

Smart Growth through the Transfer of Development Rights

**A selection of TDR case studies with relevance for
the preservation of farmland, open space and other
natural resources in New Jersey**

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PREFACE

The following report outlines a selection of Transfer of Development Rights (TDR) programs in the USA that may be relevant in the context of TDR programs in New Jersey. TDR programs can be found under a variety of guises, including Transfer of Development Credits (TDC), density transfer, and lot coverage transfer programs. TDR is a valuable tool for the preservation of farmland, open space, natural and historic resources, as well as promoting development in smart and strategic locations. New Jersey already has several TDR programs, including the highly successful Pinelands Development Credit program. This report is intended to support the work of New Jersey's TDR Taskforces which began to meet in 2009, which are coordinated by the Delaware Valley Regional Planning Commission and New Jersey Future with support from the William Penn Foundation.

This report focuses primarily on regional and county TDR programs that focus on preserving agricultural and open space resources. It examines case studies on a variety of scales, from towns and cities to large counties and regions, with both intra- and inter-jurisdictional examples. Case studies were chosen for their potential relevance within the New Jersey context, particularly looking for innovative examples that may help address some of the issues that face TDR programs in New Jersey. For example, the Town of Southold considered only allowing transfers within school districts for their revised TDR program.

TDR can be adapted to meet a variety of needs within communities, both for sending and receiving areas. TDR is not just a tool for preservation, but can also be used to encourage the more efficient use of infrastructure, the provision of affordable housing and economic development in targeted areas. While the vast majority of programs examined within this report had a focus on preservation of agricultural lands, open space and/or natural resources, two programs shared many similar characteristics to these other programs but had a greater focus on the reduction of residential density (Montgomery County) and encouraging affordable housing (Town of Southold).

Nearly all programs contained within this report transferred development rights between or within place-based (county or municipality) jurisdictions, although the Tahoe Regional Planning Agency (TRPA) mandated transfers within hydrological regions and the Town of Southold has been considering transfers only occurring within school districts. While several county programs use large areas of unincorporated lands as sending and receiving areas, a significant number of counties have negotiated intergovernmental agreements with incorporated communities to become receiving areas and sometimes also part of the sending area. The majority of programs examined had only residential receiving areas (60%) and only three of the programs had only non-residential receiving areas (Hadley Township, Town of Hatfield and Warwick Township).

In the majority of the case studies development rights/credits were transferred from the sending areas to the receiving areas. There were, however, four exceptions with two programs that transferred sanitary flow rights (Long Island Pine Barrens (otherwise known as the Pine Barrens Credit Program, PBCP) and Town of Southold, both in Suffolk County, NY) and two that transferred lot coverage (TRPA and Warwick Township). For the TRPA and PBCP these atypical transfers correspond with one of the goals of their programs, to restore and enhance regional water quality. While the majority of programs relied on density increases as the primary incentive for purchasing development rights in the receiving areas, three programs used open space incentives (Gunnison County, Alachua County, and Cecil County) and three programs used other non-density related incentives (Hadley Township, King County, and Dane County).

Over time more communities are experimenting with new varieties of TDR that can create programs more suited to the individual circumstances of each jurisdiction (Pelletier *et al.*, 2010). Non-traditional TDR programs, such as land mitigation programs and some payment in-lieu options, share many of the characteristics of traditional TDR programs but lack some of the complexity that reduces the

success of some more traditional TDR programs. Two programs within this report had land mitigation components (City of Davis and TRPA) and six programs had payment in lieu options (City of Davis, City of Livermore, Gunnison County, Hadley Township, Town of Hatfield, and Town of Warwick NY).

In many cases TDR programs work alongside Purchase of Development Rights (PDR) programs. TDR programs are distinct from PDR programs which concentrate on the preservation of land, without the component that relocates the development to another location. TDR programs depend on a careful balance between sending and receiving areas; the demand and the price landowners are willing to pay to increase the density of development in the receiving area needs to balance with the willingness of landowners in the sending areas to sell their development rights and at an appropriate cost. PDR programs, on the other hand, can designate as much land as they wish as areas suitable for preservation but the scale of their achievement is often significantly limited by the availability of funding from public and non-profit organizations to purchase the development rights. PDR programs also permanently retire development rights rather than transferring the rights to a more suitable location and preserving the overall development potential of the region. PDR and TDR programs work best alongside each other if they are designed to fulfill slightly different purposes as in Montgomery County, Maryland; thus landowners in Montgomery County wishing to preserve natural resources and prime farmland gravitate toward the PDR program while landowners who wish to reduce residential development density on their property in return for the sale of their development rights use the TDR program.

While this report mainly focuses on programs which have been proved to be successful, it also includes some programs which have been adopted more recently that have not yet been proved successful but contain interesting characteristics that could be useful for TDR programs in the future. The twenty case study programs in this report are not an exhaustive list of relevant or successful programs. This report focuses on highlighting the noteworthy characteristics of each program and useful sources of further information rather than describing the details of the program. A summary of these noteworthy characteristics can be found in the Overview of Programs and listed at the end of each case study. There are hundreds of other successful or innovative programs that are referenced in the existing literature on TDR programs. The Resources section of this report references some of the existing literature that has been useful to explain more about how TDR programs and the places that have used it.

TDR is a valuable smart growth tool that has already preserved hundreds of thousands of acres of farmland, open space, forest and historic resources across the nation in return for promoting more efficient and economically viable communities. Five of the programs listed in this report were identified in the top ten TDR programs in the country in terms of the number of acres preserved by 2008 – King County, Montgomery County, Calvert County, Pitkin County and Boulder County (Pruetz and Standridge, 2009). By 2010 TDR programs had been responsible for preserving over 400,000 acres of land in over 200 jurisdictions (Pelletier *et al*, 2010) and in return encourage development in more efficient and sustainable communities. The number of acres preserved cannot alone determine a successful TDR programs when base zoning densities, development pressures and resource values vary so greatly. The great number of acres preserved, however, serves to indicate the significant private market demand for additional development rights for a price that can preserve local resources.

USEFUL RESOURCES

This report is intended as more of a brief introduction to the diversity of TDR programs. The following resources give interesting insight into more TDR programs and the policy and legislation that supports them. For any additional information about this report contact Katharine Otto, kotto104@gmail.com.

Articles and books

Detailed introduction to TDR and detailed case studies of hundreds of TDR programs across the USA and beyond:

- Pruetz, R (2003) *Beyond Takings and Givings. Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*, Arje Press, Marina Del Rey CA
- Pruetz, R (2010) *Beyond Takings and Givings*. Website: www.beyondtakingsandgivings.com (updates about the status of case study TDR programs after the 2003 book was published)

Overview of selected themes and characteristics of TDR programs:

- American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf
- Bratton, N.; Eckert, J.; and Fox, N. (2008) *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*. Prepared by the Cascade Land Conservancy July 10, 2008. Cited June 12, 2010 at www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6223&Mid=944&wversion=Staging
- Pruetz, R; and Pruetz, E (2007) “Transfer of Development Rights Turns 40”, *American Planning Association. Planning and Environmental Law. June 2007 59(6):3-11*
- Pruetz, R and Standridge, N (2009) “What makes transfer of development rights work?”, *Journal of American Planning Association, Winter 2009, 75(1):78-87*

Detailed case studies of county and regional TDR programs:

- McConnell, V.; Walls, M.; and Kelly, F. (2007) *Markets for Preserving Farmland in Maryland Making TDR Programs Work Better*. HRHCAE Pub 2007-03. Report Prepared for the Maryland Center for Agroecology. Final Draft. February 2007. Cited June 23, 2010 at <http://agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%202007-03.pdf>
- New Jersey Highlands Water Protection and Planning Council (2008) *Transfer of Development Rights Technical Report*. (Particularly Appendices A and B.) September 2008. Cited June 13, 2010 at www.highlands.state.nj.us/njhighlands/master/tr_tdr.pdf

Non-traditional TDR programs, particularly Density Transfer Charge Programs:

- Pelletier, M.; Pruetz, R.; and Duerksen, C. (2010) “TDR-Less TDR Revisited: Transfer of Development Rights Innovations and Gunnison County’s Residential Density Transfer Program.” *Planning Advisory Service Memo. May/June 2010*. www.planning.org/pas/memo/2010/may/index.htm

TDR laws and regulations

Municipal and county codes are often available online and give detailed information about the specifics of TDR programs and the other land use regulations that work alongside the program. Where available references to the location of municipal/ county codes is referenced at the end of each case study. Some state and local TDR enabling statutes and ordinances are inventoried at www.farmlandinfo.org/farmland_preservation_laws/index.cfm?function=laws&articleID=0&sortOrder=rating&articleTypeID=246&publishedStatusID=2&questionStatusID=&stateID=&topicID=3257&categoryID=&go.x=35&go.y=13&go=submit.

TDR Taskforces/ Alliances

TDR taskforces and alliances can publish a wealth of resources that critically examine the technical and practical components of TDR programs.

State of New Jersey TDR Policy Taskforce and Salem County TDR Taskforce

Insight into the issues currently facing New Jersey's established and developing TDR programs can be found in the discussions at the State of New Jersey and Salem County TDR Taskforces which were meeting from 2009 to 2010, convened by New Jersey Future and the Delaware Valley Regional Planning Commission (DVRPC). The Taskforces have published notes and agendas at www.dvrpc.org/tdr.

Puget Sound TDR Alliance, Washington

The Puget Sound TDR Alliance includes the Puget Sound Regional Council, Washington State Department of Commerce, Pierce, King and Snohomish Counties, and the Cascade Land Conservancy, who are working together to promote TDR programs in the Puget Sound Region. A key component of the Alliance's work is hosting a series of educational workshops which highlight available grants for receiving areas, technical assistance materials, and outreach materials for landowners and developers. The region already boasts of some of the more successful and long standing TDR programs, which provide a good selection of local examples of policies, regulations, interlocal agreements, TDR certificates, conservations easements and plans for receiving areas, which are all available at www.commerce.wa.gov/tdr. The Washington State Department of Commerce is in the process of drafting a new rule for voluntary interlocal agreement in TDR programs.

