

Transfer of Development Rights (TDR) Programs: Protecting Agriculture and Natural Resource through Market-based Tools

The Purchase of Development Rights (PDR) program, has been the most effective agricultural land protection strategy utilized in the State of Delaware, to date, but it has faced funding issues and is not significant enough to protect agriculture in the State.¹ However, transferring development rights to more desirable areas can also be a very successful protection strategy and can do so in ways that do not require massive public funds investments. Delaware's *State Transfer of Development Rights Enabling Legislation* is in Draft format, and will "enhance current efforts by enabling county level TDR banks and allowing receiving zones to use a special mechanism called Special Development Districts to plan for and fund needed infrastructure."²

By owning property, land-use law assumes certain rights to that property. One of those rights is the right to build residences or other buildings, as designated by the local codes and laws. TDR programs are voluntary market-based efforts to transfer these development rights out of undesirable areas into areas that are appropriate for more intensive development, i.e., from coastal high hazard, agricultural, wetlands, or other sensitive areas to areas designated as future urban areas with appropriate infrastructure provision. Maryland and Pennsylvania have both been successful at implementing this type of program.



"To set a TDR program in motion, public officials work with community residents to determine which areas they want to develop and which ones they want to preserve. To restrict development, the community then transfers the right to develop away from restricted areas to more suitable development sites. Areas to be preserved are known as "sending sites," while areas targeted for development are the "receiving sites." (Sending sites may also be called "selling sites," and receiving called "purchasing.") TDRs permit landowners in the sending area to sell the "right to build" to landowners in the receiving area. The sending landowner's property is then permanently restricted from the transferred development, usually by a recorded deed restriction. In contrast to regulation, TDRs compensate landowners for keeping land in its current use, rather than selling it for development." (Progressive Policy Institute, *Using Markets to Protect Land & Property Rights*)

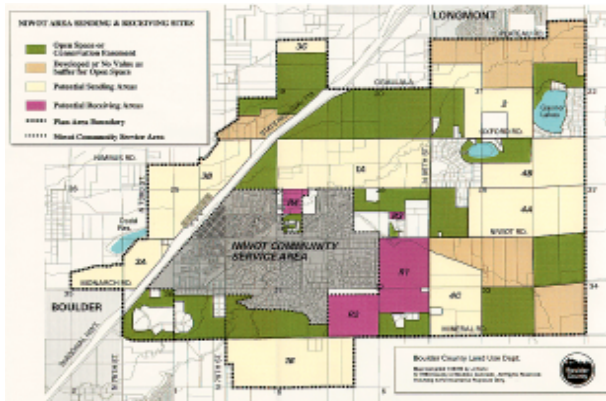
Some programs use banks to facilitate the sale/purchase of these units by allowing people to sell their units to a "bank" prior to the market demand for them. The county or other implementing agency then sells those units as the demand occurs. Many times, the state provides technical assistance to local governments in order to promote the TDR program within urban areas for high-density infill and redevelopment projects.

Successful programs significantly increase density in the receiving areas in order to accommodate urban amenities such as public transportation or

¹ Delaware Department of Agriculture. *Livable Delaware Implementation Strategy*. 24 Jan 2002.

² Delaware Office of State Planning Coordination. *TDR Bill "Highlights" Document*. Available from: stateplanning.delaware.gov/livedel/draft_tdr_legislation_highlights_20070426.pdf

workforce housing and to incentivize transfer of these units for private developers. Increased rates of transfer (one purchased unit resulting in permission to build two units in the receiving area), in combination with this increase permissible density, is one way to encourage the purchase/use of these units rather than maintenance of the status quo.



Communities with rural backgrounds can be wary of increasing density, but by concentrating future development, more open space and agricultural heritage can be preserved for future generations. Smart Growth provides multiple tools that can be used to ensure that, despite increased density in urban areas, the outcome is positive and reflects the expected result, as determined by the existing community. Examples of these tools are Form-Based Codes, Community Planning, and Traditional Neighborhood Design.

A TDR Program would *not*

- Force landowners to sell their development rights.
- Prevent landowners from building units they are currently permitted to build on their land.
- Cause the removal of development rights without just compensation to the landowner.
- Remove community control over local land use

A TDR program *would*

- Preserve agriculture by providing funds to property owners that sell their TDR units and allowing them to continue farming the subject property.
- Move potential homes and commercial square footage from existing agricultural areas to more appropriate urban areas.
- Increase density to beneficial urban levels in previously identified locations in a way that helps guarantee the expected outcome.
- Allow developers to build at densities that may encourage units to be available for workforce housing and support a sense of community.
- Help combat the negative effects of stormwater runoff and protect aquifer recharge by maintaining pervious land in sending areas.
- Cost little in public funds in order to potentially achieve very significant land-use goals.

Additional Resources:

William B Fulton; Jan Mazurek; Rick Pruetz; & Chris Williamson. *TDRs and other market-based land mechanisms how they work and their role in shaping metropolitan growth*
www.brookingsinstitution.org/Urban/pubs/2004_0629_fulton.pdf

Delaware 143rd General Assembly, *Senate Bill 344*: www.legis.state.de.us

Montgomery County, MD Planning Board: www.mc-mncppc.org

York County PA Planning Commission, *Protecting York County's Rural Environment*, January 2004
www.ycpc.org/index_docs/Protecting%20rural%20envir.pdf

American Farmland Trust. Farmland Information Center, *TDR Fact Sheet*
farmlandinfo.org/documents/27746/FS_TDR_1-01.pdf