FARMLAND INFORMATION CENTER

FACT SHEET

TRANSFER OF DEVELOPMENT RIGHTS

DESCRIPTION

Transfer of development rights (TDR) programs enable the transfer of development potential from one parcel of land to another. TDR programs are typically established by local zoning ordinances. In the context of farmland protection, TDR is often used to shift development from agricultural land to designated growth zones located closer to municipal services. TDR is also known as transfer of development credits (TDC) and transferable development units (TDU).

TDR programs are based on the concept that landowners have a bundle of different property rights, including the right to use the land; lease, sell and bequeath it; borrow money using it as security; construct buildings on it; and mine it; subject to reasonable local land use regulations. When a landowner sells property, generally all the rights transfer to the buyer. TDR programs allow landowners to separate from their other property rights, and to sell, the right to develop land.

The parcel of land where the development rights originate is called the "sending" parcel. When the rights are transferred from the sending parcel, the land is typically protected with a permanent conservation easement. A few localities record transfer documents to track the number of rights transferred and to notify buyers and local officials of limited future development potential. This approach, however, offers less protection than a conservation easement because changes in local land use regulations—even if such changes require a comprehensive plan update—could alter the rules for determining the remaining development potential on sites in sending areas.

The parcel of land to which the rights are transferred is called the "receiving" parcel. Transferred rights generally allow the purchaser of the rights to build at a higher density than ordinarily permitted by the base zoning on the receiving parcel.

TDR is most suitable in places where large blocks of land remain in agricultural use. In communities with a fragmented agricultural land base, it may be difficult to find viable sending areas. Communities also must be able to identify receiving areas that can accommodate the development potential to be transferred. Well-planned receiving areas have the infrastructure needed to absorb additional density. They also respond to residents' concerns about increased residential density while taking advantage of market conditions.

Local officials in Chesterfield Township, New Jersey, for example, designed a mixed-use community, Old York Village, *outside* of previously developed areas to accommodate transferred development potential. Other communities have authorized, or are considering, alternate applications of development potential such as increases in non-residential floor area, impervious surface area, decreases in parking requirements and even *decreases* in residential density.

The most effective TDR programs help facilitate transactions between private landowners and developers. A few programs allow developers to make payments in lieu of actual transfers. The locality then buys conservation easements on land in the sending area, sometimes in partnership with established purchase of agricultural conservation easement (PACE) programs and/or local land trusts. Other programs maintain public lists of TDR sellers and buyers. Some buy and retire rights to stimulate the market and/or reduce overall building potential. Lastly, at least a dozen communities have established TDR banks that buy development rights with public funds and sell the rights to developers. Some banks finance loans using the rights as collateral.

Some states have enacted legislation explicitly authorizing local governments to create TDR programs. For example in 2004, the New Jersey Legislature enacted the State Transfer of Development Rights Act. The State TDR Act authorizes municipalities to develop and participate in intra-municipal and inter-municipal programs. This law also established a formal planning process to enact a TDR ordinance and authorized the State TDR Bank Board to provide planning grants to communities.

TDR programs are distinct from PACE programs because TDR programs harness private dollars to achieve permanent land protection. TDR programs also differ from PACE programs in that they permit development potential to be transferred to a more appropriate location while PACE programs permanently retire development potential.

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HISTORY

TDR is used predominantly by counties, towns and townships. The 1981 National Agricultural Lands Study reported that 12 localities had enacted TDR programs to protect farmland and open space, but very few of these programs had been implemented. In the 1980s and 1990s, many local governments adopted TDR ordinances. An American Farmland Trust (AFT) Farmland Information Center (FIC) survey in 2000 identified 50 jurisdictions with TDR ordinances on the books.

In 2007, the FIC identified 99 TDR programs that protect agricultural land. We collected information from 64 programs. Of these, 38 had protected land or received payments in lieu of transfers. This activity is summarized in the accompanying table. Seventeen programs had not protected any agricultural land to date. Nine programs had been discontinued.