TDR/ Land Preservation Work Group of the Maryland Growth Taskforce

As part of Maryland's Task Force on the Future for Growth and Development, the TDR/ Land Preservation Work Group critically examined several examples of interjurisdictional TDR programs from across the country, including Boulder County CO, King County WA, the NJ Pinelands and Chesterfield Township NJ. The work group also examined how TDR programs could evolve in the future. The TDR/ Land Preservation Work Group's final report can be found at www.mdp.state.md.us/PDF/773/20091102/Final_Report_Task_Force_Version_20091101.pdf

OVERVIEW OF PROGRAMS

Location			Preservation of...					Transfer of ...			Transfer within...				Receiving Area			Other Characteristics					Page		
		State	Agriculture/ Farmland	Open Space	Historic Resources	Forest	Other Natural Resources	Development Rights	Sanitary Flow Rights	Lot Coverage	Municipality	Unincorp. County Lands	School District	Hydrological Region	Inter-jurisdictional	Low Density	Residential	Non-Residential	Land Mitigation	Under Review	Payment in Lieu option	EasementNon-permanent	Open Space Incentive	Non-Density Incentives	
Davis	City	CA	Ag					DR						IJ		R		LM		PIL					7
Livermore	City	CA	Ag	OS			NR	DR			M					R				PIL					9
Tahoe	Regional Planning Agency	CA, NV		OS			NR			LC			H	IJ		R	NR	LM	UR						10
Boulder	County	CO	Ag	OS			NR	DR			UC			IJ		R									12
Gunnison	County	CO	Ag	OS			NR	DR			UC					R					PIL		O		14
Pitkin	County	CO	Ag	OS	H		NR	DR						IJ		R									16
Alachua	County	FL	Ag	OS			NR	DR			UC					R	NR						O		18
Hadley	Township	MA	Ag					DR			M						NR			PIL			ND		19
Hatfield	Town	MA	Ag	OS				DR			M						NR			PIL	NPE				21
Calvert	County	MD	Ag			For		DR			UC				LD	R									22
Cecil	County	MD	Ag			For	NR	DR			UC					R						NPE	O		24
Montgomery	County	MD	*					DR			UC					R			UR						25
Long Island Pine Barrens	Regional	NY					NR		SF					IJ		R	NR								27
Southold	Town (Suffolk Co.)	NY	Ag	OS					SF				**			R									29
Warwick	Town	NY	Ag	OS				DR						IJ		R				PIL					31
Warwick	Township (Lancaster Co.)	PA	Ag							LC	M						NR								33
King	County	WA	Ag	OS		For	NR	DR			UC			IJ		R	NR							ND	34
Snohomish	County	WA	Ag					DR			UC			IJ		R	NR								36
Thurston	County	WA	Ag					DR							LD	R			UR						37
Dane	County	WI	Ag	OS				DR			UC					R								ND	38

* Reduce residential density
 ** Being considered in revised TDR program

CASE STUDIES

CITY OF DAVIS, CA

Program Goals

The City of Davis has a program similar to the concepts of TDR known as the agricultural land mitigation program. Primarily the program is intended to mitigate the effects of the loss of agricultural lands to nonagricultural uses and reduce the potential for conflict between agricultural and non-agricultural land uses (City of Davis Municipal Code, Chapter 40A). In cooperation with Solano and Yolo counties, the program also aims to preserve lands within the Davis Planning Area which extends up to about 5 miles from the city limits. Agriculture is an important component of the city's economy and farmland is viewed as an important landscape and environmental resource.

Program Status

Agricultural land mitigation is required when land is altered from an agricultural to non-agricultural use in the general plan designation or zoning. Between 1995 and 2006 the City preserved over 2,000 acres of agricultural land by easement and collected over \$1.2 million in in-lieu fees which were used as matching funds for state and federal preservation program grants (City of Davis, 2006). Details on the structure and performance of this program can be found in detail in the 2006 Davis Agricultural Preservation Program and Nexus Study.

In November 2007, the city amended the land mitigation program to discourage payment of in-lieu fees which were difficult to put to use, and instead encourage mitigation projects to be carried out by the landowners themselves. To calculate the amount of money to be paid in lieu, the fee is based on the appraisal of more expensive land near the city limits rather than on land further out where it is cheaper. The new program also added new locational requirements for mitigation areas. Davis is a slow growth community so, while the current slump in development which is facing most of California and other states is not having a significant impact on the rate of development in the region, growth occurs at a slow enough rate that the new program has yet to be followed all the way through to new developments being built and mitigation lands purchased. The new land mitigation regulations have, however, been a useful tool for developers to run pro formas for potential new projects, with clear options for mitigation projects (Sears, 2010).

Program details

There are requirements for both adjacent mitigation and "remainder" mitigation depending on factors such as the characteristics of the parcel (eg soil quality, parcel shape, proximity to other agricultural land) and the proposed use (such as clustered residential development that would not be conducive to commercial farming operations next door). Adjacent and remainder land mitigation can occur in Davis Planning Area, with adjacent mitigation on the non-urbanized perimeter of the project and remainder mitigation occurring anywhere in the Planning Area. The number of acres that need to be preserved under remainder mitigation depends on the distance from the city limits, proximity to the site, and whether the site is in an priority open space acquisition area.

"Alternative" mitigation proposals (mitigation on non-adjacent properties in lieu of adjacent mitigation) can be approved by the city council if the proposal meets the intent of Chapter 40A.03 (Farmland Preservation), would have extraordinary community benefits, the area is threatened by an equal or greater growth pressure to the project site, the site is strategically located and has agricultural or potential open space values. A mitigation administration fee must be paid by a developer who is seeking a zoning change to convert agricultural land. Mitigation can be accomplished by in-lieu fees which cover the cost of acquisition, administering, monitoring and enforcing the easement.

The program used to have a 500ft buffer around the city to minimize conflict between rural and urban land uses which was eliminated when simplifying regulations. The City does, however, still require a

minimum 150 foot wide agricultural buffer for any developer proposing urban uses adjacent to agricultural land, 50ft of which may have public access and 100ft of which would have not have public access.

There are two additional characteristics to open space preservation in the City of Davis that should be noted with regard to preservation efforts. The City has had an open space tax since 2000 which generates approximately \$600,000 per year which is used as matching funds for state and federal preservation program grants for the purchase of development rights. The City also has a Citizen's Right to Vote for any new project that would annex agricultural land to the city to be developed. While there have only been a few of those cases since 2000, they have all been voted down.

Noteworthy Characteristics

- Mitigation dependent on quality of sending site
- Payment in lieu option, but highly discouraged
- Agricultural buffer
- Adjacent and non-adjacent land mitigation options
- Inter-jurisdictional (but within city's planning area)

More information

City of Davis Municipal Code. Chapter 40A. Right to Farm and Farmland Preservation. Cited May 23, 2010 at <http://cityofdavis.org/cmo/citycode/chapter.cfm?chapter=40A>

City of Davis (2010) *Open Space Program*. Cited May 24, 2010 at <http://cityofdavis.org/pgs/openspace/moreinfo.cfm>

City of Davis (2006) *Davis Agricultural Preservation Program and Nexus Study*. Adopted November 1995. Last updated May 23, 2006. Cited May 24, 2010 at <http://cityofdavis.org/pgs/openspace/pdfs/Davis%20Ag%20Preservation%20Program%20-%20Info%20packet%207-06.pdf>

Correspondence with Mitch Sears, Open Space Planner, City of Davis. July 2010.

CITY OF LIVERMORE, CA

Program Goals

Livermore's Transferable Development Credits (TDC) program has an overarching goal to preserve open space. More specifically the program aims to preserve agriculture, preserve natural resources, prevent further sprawl, provide recreation opportunities, reduce traffic congestion and air pollution, avoid additional expenditure caused by increasing service areas, and preserve the special identity of the area (City of Livermore Development Code, Chapter 4.02.060).

Program Status

By 2008 the city had collected 56 payments adding up to a total of \$1,200,000 (American Farmland Trust, 2008). Livermore's current Transfer of Development Credits Ordinance was adopted in 2004, following in footsteps of the 2002 North Livermore Urban Growth Boundary Initiative.

Sending and Receiving Areas

Receiving areas are designated in the General Plan to allow new residential land use. All properties in North Livermore are part of the sending area. Receiving areas are districts that are zoned to receive additional residential development or density.

Other Program Details

The City of Livermore's TDC program is an example of a TDR program that allows a payment in lieu of transfer. Credits in the sending area are allocated based on a variety of factors, including land area, willingness to forgo development rights on one parcel and/or subdivision rights, and demolition of existing structures. Credits can be granted for land that is already under easement, providing that the existing easement is less restrictive than the proposed. On the receiving site, credits are allocated according to the type of housing (more credits required for a single family dwelling than a multi-family dwelling). An in lieu fee may be paid for each required transferred development credit, a fee which is reviewed no less than bi-annually. Affordable housing units are exempt from the transferable development credits requirements.

The Transferable Development Credits Regulations have some close connections to the North Livermore Urban Growth Boundary Initiative. It should also be noted that the city also implements a Seismic Hazard Mitigation Program that include the increase of coverage or floor area ratio in the Downtown Specific Plan area.

Noteworthy Characteristics

- Payment in lieu option

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

City of Livermore Community Development Department Planning Division website – www.ci.livermore.ca.us/CDD/Planning/planning.html

City of Livermore Development Code. *Chapter 3-10. Transferable Development Credits*. Last updated June 23, 2006. Cited June 12, 2010 at www.ci.livermore.ca.us/CDD/Planning/pdfs/Planning_Handouts/TransferableDevelopmentCredits.pdf (Note: The development code was repealed after August 2009, to be replaced by: City of Livermore Development Code. *Part 4.02.060 Transferable Development Credits Regulations*. Cited June 23, 2010 at www.codepublishing.com/CA/Livermore/Zoning/LCU_Part4.pdf

TAHOE REGIONAL PLANNING AGENCY, CA AND NV

Program Goals

The Tahoe Regional Planning Agency (TRPA) is a key example of a regional program, one aims to preserve, restore and enhance the unique natural and human environment of the Lake Tahoe region in California and Nevada.

