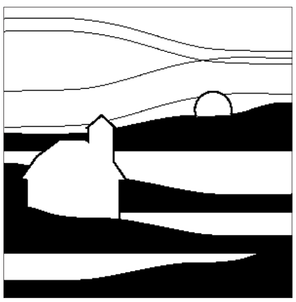
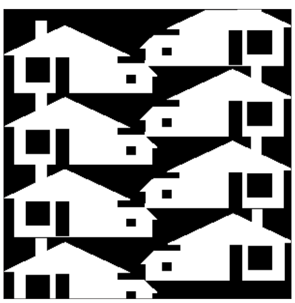
3. Transfer of Development Rights

Fact Sheet





This smart growth tool can be used in rural, suburban, or urban communities.

What is Transfer of Development Rights?

The Transfer of Development Rights (TDR) is a mechanism for preserving farmland, open space, and natural resources. The development potential of a property (as determined by the zoning and the local real estate market) can threaten the natural resources that a community wishes to protect. At the rural/suburban edge, encroaching suburban sprawl and one-acre zoning may increase the likelihood of a farm being developed.

The traditional approaches to preservation have been twofold: the public purchase of the threatened property; or implementation of zoning restrictions on development. TDR programs offer a third option by allowing the owner of the threatened property to sell the development rights to another property owner through the private real estate market. TDR is not the same thing as cluster development. Both TDR and cluster development involve the shifting of development rights, but cluster development involves the reorganization of development yield on the same property, whereas TDR involves the transfer of rights from one property to another.

Why use Transfer of Development Rights?

Traditional approaches to preservation have certain drawbacks. Public purchase of a property is not always feasible, because of budgetary constraints and time delays associated with public appropriations. Increased zoning restrictions may be construed as property "takings", triggering a political fallout or expensive legal actions. TDR programs are attractive because they have the potential to create "win-win" situations. The resource on the sending site is permanently protected. The property owner of the sending site is compensated without a major public expenditure. The property owner of the receiving site is permitted to build additional housing units or floor space, thereby realizing greater profits.

Toolbox

Sending and Receiving Overlay Zones. The sending zone is the area of farmland or open space intended to be protected from development, and from which development rights (based on the underlying zoning) can be transferred. The receiving zone is the area in which those development rights can be purchased and used. The creation of these sending and receiving zones helps further the purposes of smart growth in two ways. First, it conserves open space and natural resources in targeted areas, and second, it focuses development in higher-density nodes, where there may be the opportunity for more efficient use of public utilities and services, as well as opportunities for transit use and walking.

- **Compensation for Downzoning.** In some communities, TDR programs have been used to compensate property owners for low density rezoning. For example, in Montgomery County, Maryland, development in the sending zones is permitted at a ratio of one dwelling unit per 25 acres, but for the purposes of the TDR program, the development yield is calculated at a rate of unit per 5 acres. The TDR program, therefore, can be used to provide partial compensation for the rezoning of a property.

- **Medium of Exchange.** Depending upon where sending and receiving zones are designated, a town may need to determine how development rights would be converted between residential and commercial areas. One approach would be to treat a "development right" as a medium of exchange, in the same way as U.S. dollars or other currency. For example, one "housing unit" from a sending zone would be traded in for one "development right certificate", and then that one "certificate" could be redeemed for either one housing unit or a predetermined amount of non-residential floor area, to be used in a receiving zone.

The key to the success of the New Jersey Pinelands legislation was regional oversight. A Comprehensive Regional Plan was created, with new development restrictions and a TDR program to shift development from "preservation" to "growth" areas. Medford, New Jersey (above) was designated as a receiving area for development rights emanating from resource protection areas (left). If municipalities fail to comply with the plan, there is regional intervention into local land use planning. (Source: New Jersey Pinelands Commission; Rick Pruetz, Saved by Development)

New Jersey Pinelands TDR Program

In 1979, the New Jersey State Legislature created the Pinelands Commission, which oversees the protection of the Pinelands region. The Pinelands is a major ecological and natural resource area. Approximately 930,000 acres in size and occupying 22 percent of New Jersey's land area, the Pinelands is the largest protected open space region on the Mid-Atlantic seaboard between Richmond and Boston. It is underlain by aquifers containing 17 trillion gallons of water.

The Commission is responsible for developing and implementing a Comprehensive Management Plan for the Pinelands. Local plans and ordinances are required to be consistent the Plan. If a municipality fails to meet the consistency requirement, then the Pinelands Commission retains primary responsibility for reviewing development applications within that municipality's borders.

