.2700.

### **New Jersey Pinelands Commission**

In 1979 the New Jersey State Legislature enacted the Pinelands Protection Act and thereby created the Pinelands Commission. The Commission is charged with the development and implementation of the Comprehensive Management Plan for the Pinelands. It plays significant roles in monitoring the level and types of development that occur within the Pinelands, acquisition of land, planning, research, and education. For more information, visit [www.state.nj.us/pinelands/](http://www.state.nj.us/pinelands/) or call 609-894-7300.

### **Burlington County**

The Office of Resource Conservation and Agricultural Development Board oversee agricultural easements, land acquisition and transfers of development rights in Burlington County. The planners who manage the county's easement program work closely with townships on their land use policies, assisting local efforts to adopt farmland protection measures including TDR. For more information, call 856.642.3850 or visit [http://www.co.burlington.nj.us/departments/resource\\_conservation/index.htm](http://www.co.burlington.nj.us/departments/resource_conservation/index.htm).

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Created in 1965, the **Delaware Valley Regional Planning Commission (DVRPC)** is an interstate, intercounty and intercity agency that provides continuing, comprehensive and coordinated planning to shape a vision for the future growth of the Delaware Valley region. The region includes Bucks, Chester, Delaware, and Montgomery counties, as well as the City of Philadelphia, in Pennsylvania; and Burlington, Camden, Gloucester and Mercer counties in New Jersey. DVRPC provides technical assistance and services; conducts high priority studies that respond to the requests and demands of member state and local governments; fosters cooperation among various constituents to forge a consensus on diverse regional issues; determines and meets the needs of the private sector; and practices public outreach efforts to promote two-way communication and public awareness of regional issues and the Commission.



### **Delaware Valley Regional Planning Commission**

The Bourse Building, 8th Floor  
111 South Independence Mall East  
Philadelphia, PA 19106-2582

Staff contact: Kevin Denton, Regional Planner  
Direct Phone: 215.238.2898  
Email: [kdenton@dvrpc.org](mailto:kdenton@dvrpc.org)  
Web: [www.dvrpc.org](http://www.dvrpc.org)