Program Status

The TRPA coordinates several mechanisms which control development in the Lake Tahoe region. The mechanisms – transfer of lot coverage (TLC), transfer of development rights (TDR), transfer of existing development, and annual allocations – were initiated in 1987 as part of the 1987 Tahoe Regional Planning Agency’s Regional Plan. Depending on which of four scenarios is chosen during the current update of the Regional Plan, these programs may alter slightly in the future.

The residential “unit of use” for all single family properties has two components – a development right to build a home which is present as long as the right has not been transferred or extinguished, and an allocation. Commercial, recreational and tourist accomodation land uses are all regulated separately.

Annual Allocation

Development in the Lake Tahoe area is restricted by an annual “allocation” which is based on types of development (residential, tourist accommodation, commercial and recreation). Residential bonus units are used as an incentive for affordable housing. Residential allocations can be transferred under certain conditions.

Transfer of Lot Coverage

The allowable lot coverage is calculated using two different scoring systems, one for when a lot was developed before the implementation of the 1987 Regional Plan (Bailey Land Scoring System) and one for properties developed after (Individual Evaluation System). The program includes special consideration of sensitive lands, limiting permissible uses and also maintaining a sensitive land mitigation mechanism. The TLC program also includes an excess coverage mitigation mechanism for projects involving new development on parcels with existing coverage that exceeds the TRPA’s limitations for maximum allowable land coverage. For this program landowners have the option to reduce coverage on or off site, or pay a coverage mitigation fee.

Transfers of lot coverage must occur within hydrologically related areas, and occur at a 1:1 ratio for areas where up to 50% lot coverage is allowed and the ratio increases proportionally from 1:1 to 2:1 for areas with a 50% to 70% base allowable coverage (commercial uses within approved community plans). Coverage transfer must be to lands of equal or less sensitivity (ie more capable for supporting development). The region has “land banks” for each hydrologically related area which process mitigation fees. Landowners are responsible for negotiating transfers of lot coverage from one lot to another and need to show that the transfer meets TRPA’s standards. Coverage transfers are permanent for sensitive lands (Land Capability Districts 1 to 3 of 7).

Transfer of Development Rights and Existing Development

Residential development rights can be transferred from a vacant parcel to an area in a plan area or adopted community plan and designated as a receiving area for multi-residential units. Existing development can also be transferred from one parcel to another.

Noteworthy Characteristics

- Transfer of lot coverage
- Transfer of development rights and existing development
- Annual allocation for building
- Transfers within hydrological regions

- Land mitigation program
- Inter-jurisdictional, regional program

More information

Tahoe Regional Planning Agency (TRPA) (2009) *Land Use Subelement. TRPA Draft Regional Plan Update Alternatives. Environmental Threshold Carrying Capacities and Pathway Vision Statements.* Cited June 3, 2010 at

www.trpa.org/documents/rp_update/RPU_Descriptions/Land_Use/1.8.1_Land_Use_Sub.pdf

TRPA (2010) *Regional Plan Update Fact Sheet # 3: Land Use.* Cited June 3, 2010 at www.trpa.org/documents/rp_update/Facts&Presentations/RPU_Fact_Sheet_3_Land_Use.pdf

TRPA (2010) *Coverage Information.* Cited June 3, 2010 at www.trpa.org/default.aspx?tabindex=9&tabid=187

TRPA Code of Ordinances. Chapter 20 Land Coverage Standards. Last Amended August 27, 2008. Cited August 3, 2010 at www.trpa.org/documents/docdwnlds/ordinances/COCh20.pdf

TRPA Code of Ordinances. Chapter 33 Allocation of Development. Last Amended February 24, 2010. Cited August 3, 2010 at www.trpa.org/documents/docdwnlds/ordinances/COCh33.pdf

TRPA Code of Ordinances. Chapter 34 Transfer of Development. Last Amended October 28, 1998. Cited August 3, 2010 at www.trpa.org/documents/docdwnlds/ordinances/COCh34.pdf

Pruetz, R (2003) *Beyond Takings and Givings. Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*, Arje Press, Marina Del Rey CA

Correspondence with Heath Gustafson, Soils/IPES Senior Planner. Tahoe Regional Planning Agency. August 2010.

BOULDER COUNTY, CO

Program Goals

The main goal of Boulder County's TDR program is to "promote county-wide preservation of agriculture, rural open space and character, scenic vistas, natural features, and environmental resources" (Boulder County Land Use Code, 6-700A).

Program Status

Adopted in 1995, the county's voluntary TDR program allowed up to five percent of a sending site to be developed with the remainder of the land protected by a conservation easement. Up until 2007, this program succeeded in preserving over 5,000 acres of agricultural and resource land through the issuance of 293 TDR certificates (Boulder County, 2007). By 2008 the county had preserve 5,900 acres (Pruetz and Standridge, 2008). Following the completion the County's Sustainability Element in 2007, the Expanded TDR Program was approved in June 2008.

Sending and Receiving Areas

Potential receiving areas are not mapped by the county so that property values are not artificially raised or lowered through speculation. Instead, the county requires that any interested property owner show how their property meets the criteria for approval. Neighboring land owners are notified and public hearings are held once a receiving area is proposed. The County has intergovernmental agreements with several of the communities within the county to act as sending and receiving areas, including the Cities of Boulder, Erie, Lafayette, Longmont, and Louisville, and the Town of Superior. Unless there is an intergovernmental agreement that requires a higher percentage, 75% of the units transferred to the receiving site must come from the sub-area surrounding the site.

Other Program Details

The Expanded program approved in 2008 allows the creation of a Transferable Development Credits (TDC) Clearinghouse in August 2008. The Expanded program also included the mandate that all property owners of unincorporated county land must purchase TDCs if they want to build a home of more than 6,000 square feet. If a property owner has a vacant parcel or home smaller than 2,000 square feet on unincorporated county land, they now have the opportunity to sell TDCs. The new program is responding to the dramatic increase in median dwelling unit size in the last decade and is an effort to preserve the diversity of the housing stock. The number of development rights that can be transferred, and the number of units that may still be built on the remaining site is defined by formula, with more development rights allocated per acre for larger lots. For receiving sites, the number of development credits per 500 sq ft of additional development increases from 1 TDC per 500ft for the first additional 500 sq ft to 3 TDCs for each additional 500ft after 2,000 sq ft of addition.

The program is used alongside other land development tools such as non-urban planned unit developments program which was started in 1978. The majority of the county is under a 35 acre minimum lot size zoning. In conjunction with the Expanded TDR program, the County also released an additional site plan review standard of compatibility – requiring that the size of dwelling units remain compatible with the surrounding neighborhood (area within 1,500 feet of the site, platted subdivisions of more than seven developed lots, or mapped townsites).

At present the TDR program only allows transferral of single family residential development rights. TDR dwelling units cannot serve as affordable housing unless a TDR participating municipality wishes to add an affordable housing element to the site as the county recognizes that its model encourages relatively low density development (two dwelling units per acre or less) and the additional cost of purchasing development credits would significantly increase the underlying cost of the land.

Noteworthy Characteristics

- Voluntary until 2008

- Sending or receiving area dependent on size of home
- Inter-jurisdictional
- Preserved parcel allows development of up to 5% of site

More information

Boulder County Land Use Department. Planning Division. *Transferable Development Rights Program*. Cited June 30, 2010 at www.bouldercounty.org/lu/planning_division/tdr_program/index.htm

Boulder County Land Use Code. Article 6. Planned Development Districts. Cited June 30, 2010 at www.bouldercounty.org/lu/lucode/pdf/Boulder_County_Land_Use_Code_Article_6.pdf

Boulder County Land Use Department. Planning Division. *Boulder County Code Updated: Expanded TDR Program*. Cited June 30, 2010 at www.bouldercounty.org/lu/planning_division/expanded_tdr/index.htm

Boulder County (2007) *Boulder County Comprehensive Plan Update. Sustainability Element*. Adopted May 16, 2007. Cited June 30, 2010 at www.bouldercounty.org/lu/bccp/pdf/BCCPSustainabilityElement.pdf

Boulder County Board of County Commissioners (2008) *Expanded TDR Program*. Approved June 12, 2008. Cited June 30, 2010 at www.bouldercounty.org/lu/planning_division/expanded_tdr/pdf/BOCCExpandedTDRDocuments061208.pdf

Boulder County Land Use Department (2010) *Intergovernmental Agreements (IGAs)*. Cited August 13, 2010 at www.bouldercounty.org/lu/igas/index.htm

- Boulder Valley. Parties: Boulder, Boulder County. Boulder Valley TDR CDP Successor IGA
- East Central Boulder Comprehensive Development Plan. Parties: Boulder County, Erie, Lafayette. Isabelle Ranch TDR/PUD Amendment
- Lafayette Transfer of Development Rights Comprehensive Development Plan. Parties: Boulder County, Lafayette. Resolution Approving TDR IGA.
- Longmont Planning Area Comprehensive Development Plan. Parties: Boulder County, Longmont. TDR Map, TDR Sending Site Map
- Longmont Transfer of Development Rights IGA. Parties: Boulder County, Longmont. First Amendment, and Second Amendment.
- US 36 Corridor Comprehensive Development Plan. Parties: Boulder County, Boulder, Louisville, Superior. Willow Ranch TDR Amendment to US 36 Corridor CDP

Pruetz, R and Standridge, N (2009) "What makes transfer of development rights work?", *Journal of American Planning Association*, Winter 2009, 75(1):78-87

GUNNISON COUNTY, CO

Program Goals

The main goal of Gunnison County's TDR program, known as the Residential Density Transfer (RDT) program, is to "provide an effective and equitable tool to conserve ranchlands used in agricultural operations and other valuable natural lands, and to help protect those lands from development impacts" (Gunnison County Land Use Resolution, Division 14-200).