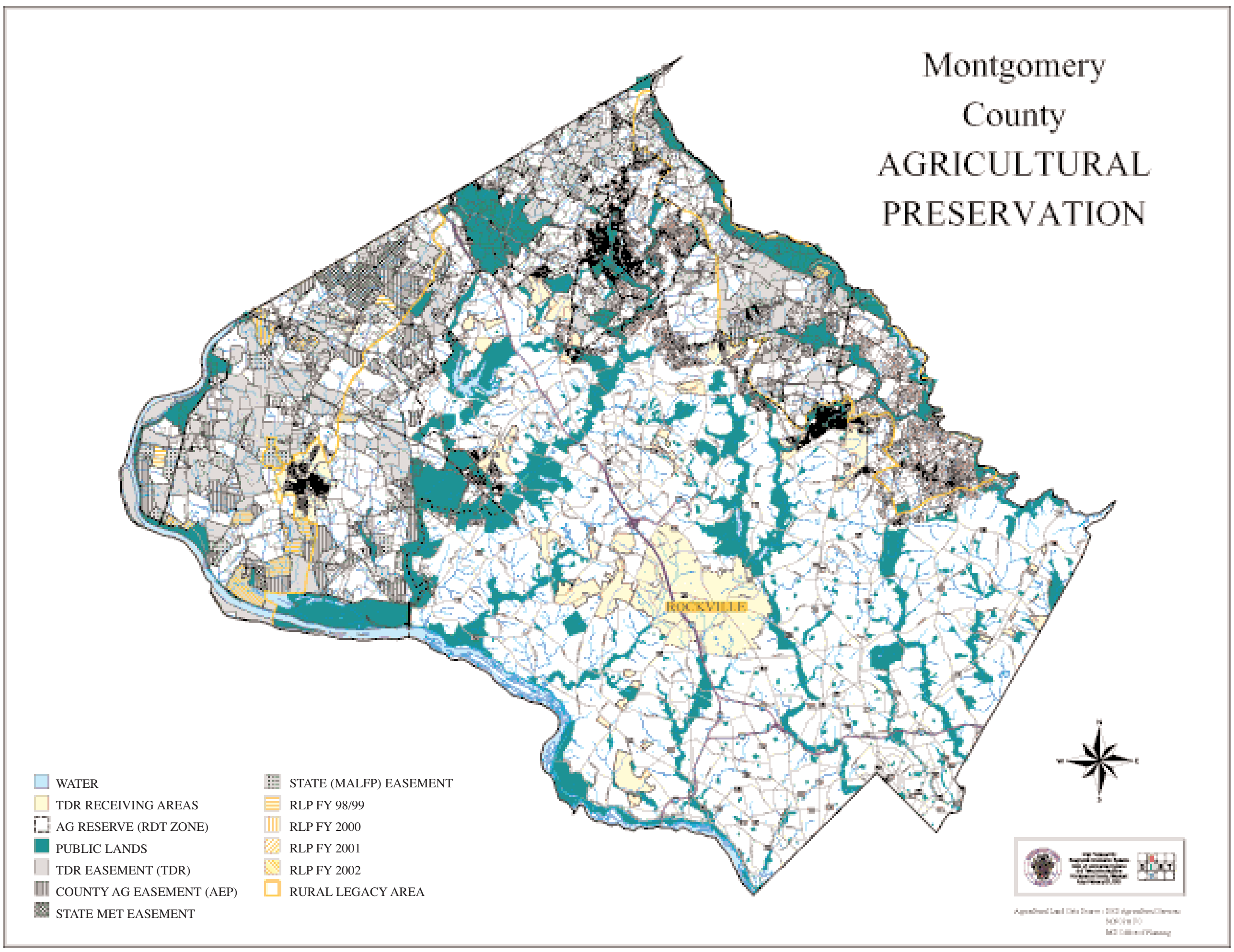
As outlined in the Plan, development credits are transferable from "preservation" to "growth" areas. A landowner selling credits retains title to the land and is allowed to continue using it for any non-residential use authorized by the Plan. This landowner is required to enter into a deed restriction that would bind future owners to those same uses. To date, over 12,000 acres have been deed restricted under the program.

- **Units of Measurement.** The units of measurement for a development right would also need to be determined. In a residential area, a single "development right" is typically defined as one housing unit. In a commercial area, a "development right" may be defined as a specified amount of floor area or a proxy thereof (for example, the amount of floor area that would generate a certain amount of wastewater flow).
- **TDR Bank.** A TDR Bank would be intended to facilitate the private-sector exchange of development rights, acting as an intermediary between the sender and the receiver. The bank would purchase development rights from sending zones, using public funds or private donations, and then, it would either hold onto those rights indefinitely or eventually sell them to developers in receiving zones.