As of January 2008, 12 programs had each protected more than 1,000 acres of agricultural land, compared to eight programs during our previous survey. Since 1980, Montgomery County, Maryland, has protected 51,489 acres using TDR, or 40 percent of the agricultural land protected by the programs that responded to our survey (129,810 acres). The county's share of protected agricultural land via TDR dropped significantly, down from 60 percent of the national total at the time of the 2000 survey. Two programs that permit payments in lieu of transfers have received a combined total of more than $1.4 million for agricultural land protection.

FUNCTIONS & PURPOSES

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

TDR programs also offer a potential solution to the political and legal problems that many communities face when they try to restrict development of farmland. Landowners may oppose agricultural protection zoning (APZ) and other land use regulations because of their concern that such controls will reduce the value of their land. When more restrictive land use regulations are enacted in conjunction with a TDR program, communities can retain equity for landowners. For example, development rights for transfer may be allocated based on the "underlying" or prior zoning. Selling development rights enables landowners to recapture the equity available under the previous zoning.

When downzoning is combined with a TDR program, however, landowners can retain their equity by selling development rights.

ISSUES TO ADDRESS

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

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

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

APZ: New construction is restricted in the agricultural zone, and farmers are compensated with the opportunity to sell development rights.

Because the issues are so complex, TDR programs are usually the result of a comprehensive planning process. Comprehensive planning helps a community envision its future and generally involves extensive public participation. The process of developing a community vision may help build understanding of TDR and support for farmland protection.

BENEFITS OF TDR

- Most TDR programs protect farmland permanently, while keeping it in private ownership.
- Participation in TDR programs is voluntary—landowners are never required to sell their development rights.
- TDR can promote orderly growth by concentrating development in areas with adequate public services.
- TDR programs allow landowners in agricultural protection zones to retain their equity without developing their land.
- TDR programs are market-driven—private parties pay to protect farmland, and more land is protected when development pressure is high.
- TDR programs can accomplish multiple goals, including farmland protection, protection of environmentally sensitive areas, the development of compact urban areas, the promotion of downtown commercial growth and the preservation of historic landmarks.

DRAWBACKS

- TDR programs are technically complicated and require a significant investment of time and staff resources to implement.
- TDR is an unfamiliar concept. A lengthy and extensive public education campaign is generally required to explain TDR to citizens.
- The pace of transactions depends on the private market for development rights. If the real estate market is depressed, few rights will be sold, and little land will be protected.

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For additional information on farmland protection and stewardship, contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

www.farmlandinfo.org

(800) 370-4879

LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2008

Locality	Year of Inception	Rights Transferred	Agricultural Acres Protected	How Rights Are Used	Notes
California					
City of Livermore	2003	56 payments	$1,200,000	Increase residential density	Allows payments in lieu of transfers
Marin County	1981	11	660	Increase residential density	Multi-purpose program
Colorado					
Larimer County	1994	721	503	Increase residential density	Multi-purpose program
Mesa County	2003	10	50	Increase residential density	Multi-purpose program
Delaware					
Kent County	2004	157	157	Increase residential density Change permitted land use	Multi-purpose program
New Castle County	1998	93	300	Increase residential density	Multi-purpose program
Georgia					
City of Chattahoochee Hill Country	2003	21	21	Increase residential density Increase commercial square footage	Multi-purpose program Chattahoochee Hill Conservancy operates TDR bank
Idaho					
Payette County	1982	154	4,000	Permit development on substandard lots	Multi-purpose program
Maryland					
Calvert County	1978	UNK	13,260	Increase residential density	Multi-purpose program Purchases and retires rights
Caroline County	2006	136	1,500	Increase residential density	Multi-purpose program Maintains registry of interested buyers/sellers
Charles County	1992	1,110	3,330	Increase residential density	Multi-purpose program
Howard County	1993	NR	2,045	Increase residential density	Multi-purpose program Purchases and retires rights
Montgomery County	1987	9,630	51,489	Increase residential density	Operated bank but discontinued in 1990
Queen Anne's County	1987	UNK	8,032	Increase residential density Increase commercial square footage Increase impervious surface area	Multipurpose program Non-Contiguous Development activity included in county figures
St. Mary's County	1990	155	465	Increase residential density	
Massachusetts					
Town of Groton	1980	25	100	Increase residential density Increase rate of development	Multi-purpose program
Town of Hadley	2000	3 payments	$206,772	Increase commercial or industrial floor area Reduce parking requirements	Allows payments in lieu of transfers
Town of Plymouth	2004	13	118	Increase residential density	Multi-purpose program
Minnesota					
Blue Earth County	1996	150	6,000	Increase residential density	Multi-purpose program
Chisago County	2001	11	290	Increase residential density	Multi-purpose program
Rice County	2004	102	3,252	Increase residential density	Multi-purpose program
Nevada					
Churchill County	2006	200	688	Increase residential density	Multi-purpose program Operates TDR bank
Douglas County	1997	3,518	3,727	Increase residential density Increase commercial square footage	
New Jersey					
Chesterfield Twp., Burlington Co.	1998	652	2,231	Increase residential density Increase commercial square footage	Burlington County operates bank used by township
New Jersey Pinelands	1981	4,000	25,000	Increase residential density Permit development on substandard lots	Multi-purpose program Operates TDR bank Maintains registry of interested buyers/sellers