Program Status

Gunnison's RDT program was adopted in November 2009 and has not been used to date (Pelletier, 2010). The program is a simplified version of Berthoud, Colorado's TDR program. It was established as a voluntary TDR program that applies to subdivisions of five or more lots. For these subdivisions there is an 30% open space requirement (pre-existed the 2009 RDT ordinance) which can be reduced to 15% if the developer complies with the RDT programs requirements.

Sending and Receiving Areas

There are no particular sending or receiving areas. The program currently applies to all unincorporated lands within the county. Some lots may not be eligible for the open space reduction as the natural environmental constraints on the land already exceed 30%. Lots used for mobile homes or solely for Essential (Workforce) Housing are also excluded from the open space calculation.

Other Program Details

The payment in lieu option for this program is based upon the difference in tax assessed (not appraised) values for the properties. Developers would currently pay 10% of the difference between the assessed value property before subdivision and sum value of all lots after subdivision. By reducing the required amount of open space on the property from 30% to 15% the number of lots that can be subdivided from the original lot can be increased and the amount of usable area on the lots may increase. The percentage was set low enough that developers can still make a profit on projects that are sited on a wide variety of original lot sizes, while providing suitable funding to acquire conservation easements in other areas of the county particularly. The funds generated are mainly used to leverage state lottery funds. The county also has an active PDR program which is funded by sales taxes.

Noteworthy Characteristics

- Open space requirement reduction
- Payment in lieu option

More information

Gunnison County Land Use Resolution. Reprinted 2006. Last amendment approved August 4, 2005. Cited July 26, 2010 at www.gunnisoncounty.org/planning_pdf/GC-LUR-2006.zip?download=GC-LUR-2006.zip

Gunnison County (2007) *Transfer of Development Rights (TDR) Program for Gunnison County*. November 30, 2007. Cited June 24, 2010 at www.gunnisoncounty.org/gis_pdf/TDR_information.pdf%3Fdownload%3DTDR_information.pdf

Gunnison County Land Use Resolution 2009-47 Concerning the Addition of a Voluntary Residential Density Transfer Section. Adopted November 3, 2009. Cited July 26, 2010 at www.gunnisoncounty.org/commissioners_pdf/resolutions/2009/Resolution%202009-47.PDF

Pelletier, M.; Pruetz, R.; and Duerksen, C. (2010) "TDR-Less TDR Revisited: Transfer of Development Rights Innovations and Gunnison County's Residential Density Transfer Program." *Planning Advisory Service Memo*. May/June 2010. www.planning.org/pas/memo/2010/may/index.htm

Shoemaker, W (2009) "Program aims to conserve land via developer incentive". *Gunnison Country Times*. Thursday November 5, 2009. Page A4. Cited June 24, 2010 at www.gunnisoncounty.org/gis_pdf/RDT_newspaper_article.pdf

Correspondence with Mike Pelletier, GIS Manager, Gunnison County. July 2010.

PITKIN COUNTY, CO

Program Goals

Pitkin County's TDR program is provided as an alternative to the Growth Management Quota System (GMQS). In Pitkin County, both systems are designed to promote smart growth, with the GMQS managing the rate, type, location, quality and quantity of growth in unincorporated rural and urban areas in the county, and the TDR program also promoting the Pitkin County Comprehensive goal plans by transferring development rights to preserve natural and historic resources and lands which are physically and visually constrained (Pitkin County Land Use Code, Chapter 6).

Program Status

Pitkin County's TDR program was first adopted in 1994, with the adoption of a new land use code in 2006 that expanded from the original TDR program's focus on relocation of development closer to existing services and infrastructure thereby preserving the backcountry, to also include an element of protecting environmentally sensitive areas and discouraging development in environmentally hazardous areas. As of 2008, the County had preserved over 6,452 acres (Pruetz and Standridge, 2009). By December 2009, 308 TDR certificates had been issued for a variety of different site types and 121 of the rights had been redeemed with 30 TDRs used for new growth management exempt homes and 91 TDRs used for additional floor area (Pitkin County, 2009). Another 314 TDRs on receiver sites have been granted approval, mainly for additional floor area. The expansion of the program in 2006 allowed the program to have a more balanced supply and demand of TDRs, which is evidenced in the annual TDR tallies.

Since 2006, areas within the Aspen Urban Growth Boundary have also been receiving sites. Most receiving areas only allow the size of house to increase when "transferred development rights" are purchased, but within the Aspen Urban Growth Boundary new development rights can be created on the sites. The City of Aspen also has its own TDR program which focuses on historic preservation. A study of alternative TDR transaction mechanisms highlighted the rather unusual situation in Pitkin County that helped the program protect over 5,000 acres; that the county includes the Aspen which, while an affluent city, believes that protecting rural areas in exchange for building large vacation or ranch homes in particular areas is an worthwhile exchange (Bratton *et al.*, 2008).

Sending and Receiving Areas

Sending areas include parcels within preservation and conservation development planned unit development (CD-PUD) zone, physically and visually constrained sites, sites identified in the Open Space Preservation Master Plan and sites on the County Historic Register. Receiving areas include sites in certain residential districts, to the CD-PUD zone, and to any existing site without development rights if it is within the Aspen Urban Growth Boundary (designated center in unincorporated county land, not within any of the incorporated areas such as the City of Aspen) or part of the Conservation Development Option in rural areas. Depending on the receiving site zone, a credit can be used for a right to develop a new structure on the property and/or to increase the floor area of the house.

Noteworthy Characteristics

- Sending area includes environmentally hazardous and constrained lands.
- Inter-jurisdictional

More information

City of Aspen Land Use Code. Chapter 26.535 Transferable Development Rights. Cited June 22, 2010 at www.aspenpitkin.com/Portals/0/docs/City/clerk/municode/coaspent26-500.pdf

Bratton, N.; Eckert, J.; and Fox, N. (2008) *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*. Prepared by the Cascade Land Conservancy July 10, 2008. Cited June

12, 2010 at

www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6223&MIId=944&wversion=Staging

Estin, T (2006) "Pitkin County 2006 Land Use Code: A Primer", *Mountain Business Journal*, July 4, 2006. Cited June 21, 2010 at www.estinaspen.com/2006070468/pitkin-county-2006-land-use-code-a-primer.html

Pitkin County Land Use Code. Chapter 6. Growth Management Quota System and Transferable Development Rights. Cited June 22, 2010 at www.aspenpitkin.com/Portals/0/docs/county/countycode/chapter_06_ord_014D,%2007-06,%20030-06,%20038-06,%20021-07,%20023-07,%20022-08,%20019-09,%20024-09,%20026-09.pdf

Pitkin County. Department of Community Development. Division of Planning and Zoning. *Transferable Development Rights Program Summary and Annual Review of the TDR Program*. Last updated December 16, 2009. Cited July 26, 2010 at www.aspenpitkin.com/Departments/Community-Development-Pitkin-County/Planning-and-Zoning/Transferable-Development-Rights-%28TDRs%29/

Pruetz, R (2005a) "Aspen, Colorado." *Beyond Takings and Givings Book Updates*. Cited June 22, 2010 at www.beyondtakingsandgivings.com/aspen.htm

Pruetz, R (2005b) "Pitkin County, Colorado." *Beyond Takings and Givings Book Updates*. Cited June 22, 2010 at www.beyondtakingsandgivings.com/pitkin.htm

Pruetz, R and Standridge, N (2009) "What makes transfer of development rights work?", *Journal of American Planning Association*, Winter 2009, 75(1):78-87

ALACHUA COUNTY, FL

Program Goals

The purpose of Alachua's TDR program is to "protect the County's environmental resources and promote viable agriculture while encouraging efficient use of services and infrastructure within the Urban Cluster" (Alachua Unified Land Development Code, Chapter 402.180).

Program Status

While originally adopted in 2005, Alachua County's TDR program was only fully adopted in 2010 and has not been used so far. The county does not have much expectation of the program being used significantly in the near future for a variety of economic reasons.

Sending and Receiving Areas

The program is focused on unincorporated county lands, although there are options that allow the establishment of additional receiving areas in municipalities through intergovernmental agreements. Transferred development rights may be used to reduce the open space requirement and as support for a comprehensive plan amendment to expand the Urban Cluster.

Agricultural sending parcels are properties that are classified as agricultural by the Alachua County Property Appraiser, is outside the Urban Cluster, and are over 160 acres, contiguous to a designated sending area or has exceptional agricultural value. Conservation sending parcels are those identified as a Strategic Ecosystem or on the Alachua County Forever active acquisition list, and is over 160 acres, contiguous to 160 acres of eligible conservation sending parcels, or contains critical resources or ecological value. Sending parcels are rezoned to either Agricultural or Conservation with TDR Zones after development rights are sold. The sending area and transfer formulas differ according to whether the sending parcel is an agricultural or conservation area.

The program encourages non-residential development in receiving areas, with any non-residential development on unincorporated lands being eligible to receive. Mixed use developments in unincorporated areas can also receive development rights, but only proportional to the amount of non-residential use in the development. Any amendment to the Urban Cluster requires the purchase of two development rights per residential unit and 10 development rights per acre for non-residential land uses.

Noteworthy Characteristics

- Preserved parcels rezoned once development rights are sold.
- Open space requirement reduction
- Voluntary non-residential receiving area in unincorporated areas
- Expansion to Urban Cluster for residential and non-residential uses require purchase of transferred development rights

More information

Alachua County (2009) *Unified Land Development Code. Adopted 2005, last modified 2009. Chapter 402, Article 29 (Transfer of Development Rights Program)*. Cited June 10, 2010 at <http://growth-management.alachua.fl.us/ldr.php> (Note: the updated TDR section is in the "replacement pages" document)

Correspondence with Steve Lachnicht, Director, Division of Administration, Office of Growth Management. Alachua County. July 2010.

TOWNSHIP OF HADLEY, MA

Program Goals

There are three goals for Hadley's Farmland Preservation Bylaw: to "permanently protect farm land and agricultural soils in the Town", "protect farmland property values and provide a fair economic return to owners of property restricted from further development", and to "foster compact commercial and industrial development in central areas served by public infrastructure" (Hadley Zoning Bylaws, Section XVII).