Keys to Success

- **Designate receiving zones in areas with a strong real estate market.** A TDR program is most successful where the receiving zone has a strong real estate market. In such areas, developers in the receiving zone have a natural economic incentive to seek out and purchase development rights.
- **Establish zoning incentives for purchasing development rights.** To promote the purchase of development rights in the receiving zone, the density increment that could be realized through the purchase needs to be significant. Also, the resulting density achievable with the purchase should be a desirable target from a real estate viewpoint. If the base zoning already allows the development of an optimally sized project based on market conditions, then a developer would have no economic incentive to purchase development rights.
- **Do not establish overly large sending zones.** A property owner in a sending zone must have an incentive to sell the development rights, rather than either developing the property or simply holding the development right as equity. This is possible only if TDR purchasers are willing to compete over and bid on the available pool of development rights. Such competition will occur only if the number of development rights that can be purchased and used in the receiving zones is greater than the number of development rights available for sale in the sending zones.

Establish a regional or interjurisdictional program. The most effective TDR programs have covered large geographical areas, typically at the county or regional level. At a regional level, sending zones can be located in rural areas outside the path of suburban sprawl (where the transfer of rights is more likely to be a competitive alternative to development). Receiving zones can be located in highly desirable business and residential centers, where there is a strong economic incentive for higher-density development. The State currently allows development rights to be transferred between local municipalities upon agreement of both municipalities, but this provision has not been used to date. Nothing in the State statutes would allow a regional body to be established for the purpose of transferring development rights.



One key ingredient in Montgomery County's success with TDR is that the program was combined with down-zoning. The sending zone allows 1 unit per 25 acres on-site with a mandatory cluster, or 5 units per 25 acres if the rights are transferred out, consistent with the original 5-acre zoning. (Source: Montgomery County Council, <www.co.mo.md.ns/council>)

Central Pine Barrens,
Long Island, NYTDR Program

In 1993, New York State established the 100,000-acre Central Pine Barrens region in central and eastern Long Island, spanning the three towns of Southampton, Brookhaven, and Riverhead. The Central Pine Barrens was identified as a critical resource area, due to its unique woodlands and wetlands, sensitive habitat areas for endangered species, and deep-flow recharge areas for the Long Island's sole-source aquifer.

Development on properties located in the Central Pine Barrens region is strictly limited. However, a landowner in one of the Central Pine Barrens' sending zones is eligible for receiving a certain number of "credits". When the landowner obtains a credit certificate, the land is placed under a permanent conservation easement. Receiving zones (where those credits may be purchased and used for additional density) are located outside the Central Pine Barrens region in each of the three towns.

A clearinghouse was established to "purchase, sell, and track" the credits and has helped develop the market for Pine Barrens credits. The market for credits has been strongest in Brookhaven, on the western side of the Pine Barrens, where housing demand is robust.

The Central Pine Barrens TDR program on the east end of Long Island encompasses three towns, with three different market. Development rights are transferrable from the Pine Barrens core preservation areas (above) to developed areas in the towns of Brookhaven, Riverhead and Southampton (left). the program has been most successful in Brookhaven, where there is development pressure for higher-density housing in the designated receiving areas. (Source: Central Pine Barrens, NYS, http://pb.state.ny.us/; APPS, Inc.)

How Can the State Help?

- **Create a bottom-up regional TDR program for the Hartford region.** A regional TDR program for the Hartford region should work within Connecticut's "home rule" model of land use regulation. Rather than establishing a top-down regional TDR program (as in the New Jersey Pinelands or the Long Island Pine Barrens), the Hartford program should work from the bottom-up, not superimposing a regional program upon towns, but coordinating a TDR program among them.
- **Facilitate interjurisdictional TDR agreements.** A regional agency (potentially CRCOG) should work with towns to consider integrating interjurisdictional TDR programs into their

zoning provisions. The Hartford program should pair up a community that is considering an upzoning in a highly desirable center that has the potential to support higher-density development, with communities that are interested in preserving open space and farmland. Thus, the regional authority would play a match-making role. The regional authority would have to work closely with local towns to identify candidate sending and receiving zones.

For More Information

1. American Farmland Trust, Washington, D.C. Phone: (202) 331-7300, <www.farmland.org>.
2. Center of Excellence for Sustainable Development, Boston Regional Office, Boston, MA. Phone: (617) 565-9700, <www.sustainable.doe.gov>.
3. Trust for Public Land, Connecticut Field Office, New Haven, CT. Phone: (203) 777-7367, <www.tpl.org>.
4. 1000 Friends of Minnesota, Saint Paul, MN. Phone: (651) 312-1000, <www.1000fom.org>.

See also, Detailed Technical Analysis on Transfer of Development Rights, available through CRCOG.

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