

Transfer of Development Rights: What Is It, and Where Has It Been Used?

What is TDR?

Transfer of Development Rights (TDR) is a zoning technique that has been in use around the United States for more than 30 years; there are about 140 programs nationwide. The basic idea is to achieve less development in areas that the Town wants to preserve by shifting it to locations where development is more desirable. Because property owners have rights to develop under the basic underlying zoning, it is not possible to prevent development, but the TDR mechanism provides incentives for voluntary cooperation with the Town's planning goals.

Hypothetical Example:

Ms. Smith owns a piece of land the Town would like to preserve as open space. She could build 30 units of housing under the existing zoning, but her land has been designated a "sending area" if she should choose to use TDR.

Mr. Jones owns a parcel in a center (perhaps Kelley's Corner) that has been designated a "receiving area" for TDR. He could build up to 40 additional units on his property if he (a) can get the rights to 30 units from a sending area and (b) his proposal meets a list of incentives specified in the zoning for the receiving area (some of these are automatic for a TDR, others are for "going beyond" the minimum requirements). Jones' development must go through Special Permit review to ensure it meets stated guidelines and merits the incentives¹.

Smith and Jones are brought together by a broker. They negotiate a transaction in which Smith gets the value of more than a 30-unit development; Jones gets the proceeds from his development including the extra 40 units, which exceeds what he could otherwise do on his parcel of land.

In a variation of the technique, the Town buys Smith's development rights and puts them in a development bank. Later, Jones buys the rights to these units from the development bank.

Another variation is that the TDR mechanism can allow some of the residential development rights from the sending area to be converted to commercial square footage at a specified rate.

Examples of Where TDR Has Been Used

Falmouth, MA

- One of the first TDR bylaws in the Commonwealth, from 1985
- TDR can only be part of a subdivision application but the Planning Board handles both operations to streamline the process
- Density bonuses range from 20 to 40% depending on sending and receiving areas

Portsmouth NH

[to be added – Portsmouth has a TDR development bank]

Groton MA

[to be added]

Montgomery County, MD

- Established a TDR program after downzoningⁱⁱ failed to curb development
- With the TDR program 90,000 acres of farmland and open space were rezoned to 1 duⁱⁱⁱ/25 acres. If the landowners chose to participate in the TDR program they could sell the original density rights (1 du/ 5 acres).
- Land in the TDR program has **a permanent restriction from development once the density rights are sold.**
- Receiving areas were also rezoned with a baseline density (no-TRD) and a higher density for development with TDRs.
- **TDRs may be bought on a speculative basis for resale.**

King County, WA

- The County (which includes Seattle) set up a TDR program to encourage infill and high density development while curtailing sprawl corridors.
- As TDRs are sold, only the part of the property represented by the TDRs has a conservation easement put on it. So if there is a remaining part it can be developed to the baseline zoning level.
- TDRs are applicable in some rural areas as long as they **fulfill certain requirements such as existing public water service, being within a certain range of other similarly sized developments, and not affecting environmentally sensitive areas.**
- The county also had “amenity funds” to **offer compensation for additional density in cities.** These funds could be used for features such as **public art, cultural or community facilities, parks, recreation, open space and transit-related improvements.**
- A **TDR bank** also exists so the County can buy TDRs to sell at another time, **maintaining a healthy market.** The County also carefully **tracks and records the sales and prices of TDRs.**

St. Mary’s County, MD

- Sending and receiving areas overlap.
- Existing zoning is generous, hurting the incentive for developers to by TDRs.
- There are **other density incentives (connecting to existing water and sewer systems, planned unit development, design enhancements) that also undermined the importance of TDRs.**
- Since this TDR system was not as popular as hoped, the County changed the system:
 - **Any development beyond the first dwelling unit on a rural property must use TDRs.**

- **The number of TDRs required for each dwelling unit would vary based on the existing density (increasing as the density increased).**
- After these changes were made the use of TDRs increased.

Charles County, MD

- Strict requirements for sending areas (must qualify under the Maryland Agricultural Land Preservation Foundation)
- **Once a single TDR is sold from a property, the entire property is restricted and is not eligible for development.** (Though the remaining TDRs can still be sold later.)
- **A landowner can buy back TDRs from his/her property or another as long as there is not a net loss in preserved land.**
- When the county noticed that the TDR program was not popular they downzoned an area of the county near the development district, but instead of encouraging development in the development district **this pushed more new development into rural areas.**
- **The county is not involved in the negotiations or sales of TDRs and the records are not public.**
- In 10 years, only 690 TDRs were sold. This lack of performance is attributed to:
 - The lack of supply of TDRs due to the high standards of qualifications
 - The lack of demand for TDRs due to the fact that developers can attain the density levels they want in other ways
 - The opaque TDR market.

Queen Anne's County, MD

- The County has had a TDR program and a density transfer program (called a Non-Contiguous Development program) since 1987. In 1995, the TDR program was reconfigured to focus on environmentally sensitive land.
- The NCD program focuses on **rural to rural density transfers, offering a high increase in the amount of density a property can have** (shifting from 1 du/20 ac to .9 du/ ac).
- Meanwhile, the TDR program limited TDR development to **designated growth areas that already had a high density zoning.**
- In the beginning of the programs, the TDR program was more popular, but when all the restrictions were added the NCD program took over as most popular since developers could gain so much more for their purchases.

Boulder CO

[to be added]

Sources:

Transfer of Development Rights in U.S. Communities: Evaluating Program Design, Implementation, and Outcomes by Margaret Wells and Virginia McConnell, 2007.

Transfer of Development Rights Case Studies from www.mass.gov

ⁱ These development guidelines include basic requirements like maximum height and density that limit how large the development can be, as well as extras like providing public open space as part of the development. These guidelines would also apply to non-TDR developments.

ⁱⁱ Downzoning is a change in the zoning to reduce the amount of development permitted in a zoning district.

ⁱⁱⁱ du = dwelling unit