Program Status

Adopted in 2000, Hadley's Farmland Preservation Bylaw is one of the first examples of TDR in Massachusetts and often serves as an example to other municipalities in the area. To date over ten new developments have been approved in the commercial/ industrial receiving area to pay the in-lieu fee for either a reduction in parking requirements or increase in density.

The TDR program in Hadley is based upon the transferral of credits from farmland to commercial property, allowing additional commercial floor area and a parking requirement reduction. The program has not been amended to date, although there is discussion about expanding the program for some residential uses in the receiving areas. While there are two options in the Bylaw about how to transfer the development rights, to date there has been no uptake on direct purchase of development rights by a developer. Instead, developers have all chosen to pay into a revolving fund which is then used as matching funds for the State of Massachusetts' Agricultural Preservation Restriction Program for preservation of chosen properties. To date, Hadley has generated \$338,772 in in-lieu fees from four TDR projects, funds which have been leveraged to preserve over 239 acres of farmland (Pioneer Valley Planning Commission, 2009 and Dwyer, 2010).

Sending and Receiving Areas

The sending area is all developable farmland of at least five acres within the Agriculture/Residential Zone. The receiving area is a state highway commercial corridor – all lots within the Business and Industrial Zones with frontage on Route 9, Mill Valley Road or North Maple Street. The program is particularly relevant now that many anchor stores in both enclosed and strip malls want to own their land and parking lots, thus making them subject to zoning requirements on a store by store (lot by lot) basis (rather than the combined parking requirement for the entire mall being spread across the single lot).

Other Program Details

Another interesting characteristic of Hadley's program is that not all applications for increased floor area or a reduced parking requirement are automatically approved. Applications for the increased density or reduced parking requirement are processed as Special Permit applications, thus allowing the Planning Board to assess whether the parking reduction or density increase is suitable given the individual lot, deal with properties that were grandfathered into the program but wish to make changes, and also make allowances depending on the proposed use of the site (a restaurant would have different requirements from a manufacturing site that required more floor area but fewer parking spaces).

Calculation of the in-lieu fee uses the average cost for the purchase of Agricultural Preservation Restrictions in the Town over the previous three years.

Noteworthy Characteristics

- Payment in lieu option
- Non-residential receiving area – highway commercial/ industrial
- Option for reduction of parking requirement
- Processed as a Special Permit by the Planning Board

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Town of Hadley Master Plan. October 2005. Prepared by Long Range Planning Committee with the assistance of Daylor Consulting Group. Cited May 29, 2010 at www.hadleyma.org/masterplan/HadleyMasterPlan.pdf

Town of Hadley Zoning By-laws. Section XVII Farmland Preservation Bylaw. Last amended May 2008

Pioneer Valley Planning Commission (2009) "Transfer of Development Rights". *Smart Growth Strategy 7. Preserve Farmlands and Support Farm Businesses*. Cited May 29, 2010 at www.pvpc.org/val_vision/html/toolbox/PDFs/building%20blocks/Transfer%20of%20Development%20Rights.pdf

Correspondence with Bill Dwyer, Clerk for Hadley Planning Board. July 2010.

Correspondence with Bob Wagner, Senior Policy and Program Advisor, American Farmland Trust. June 2010.

TOWN OF HATFIELD, MA

Program Goals

The purpose of Hatfield's TDR program is to "protect farmland and open space, protect property values and provide a fair economic return to property owners, foster compact development in areas served by public services and infrastructure, and to preserve the remaining rural, historic and agricultural character of the community by directing new commercial and industrial development to appropriate locations" (Hatfield Zoning Bylaws, Chapter 6.1).

Program Status

Created in 2003, Hatfield's TDR Program has not been used as of July 2010. The program includes an option for payment in lieu of credits.

Sending and Receiving Areas

The sending area is all land within the agricultural, outlying residential and rural residential zoning districts. The program allows for increased commercial and industrial development density (floor area and lot coverage) for land served by municipal water and sewer within the business, industrial and light industrial zoning districts. Development in the receiving area using transferred development credits requires an application to the Planning Board for a Special Permit.

Other Program Details

There is an option for the "restriction" (easement or covenant) on a property to be released if the land is deemed no longer suitable for agricultural or horticultural uses, as approved by two-thirds of the Massachusetts general court.

Noteworthy Characteristics

- Payment in lieu option
- Preservation easement can be released under certain circumstances
- Processed as Special Permit by Planning Board

More information

Town of Hatfield Zoning Bylaws. Chapter 6.1 Transfer of Development Rights. Adopted May 13, 2003, Amended May 11, 2004. Cited June 28, 2010 at www.townofhatfield.org/About%20the%20Town/zoningbylaws.pdf

Correspondence with Bob Wagner, Senior Policy and Program Advisor, American Farmland Trust.
June 2010

CALVERT COUNTY, MD

Program Goals

The main goals of Calvert County's TDR program is to "preserve prime agricultural and forestry land", "utilize the free market system for financing preservation" and "guide development away from prime agricultural and forestry lands" (Calvert County Agricultural Preservation Rules and Regulations). The program also aims to "promote and preserve the identity of intact rural agricultural communities" and to "minimize conflicts between agricultural and non-agricultural land use by providing for functional separation of the two". The County also has a Forest Conservation TDR program which was designed to help meet the goals of the Maryland Forest Conservation Act.

Program Status

Calvert County's TDR program was the first in Maryland, adopted in 1978. As of December, 2005, the TDR program had preserved over 11,900 acres of the 23,767 acres of lands preserved in the county. By 2008, this number had increased to 13,260 acres preserved through the TDR program. The most notable characteristic of the Calvert County TDR program is that it uses low density receiving areas and does not require infrastructure like sewer service within these areas.

Sending and Receiving Areas

The county's program operates within its unincorporated lands. Sending areas are established voluntarily. Landowners can voluntarily apply to be designated in the county's Agricultural Preservation District, a designation which must remain for at least five years. To qualify, at least fifty percent of the total acreage must be suitable for cropland and/or managed forest land. Properties within the Agricultural Preservation District can be preserved through three County mechanisms – the TDR program, the Purchase and Retirement Fund (which purchases, retires and permanently removes transferable development rights), and the Leveraging and Retirement Fund (which also permanently retires development rights for the property, but there is no limit on the number of rights that can be purchased, and the owner receives tax-free interest payments and a lump sum payment at the end of a fixed term).

The base density of receiving areas has been slowly decreased over time. All zoning densities in the county were reduced in 1999 and 2003, with TDR providing the only method to regain previous densities, resulting in new development concentrating in the Residential Districts and within a mile of Town Centers. Receiving areas for the TDR program are any areas that are not part of the Agricultural Preservation District, and includes Priority Funding Areas (Residential Districts and Town Centers) and the Rural Community District (RCD). Several of these options are low density, with densities as low as one dwelling unit per four acres in the RCD and one dwelling unit per two acres in the RD when TDRs are used. The RCD has proved the most popular area to transfer rights to. Some lands in the RCD are both sending and receiving areas.

Noteworthy Characteristics

- Low density receiving areas
- Downzoning used
- Complimentary PDR Program

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Calvert County (2009) *Preserving Farm and Forestland in Calvert County, MD*. Agriculture workshop. March 19, 2009. Cited June 3, 2010 at www.co.cal.md.us/assets/Planning_Zoning/Slideshows/March19-AgWorkshopSlideshow.pdf

Calvert County Board of County Commissioners (2006) *Calvert County Land Preservation, Parks and Recreation Plan*. Approved and adopted December 2006. Cited June 23, 2010 at www.co.cal.md.us/assets/Planning_Zoning/PDF_Files/AdoptedOpenSpacePlan.pdf

Calvert County Zoning Code. Effective Date May 1, 2006. Last updated May 19, 2010. Article 2: Zoning Districts and Maps. Article 5: Residential Development Requirements. Cited June 23, 2010 at www.co.cal.md.us/assets/Planning_Zoning/ZoningOrdinance/Article2-Final.pdf and www.co.cal.md.us/assets/Planning_Zoning/ZoningOrdinance/Article5-ResidentialDevReq.pdf

Calvert County. Calvert County Agricultural Preservation Rules and Regulations. Adopted January 9, 2007 and amended March 20, 2007. Cited July 28, 2010 at www.co.cal.md.us/assets/ResolutionAugust07andRulesRegulations20070109.pdf

McConnell, V.; Walls, M.; and Kelly, F. (2007) *Markets for Preserving Farmland in Maryland Making TDR Programs Work Better*. HRHCAE Pub 2007-03. Report prepared for the Maryland Center for Agroecology. Final Draft. February 2007. Cited June 23, 2010 at <http://agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%202007-03.pdf>

Pruetz, R and Standridge, N (2009) "What makes transfer of development rights work?", *Journal of American Planning Association*, Winter 2009, 75(1):78-87

Correspondence with Veronica Cristo, Rural Planner II, Calvert County Department of Planning and Zoning. August 2010.

CECIL COUNTY, MD

Program Goals

The goal of Cecil County's TDR program is to "encourage preservation of natural resources and facilitate orderly growth in the County" and to encourage the provision of a more attractive living environment (Cecil County Zoning Code, Article XI, Part V, Section 246).

Program Status

Adopted in 2006 with an effective date of January 1, 2007, the Cecil County TDR program is relatively new. Unfortunately, primarily due to the housing market crash, there has been no use of the TDR program to date.

Sending and Receiving Areas

Sending parcels must be located in either the northern or southern agricultural residential zoning districts and be at least 50 acres in size. At least 50% of the parcel must have soils in USDA Classes I, II, or III, and if the parcel is wooded, 50% of the land must be classified as Woodland Group 1 or 2. The TDR ordinance also contains some site design standards to guide new development.

Receiving areas include the Suburban Residential District (up to four dwelling units per acre with TDR), Development Residential District (up to twelve dwelling units per acre) and the Town Residential District (up to six dwelling units per acre). While at present the program just operates within the county's unincorporated lands, the county does have a provision that development rights may be used in incorporated municipalities if the municipality has adopted mechanisms that allow the rights to be used.