LOCAL GOVERNMENTS WITH TDR PROGRAMS FOR FARMLAND, 2008

Locality	Year of Inception	Rights Transferred	Agricultural Acres Protected	How Rights Are Used	Notes
New York					
Central Pine Barrens	1995	48	48	Increase residential density Increase commercial or industrial density/intensity All permitted increases in density or intensity relate to, and are capped by, increases in sewage flow	Multi-purpose program Commission operates bank Maintains registry of interested buyers/sellers
Town of Perinton	1993	68	174	Increase residential density	Multi-purpose program Purchases and retires rights
Pennsylvania					
Honey Brook Twp., Chester Co.	2003	18	50	Increase residential density Increase non residential square footage Increase impervious surface area	
Manheim Twp., Lancaster Co.	1991	422	476	Increase residential density Increase commercial square footage Increase impervious surface area	Operates TDR bank Purchases and retires rights
Shrewsbury Twp., York Co.	1976	30	60	Increase residential density Allowance of certain non-residential uses	Operates TDR bank
South Middleton Twp., Cumberland Co.	1999	8	135	Increase residential density	Multi-purpose program
Warrington Twp., Bucks Co.	1985	187	UNK	Increase residential density Increase commercial square footage Increase impervious surface area	Multi-purpose program
Warwick Twp., Lancaster Co.	1993	447	897	Increase commercial and light industrial square footage	Operates TDR bank Partners with Lancaster Farmland Trust
West Vincent Twp., Chester Co.	1998	162	NR	Increase residential density Increase commercial square footage	Multi-purpose program
Vermont					
South Burlington	1992	414	497	Increase residential density	Operates TDR bank
Washington					
King County	2000	8	80	Increase residential density	Multi-purpose program Operates TDR bank
Snohomish County	2004	49	70	Increase residential density Increase commercial square footage	Operates TDR bank
Wisconsin					
Cottage Grove Twp., Dane Co.	2000	3	105	Increase residential density	
TOTALS		**22,733**	**129,810**		

Most of the programs listed in this table protect multiple resources including agricultural land. For the purposes of this table, we only included transfers from agricultural land and acres of agricultural land protected by each program.

Two programs included in this table—Livermore, Calif., and Hadley, Mass.—allow payments in lieu of transfers. For these programs, the figure in "Rights Transferred" column represents the number of payments received to date and the figure in the "Agricultural Acres Protected" column equals the funds received to date. These numbers are not included in the totals at the bottom.

UNK means the program manager did not know. NR indicates that the program manager did not respond.

Surveys were sent to programs identified by staff and profiled in publications and reports about TDR programs, including *Transfer of Development Rights in U.S. Communities:Evaluating Program Design, Implementation, and Outcomes* by Margaret Wells and Virginia McConnell and *Beyond Takings and Givings: Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges* by Rick Pruetz.

Figures for St. Mary's County, Md., are from the Wells/McConnell report. Figures for Queen Anne's County, Md., are from a presentation posted on the county's Department of Land Use, Growth Management and Environment Web site.