Other Program Details

The County also has an active PDR Program. Under the county's PDR program easements can be repurchased by landowners after 25 years if the Board of County Commissioners has "determined that the land is no longer suitable for farming". The county also has a 15% minimum common open space requirement for all subdivisions, unless a payment in lieu of open space is made to the County's PDR Program.

Noteworthy Characteristics

- Payment in lieu option for PDR program
- Open space incentive
- Preservation easement can be released under certain circumstances

More information

Cecil County (2006) Zoning Ordinance Amendments adopted on August 18, 2006, effective January 1, 2007. Cited June 10, 2010 at www.ccgov.org/uploads/PlanningAndZoning/General/TDR_7_17_06.pdf

Cecil County (2006) *Purchase of Development Rights Program. Instructions for Completing the Application to Sell An Easement.* Cited June 10, 2010 at www.ccgov.org/uploads/PlanningAndZoning/AgPreservation/CC%20PDR%20Instructions_11_06.pdf

Cecil County Planning and Zoning Department (2010) *Transfer of Development Rights. Executive Summary.* Cited June 10, 2010 at www.ccgov.org/dept_planning/TDRExecSum.cfm

Correspondence with Eric S Sennstrom, Director, Cecil County Department of Planning and Zoning. August 2010.

MONTGOMERY COUNTY, MD

Program Goals

The main goal of Montgomery County's TDR program is to reduce residential density in sending areas. Preserving natural resources and agriculture is primarily the goal for the county's Purchase of Development Rights (PDR) program.

Program Status

One of the earliest and most successful TDR programs in the country, the Montgomery County TDR program has preserved over 64,000 acres at a density of one dwelling unit per 25 acres and over 5,000 acres are preserved without any potential for future development (MNCPPC, 2007:3). The County is currently in the process of a comprehensive rewrite of the County Zoning Code, a process that started in 2008 and not expected to be completed until 2012.

In the early 2000s the problem of "fifth TDR" arose, where individuals were developing country estates in the sending areas with the remaining development right, thus causing an escalation in land value in the area which made it unaffordable for commercial farming (McConnell *et al.*, 2007; and Bratton *et al.*, 2008). This issue still remains and is part of the motivation for developing the Building Lot Termination program which allows for the exchange of the fifth development right for a higher value (Dunn, 2010). As of 2007, the BLT program had successfully severed over 200 buildable ("fifth") TDRs from the land which represented over 5,000 acres protected from future development at any density (MNCPPC, 2007).

The program has nearly reached its goal of conserving 70,000 acres. As such a large proportion of the agricultural land is conserved and there are increasing pressures to develop the remaining lands, thereby increasing the value of those lands. While the county has been considering new development rights programs so that the remaining areas can be preserved, with the exception of the BLT program, no other new programs are being developed at the moment due to the state of the economy (Bratton *et al.*, 2008; and Dunn, 2010).

Sending and Receiving Areas

The county's sending area is known as the Rural Density Transfer Zone, where density is limited to one dwelling unit per 25 acres. One development credit is equal to five acres, and property owners can sell four of five development credits. The fifth development credit can be sold through the BLT program. The TDR program operates within the county's unincorporated lands unless land is annexed from the county to an incorporated community and, following a individual assessment of the parcels involved, an agreement is reached with the municipality that the parcels remain in the program.

TDR is the only way to exceed base zoning in the county, with the exception of the development of affordable housing. The county's use of downzoning and then allocating development rights as per the old zoning provided incentive for development rights to be purchased. To further incentivize growth in receiving areas, the County's capital improvements program ensure that infrastructure such as sewer, water and transportation reach the area. Other than capital improvement incentives, the program relies solely on additional density providing the incentive for development in the receiving areas. Unfortunately, over recent years the market for larger lot subdivisions has increased to such an extent that it is often more profitable for developers to build at lower densities, thus decreasing the demand for credits.

Other Program Details

The County also has an active PDR program which compliments the TDR program. Reflecting the TDR program's main goal to reduce residential density in sending areas rather than preserving natural resources or agriculture like the county's PDR program, Montgomery County's TDR program issues different easements for properties than under their PDR program. The standard TDR easement

focuses on the number of residential dwellings that can be constructed, occupied or maintained on the property, ignoring the elements commonly mentioned in the PDR program such as future subdivision, mining, development of soil, water or forestry conservation plans, agricultural structures, public access, and use of property. Unlike the PDR agricultural easement which contains a clause for termination of an easement if the land is no longer suitable for agriculture after 25 years, the standard TDR easement does not contain such a clause since the development rights have already been used elsewhere.

Noteworthy Characteristics

- Complimentary PDR program (not competing)
- Use downzoning
- PDR preservation easement can be released under certain circumstances

More information:

American Farmland Trust (2001) *Purchase of Development Rights and Transfer of Development Rights Case Studies*. Prepared for Boone County Planning Commission. Cited June 1, 2010 at www.ctahr.hawaii.edu/awg/downloads/rp_AFT_TDRstudies_Boone.doc

Bratton, N.; Eckert, J.; and Fox, N. (2008) *Alternative Transfer of Development Rights (TDR) Transaction Mechanisms*. Prepared by the Cascade Land Conservancy July 10, 2008. Cited June 12, 2010 at www.commerce.wa.gov/DesktopModules/CTEDPublications/CTEDPublicationsView.aspx?tabID=0&ItemID=6223&MIId=944&wversion=Staging

Knapp, M (2008) "Council Provides Further Protection for Ag Reserve", *The Open Mike Newsletter from Councilman Mike Knapp*, December 2008. Cited August 3, 2010 at www.montgomerycountymd.gov/content/council/mem/knapp_m/newsletters/december2008.asp#ag

Maryland National Capital Park and Planning Commission (MNCPPC), Research and Technology Center (2007) *Tracking Transferrable Development Rights*. Cited June 1, 2010 at www.montgomeryplanning.org/research/documents/TDRstatusreport-finaldraft.pdf

Maryland National Capital Park and Planning Commission (2008) *Rural Areas/ Agricultural Reserve*. Cited June 1, 2010 at www.montgomeryplanning.org/community/ag_reserve.shtm

Maryland National Capital Park and Planning Commission (2010) *Montgomery County Zoning Rewrite*. Cited June 8, 2010 at www.montgomeryplanning.org/development/zoning/interact.shtm

McConnell, V.; Walls, M.; and Kelly, F. (2007) *Markets for Preserving Farmland in Maryland Making TDR Programs Work Better*. HRHCAE Pub 2007-03. Report Prepared for the Maryland Center for Agroecology. Final Draft. February 2007. Cited June 23, 2010 at <http://agroecol.umd.edu/files/Virginia%20McConnell%20Final%20Report%20HRHCAE%20Pub%202007-03.pdf>

Montgomery County Council. Bill 39-07. Repealing and re-enacting Montgomery County Code Chapter 2B Agricultural Land Preservation. Approved November 18, 2008. Cited August 3, 2010 at www.montgomerycountymd.gov/content/council/pdf/bill/2007/39-07.pdf

Montgomery County Zoning Code. Last updated 30 April, 2010. Cited June 8, 2010 at www.amlegal.com/montgomery_county_md/

Correspondence with Pam Dunn, Research and Technology Center, Montgomery County Planning Board. August 2010.

LONG ISLAND PINE BARRENS, NY

Program Goals

The purpose of the Pine Barrens Credit Program (PBCP), as established by the Long Island Pine Barrens Protection Act, is to “preserve the pine barrens ecology and to ensure the high quality of surface and groundwater within the Central Pine Barrens” (Central Pine Barrens Comprehensive Plan. Volume 1. Chapter 6.1). The Plan which accompanies the program also aims to “discourage piecemeal and scattered development”, “accommodate development in a manner consistent with the long term integrity of the pine barrens ecosystem”, and “promote a compact, efficient and orderly plan of development”.

Program Status

The Long Island Pine Barrens (or Central Pine Barrens) TDR program was started in 1993 when the Long Island Pine Barrens Protection Act of New York State was passed. The PBCP is managed by the Central Pine Barrens Joint Planning and Policy Commission which was also created as part of the 1993 Act. As of January 1, 2009 a total of 1,843 acres of land had been protected by easement, with approximately 40% of the credits generated having been redeemed (345 out of 907).

Sending and Receiving Areas

The sending and receiving areas, as well as the operational guidelines for the PBCP are outlined in the Central Pine Barrens Comprehensive Land Use Plan which was first adopted in 1995 and is currently undergoing its fourth update. The program is inter-jurisdictional with the towns of Brookhaven, Riverhead and Southampton hosting the sending areas and receiving areas, and several additional Suffolk County town designating additional receiving areas. While Brookhaven, Riverhead and Southampton Town have both sending and receiving areas, credits cannot be transferred within the same town. There is no restriction on the type of development that can occur in receiving areas according the Pine Barrens Plan, allowing residential, industrial and commercial uses, amongst others.

While in Brookhaven and Southampton a Pine Barrens Credit is equal to one single family dwelling, in Riverhead a Pine Barrens Credit is equal to three hundred gallons of sewage flow per day per acre. Even in Brookhaven and Southampton credit transfers are connected to sewage flow and are tied to the Suffolk County Department of Health Services Sanitary Code. It is the County Sanitary Code that defines that credit transfers must occur within the same Groundwater Management Zone.

Noteworthy Characteristics

- Regional, inter-jurisdictional program
- Some credit transfers connected to sewage flow

More information

American Farmland Trust Farmland Information Center (2008) *Transfer of Development Rights Factsheet*. Cited May 24, 2010 at www.farmlandinfo.org/documents/37001/TDR_04-2008.pdf

Central Pine Barrens Joint Planning and Policy Commission website. *Pine Barrens Credit Program (Transfers of Development Rights)*. Last updated June 8, 2010. Cited June 9, 2010 at www.pb.state.ny.us/chart_pbc_main_page.htm

Central Pine Barrens Joint Planning and Policy Commission. *The Pine Barrens Credit Program: Transferable Development Rights in Central Suffolk County, NY*. January 2010. Cited June 9, 2010 at www.pb.state.ny.us/pbc/pbc_overview.pdf

Central Pine Barrens Joint Planning and Policy Commission (2004) *Central Pine Barrens Comprehensive Plan. Volume 1:Policies, Programs and Standards. Chapter 6*. Originally issue 1995,

amended to October 20, 2004. Cited June 9, 2010 at www.pb.state.ny.us/cpb_plan/chapter_6.htm

Suffolk County Department of Health Services. Division of Environmental Quality. *Sanitary Code. Article 6: Transfer of Development Rights Standards*. Effective September 30, 1995. Cited June 9, 2010 at www.co.suffolk.ny.us/Health%20Services/TDRStandards.pdf

TOWN OF SOUTHOLD (IN SUFFOLK COUNTY), NY

Program Goals

Adjacent to the Long Island Pine Barrens region, Southold's program also transfers development rights as related to sanitary flow, drawing upon Suffolk County's Sanitary Code. Southold's program has been used to encourage affordable housing goals in addition to land preservation goals. The official goals of Southold's "TDR" program is the "preservation of open space, agricultural lands and recreational landscapes; preservation of the rural, cultural, and historic character of the hamlets and surrounding countryside; preservation of the natural environment and prevention of further deterioration of resources; preservation and promotion of a broad range of housing and business opportunities to support a socioeconomically diverse community; and increased transportation efficiency" (Southold Municipal Code, Chapter 117).

Program Status

Southold's transfer of sanitary flow rights program has been in place since 2005. A sanitary flow credit is "equivalent to a right to develop a single-family residential parcel with an individual on-site sewerage system, or its nonresidential wastewater flow equivalent". One sanitary flow right is allocated per lot or parcel depending on the underlying zoning. Sanitary flow credits are transferred when the Town preserves open space land that it was already intending to preserve and are held in the town's TDR bank. To date about 47 sanitary flow credits have been removed from about 101 acres of land. Only 10 credits have been purchased for an affordable housing project (Spiro, 2010).

Sending and Receiving Areas

The current sanitary flow TDR program has no particular sending or receiving areas. Sending sites are parcels that the town already intended to preserve as open space. Any affordable housing projects are eligible to be "receiving sites" and there are no particular areas within the town where these developments can be located.

Future traditional TDR program

For some time the Town of Southold has been considering implementing a more traditional TDR program. There are several interesting elements to the proposed TDR program which is evaluated in the 2009 Generic Environmental Impact Statement for the program, including transferring rights only within existing school districts, flexible sending areas and having low density receiving sites (in a "hamlet locus"/ "HALO" zone). Dependent on those parcels that are part of the Agricultural District, the sending area of the TDR program would be more fluid than most TDR sending areas, consisting of all parcels in the Agricultural District, which allows parcels to be added and removed over time. To cope with the pressure of altering density on school budgets, the town has considered only allowing development rights to be transferred within a school district (and thus reducing the net impact of the transfer of density) and also relying on the impact of reduction in the size of residential units to control the number of new school children in the area.

Noteworthy Characteristics

- Sanitary flow transfer
- Considering TDR within school districts

More information

Town of Southold (2009) *Final Supplemental Generic Environmental Impact Statement for the Town of Southold Transfer of Development Rights Program*. April 3, 2009. Cited June 21, 2010 at <http://southoldtown.northfork.net/Planning/FSGEIS%204-3-09.pdf>

Town of Southold Municipal Code (2010) Chapter 117 Transfer of Development Rights. Cited June 21, 2010 at www.ecode360.com/?custId=SO0452

Town of Southold. Community Preservation Project Plan. August/ September 2008 Update. Adopted by Local Law No. 13-2008 on September 23, 2008. Cited July 27, 2010 at <http://southoldtown.northfork.net/LandPres/Community%20Preservation%20Project%202008%20Update.pdf>

County of Suffolk Sanitary Code 760-605 Sewage Facilities Requirements for Conventional Single-Family Residential Realty Subdivisions and Developments. Cited July 27, 2010 at www.co.suffolk.ny.us/upload/healthservices/deq_sanitarycode.pdf

Pruetz, R. (2009) "Southold Town, Suffolk County, New York". *Beyond Takings and Givings Book Updates*. Cited July 26, 2010 at www.beyondtakingsandgivings.com/southold_town.htm

Correspondence with Melissa Spiro, Land Preservation Coordinator, Town of Southold NY. August 2010.

TOWN OF WARWICK, NY

Program Goals

The purpose of Warwick's TDR program is to preserve important local resources such as active farmland and significant open space, and relocate development to areas that are already served by public water and sewer or have the potential to do so (Town of Warwick Code, Chapter 164-47.4).

Program Status

The Town of Warwick use one of the broadest formulas to calculate the transferable density in TDR programs. Unlike most programs which draw almost entirely on a set proportion of the assessed value of the property and/or the number of acres, the total number of permitted units (which can be transferred) is calculated using information such as acreage of different soil groups, FEMA one-hundred year floodplains and existing permanent easements. Unfortunately, as of 2008, no transactions related to the TDR program had been completed.

In 2009 an Annexation District Floating Zone was added to the Village of Warwick's code following the establishment of the Town and Village of Warwick Intermunicipal Annexation Policy. Any lands annexed from the Town of Warwick are zoned for the Annexation District in the Village of Warwick. Landowners of the parcel that has been annexed may apply for an increase in base density for the parcel. The new development must meet the Traditional Neighborhood Design standards, 25% of the site must be reserved as common open space and a fee is paid to the Village for each additional development unit over to "as of right" unit count. The money collected is used for preservation of open space.

Sending and Receiving Areas

The sending areas in the town are designated through the Agricultural Protection Overlay District. It is intended that receiving areas in Warwick are either areas adjacent to the Town's three village centers or in the Town's five hamlets, either in areas where water and sewer are already provided, are planned, or have potential to become available. The receiving areas are zoned "Suburban Residential Low Density", "Suburban Residential Medium Density" and "Local Hamlet Business". Receiving zones can also be created in the Traditional Neighborhood Overlay District, in areas which have been designated for more compact development for some time. While the program at present is an intra-municipal program, there are provisions that the three villages located within the town (Florida, Greenwood Lake and Warwick) may become receiving areas for an inter-jurisdictional program.

Other Program Details

The Town also has Agricultural Advancement Districts, where the farm owner in certain areas of the town and the Town "enter into an agreement that provides the Town with a right of first refusal to purchase the property outright or to purchase development rights for a minimum of 10 years" where a sale for non-farm use is proposed (§ 164-47.8). Options that can be explored under this agreement include PDR, TDR, fee simple acquisition and conservation subdivision.

Noteworthy Characteristics

- Number of permitted units calculated dependent on a variety of factors including soil quality and flood zones.
- Payment in lieu option in conjunction with annexation to the Village of Warwick
- Inter-jurisdictional

More information:

Town of Warwick Code. Chapter 164 Zoning. (Particularly §164-47.3 Agricultural Protection Overlay District and §164-47.4 Transfer of Development Rights.) Last Amended January 24, 2002 by Land Law No. 1-2002. Accessed June 21, 2010 at www.e-codes.generalcode.com/codes/1027_A/1027-164.pdf

Village of Warwick Code. Chapter 145 Zoning. 145-27 Annexation District. Adopted in Local Law no. 1 of 2009. February 2009. Cited July 30 at www.villageofwarwick.org/postings/village_zoning_combined.pdf

Pruetz, R (2008) "Warwick, New York." *Beyond Takings and Givings Book Updates*. Cited June 22, 2010 at www.beyondtakingsandgivings.com/warwick.htm

TOWNSHIP OF WARWICK (IN LANCASTER COUNTY), PA

Program Goals

The purpose of Warwick's transfer of lot coverage program is to preserve the Township's farmland and agricultural landscape and economy (Township of Warwick Code, Chapter 340-45).

Program Status

Since it was established in 1991, Warwick Township's TDR program has managed to preserve over 1,318 acres of farmland (Warwick Township, 2010). Since 2001, the Township has also partnered with developers to determine the number of TDRs needed for specific projects within the Campus Industrial Zone, a partnership which has generated over \$685,000 for farmland preservation through the sale of 278 TDRs.

Sending and Receiving Areas

In the program lot coverage is transferred from farmland to a newly designated Campus Industrial Zone (zoned rural residential pre-2001) where the maximum lot coverage is 10%. Through the TDR lot coverage can be increased up to 70%. Every farm within the Agricultural Zone is an eligible sending tract.

Noteworthy Characteristics

- Lot coverage transfer

More information

Township of Warwick Zoning Code. Chapter 340-45 Transferable Development Rights. Adopted 2001. Amended December 17, 1997, April 4, 2001 and February 18, 2009. Accessed June 30, 2010 at www.ecode360.com/?custId=WA2488

Warwick Township (2010) *Transferable Development Rights Program*. Last updated January, 28, 2010. Cited June 30, 2010 at www.warwicktownship.org/warwick/cwp/view.asp?a=3&q=565106&warwickNav=|6702|

KING COUNTY, WA

Program Goals

The purpose of King County's TDR program is to preserve rural, resource and urban separator lands that provide a public benefit. It is also intended to encourage increased residential development density or increased commercial square footage in existing centers (King County Code, Chapter 21A.37). A wide variety of resources are intended to be preserved through this program; in order to qualify as a sending area, a parcel must be within a particular zones and provide at least one public benefit. (Public benefits are agricultural potential, forestry potential, critical wildlife habitat, open space, and regional trail connectors or urban separators.)

Program Status

King County's TDR program is one of the more successful TDR programs, preserving 141,400 acres of rural and resource lands between 2000 and 2010 by relocating subdivisions for 2,284 potential dwelling units in rural areas to urban areas (King County, 2010). Roughly half of the potential dwelling units are in the TDR Bank while the other half are held by private landowners. An average of over 100 TDRs were bought or sold annually until 2008 and about 400 of the dwelling units have been redeemed.

In 2009, as part of the new comprehensive plan, the County increased the options for which TDR credits could be redeemed for to a density increase, floor area ratio increase, an ability to meet traffic concurrency requirements (if used in the same travelshed as the sending site), allowing construction of larger accessory dwelling units in the Rural Area or satisfying carbon offset requirements. It is too early to say which incentives have proved the most attractive for TDR credit buyers (Greve, 2010).

Sending and Receiving Areas

The program operates primarily within unincorporated lands, although there is opportunity for receiving sites within incorporated city limits if there is an intergovernmental agreement with King County, as there been with cities such as Bellevue, Issaquah and Seattle. King County's intergovernmental agreement with Seattle between 1998 and 2008 resulted in over 900 acres of lands being preserved in return for the building of three "TDR Towers" in the Denny Triangle area of the city (King County Executive News, 2010). Proposals for a renewed partnership between Seattle and King County began in June 2010. The County's TDR program also allows some rural areas to receive TDRs if the TDRs originated in a Rural Forest Focus Area and satisfy certain criteria.

Noteworthy Characteristics

- Uses a TDR Bank
- Inter-jurisdictional
- Several non-density related incentives

More information

King County Sustainable Building website (2010) *Transfer of Development Rights*. Cited May 29, 2010 at www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx

King County Code. Chapter 21A.37 General Provisions. Transfer of Development Rights. Last Updated December 2008. Cited July 24, 2010 at www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights/~media/environment/stewardship/sustainable_building/transfer_development_rights/KCC_Title_21A37_Dec2008.ashx

King County Executive News (2010) "Executive proposes renewal of innovative Transfer of Development Rights Partnership", *King County Executive News*. June 25, 2010. Cited August 13,

2010 at www.kingcounty.gov/exec/news/release/2010/June/25TDRPartnership.aspx

Long, Katherine (2009) "Bellevue has 'regional deal' in place for future Bel-Red development", *The Seattle Times*. September 7, 2009. Cited August 13, 2010 at http://seattletimes.nwsourc.com/html/business/technology/2009818539_bellevuedevelopment07m.html

Sims, R (2000) "King County's innovative Transfer of Development Credits Program receives 'Partnership' award for Issaquah project", *King County Executive News*. October 3, 2000. Cited August 13, 2010 at <http://your.kingcounty.gov/exec/news/2000/1003001.htm>

Correspondence with Darren Greve, King County TDR Program Manager. June 2010.

SNOHOMISH COUNTY, WA

Program Goals

At present Snohomish County's TDR program is designed to "provide for urban development within portions of the Arlington Urban Growth Area" and to "help conserve valuable agricultural lands located in the Stillaguamish River Valley" (Snohomish County Land Use Code, Chapter 30.35A). The program is also a useful tool to combat a "liberal boundary line adjustment and lot status policy" which, in combination with the relatively low minimum lot size of 10 acres, was putting increased pressure to develop and speculate on local farmland (Snohomish County Long Range Planning Division, 2007:8).

Program Status

Part of the Puget Sound region of Washington, the first phase of the TDR program in Snohomish County was adopted in 2004. An expansion to the TDR program was adopted in 2008 to be in line with county's comprehensive plan policies that promote the expansion of the TDR program, and also to allow the county to designate new sending and receiving areas through a particular planning process that, amongst other requirements, includes consultation with landowners and cities. This 2008 update allowed for the establishment of the pilot program in the Stillaguamish River Valley which aims to preserve about 3,300 acres of farmland. Unfortunately, due to the weak economy, only two properties have been preserved in the sending area to date and were funded through public funding rather than through transfers of credits.

Sending and Receiving Areas

Sending and receiving areas are designated through overlay zones. Although the program is designed primarily for transfers between unincorporated lands under the County's jurisdiction, there is an inter-local agreement between the City of Arlington and Snohomish County for the Stillaguamish River Valley Pilot Program which allows some receiving areas to be located within the city's boundaries after they are added to the Urban Growth Area and annexed to the City.

Noteworthy Characteristics

- Inter-jurisdictional

More information

City of Arlington Land Use Code (2010) Chapter 20.26 and 20.37. Cited June 21, 2010 at www.ci.arlington.wa.us/documents/Planning%20Division/Title%2020%20March%202010.PDF

Snohomish County. Planning and Development Services. Long Range Planning Division. (2010) *Transfer of Development Rights Program*. Cited June 18, 2010 at www1.co.snohomish.wa.us/Departments/PDS/Divisions/LR_Planning/Projects_Programs/Agriculture_Resources/Transfer_of_development_rights.htm

Snohomish County. Planning and Development Services. Long Range Planning Division (2007) *Transfer of Development Rights for Farmland Conservation. Model Policy and Regulatory Strategy for Snohomish County*. (Also known as the TDR Demonstration Project). June, 2007. Cited June 18, 2010 at www.co.snohomish.wa.us/documents/Departments/pds/gma_planning/agriculture_resource_lands/tdr/tdrfinalprojectreport.pdf

Snohomish County Land Use Code (2010) Chapter 30.35A Transfer of Development Rights and Chapter 30.35B Designation of Transfer of Development Rights Sending Areas by Council Motion. Cited June 21, 2010 at http://library6.municode.com/7721/home.htm?infobase=16332&doc_action=whatsnew

Correspondence with Mark Beardslee, Senior Planner, Snohomish County Long Range Planning Division. July 2010.

THURSTON COUNTY, WA

Program Goals

The purpose of Thurston's TDR program is "to encourage the conservation of long-term commercially significant agricultural lands by allowing owners of such lands to realize the equity in the land's development potential without conversion to non-agricultural uses" (Thurston County Code of Ordinances, Chapter 20.62.010).

Program Status

Established in 1996, Thurston County's TDR program has not been particularly efficient at preserving the long-term agriculture district; as of March 2010, the last certificate issued to a landowner interested in selling development rights was acquired in 2007, none of the TDR senders had been able to their their development rights within the municipalities, and if agricultural land had been preserved it had been purchased through public funds rather than through a transfer of development rights.

The TDR program is currently under significant review with revisions expected to be completed in Spring 2011. Information about the status of the review process can be found at www.co.thurston.wa.us/planning/tdr/tdr_home.html.

Sending and Receiving Areas

The sending area is designated through an overlay long-term agriculture district. At present transfers occur between unincorporated county lands as local city governments have shown little interest in becoming receiving areas.

A notable characteristic of the existing program is the option for transfers that allow developers the option to build at a relatively low density in some receiving areas (3 dwelling units per acre is the lowest base density in the rural residential receiving areas). Unfortunately, there is insufficient market demand for the higher density of 4 to 8 units per acre which are offered through the TDR program.

Other Program Details

The preservation easement that is placed on the sending area parcel once the development rights have been transferred does not allow for any subdivision of the property for dwelling units unless the development right was specifically reserved for the parcel. The transfer of development rights does not affect the landowners rights to subdivide for all other agricultural uses.

Noteworthy Characteristics

- Relatively low density receiving areas

More information

American Farmland Trust (2001) *Purchase of Development Rights and Transfer of Development Rights Case Studies*. Prepared for Boone County Planning Commission. Cited June 1, 2010 at www.ctahr.hawaii.edu/awg/downloads/rp_AFT_TDRstudies_Boone.doc

Thurston County Planning Department. Transfer of Development Rights Program. Stakeholders Minutes and Documents. Receiving Subcommittee. March 22, 2010. Cited May 29, 2010 at www.co.thurston.wa.us/planning/tdr/docs/TDR%20Meeting%20Notes%203_22_2010.pdf

Thurston County Code of Ordinances. Chapter 20.62 Transfer of Development Rights. Includes all ordinances through No. 14343, passed March 3, 2010. Cited July 26, 2010 at <http://library.municode.com/index.aspx?clientId=16720&statId=47&stateName=Washington>

DANE COUNTY, WI

Program Goals

Some of the key purposes of the TDR program are to “protect high-priority natural or agricultural resources”, “reduce spot development of rural land”, “direct development in rural areas away from areas planned for long-term agricultural use”, “encourage the efficient provision of services by clustering residential units”, “encourage rural housing that is adequate and affordable for persons from a range of incomes”, “facilitate development in rural areas of towns already experiencing or seeking development and “encourage the efficient use of land that has no history of, or is no longer suitable for, agriculture” (Dane County Code of Ordinances, Chapter 10.158 and 10.159).

Program Status

The TDR program in Dane County was only adopted in March 2010.

Sending and Receiving Areas

At present the county TDR program’s overlay sending and receiving area districts can be located in unincorporated areas, but the county is encouraging local towns to become both sending and receiving areas. The sending area overlay district includes lands identified in county and municipal plans as suitable for long-term or permanent agricultural, conservation or natural resource use, and limited or no non-farm development. The County highlights several different options for “bonus” receiving areas that are tied to affordable housing, the Dane County Traditional Neighborhood Design Model Design Ordinance, occurs within a designated Urban Service Area, provides limited multi-family senior housing, or the development qualifies for LEED-ND certification. Unless expressly authorized, all transfers of development rights must occur within the same town or within unincorporated land.

Other Program Details

The county produced two useful guides to TDR in town plans which includes a useful overview of many of the different options that can be chosen in an individual TDR program and part of a model TDR ordinance.

Noteworthy Characteristics

- Several non-density related incentives

More information

Dane County (2010) *Transfer of Development Rights*. Cited June 21, 2010 at www.countyofdane.com/plandev/planning/transfer_rights.aspx

Dane County. Planning and Development Division (2010) “Guide to Transfer of Development Rights in Town Plans”. *Planning Notes, Number 7*. March 30, 2010. Cited June 21, 2010 at http://danedocs.countyofdane.com/webdocs/pdf/plandev/planning/Guide_to_TDR.pdf

Dane County. Planning and Development Division (2010) *Dane County Guide to Incorporating TDR into a Town Comprehensive Plan*. Cited June 21, 2010 at http://danedocs.countyofdane.com/webdocs/pdf/plandev/planning/TDR_Guide.pdf

Dane County Code of Ordinances. Chapter 10 Zoning. Last updated April 30, 2010. Cited August 3, 2010 at <http://danedocs.countyofdane.com/webdocs/pdf/ordinances/ord010.pdf>