Planning fundamentals for public officials and engaged citizens

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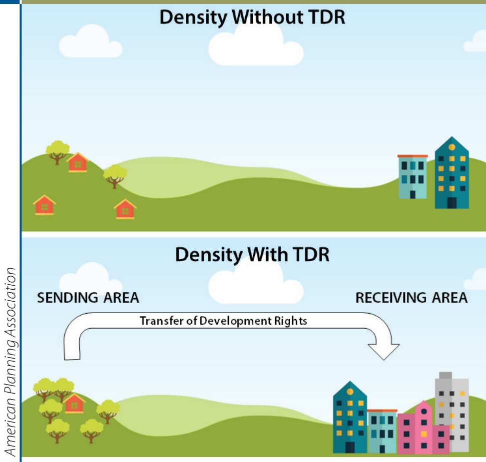
QUICKNOTES

Transfer of Development Rights

Transfer of development rights (TDR) is a voluntary, market-driven growth management tool that permits higher intensity development in designated "receiving" areas in exchange for land or resource preservation in designated "sending" areas. Under TDR, a city or county establishes baseline development rights for both sending and receiving areas. To exceed these baseline development limits, owners in receiving areas must purchase unused development rights from owners in sending areas.



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Transfer of development rights authorizes higher intensity development in receiving areas in exchange for preservation of land or resources in sending areas.

Background

More than half of all states have explicitly enabled TDR as a complement to local zoning. In other states, a city or county can create a TDR program as an extension of its ability to regulate land use and density, provided the state has given it the authority to adopt laws not explicitly enabled by state statutes (i.e., "home-rule" jurisdictions).

Some TDR programs only permit transfers within a single jurisdiction. Others permit transfers between jurisdictions. For example, a joint city-county program may designate unincorporated parts of the county as sending areas and one or more parts of the incorporated municipality as receiving areas.

While many TDR programs require owners or developers in receiving areas to purchase development rights directly from owners in sending areas, some TDR programs establish a development rights bank to facilitate trades. Under this model, buying and selling are separate transactions, making it easier for a buyer to purchase development rights acquired from multiple sending sites through a single transaction.

Establishing Program Goals

Cities and counties can use TDR to support a variety of preservation goals, including environmental protection, farmland preservation, and historic preservation. The first step in establishing a new TDR program is identifying what the community wants to preserve and how TDR may relate to other potentially complementary efforts, such as land conservation through the purchase or donation of easements or financial incentives for rehabilitating historic properties.

It is important to include residents, developers, and other community stakeholders in these conversations. While TDR is a market-driven tool, it is often most effective when paired with zoning regulations that make TDR attractive both to property owners and potential developers. This may mean reducing the baseline and increasing the maximum development potential of certain areas of the jurisdiction to encourage transfers.

Determining Market Potential

To be successful, there must be sufficient interest among both buyers and sellers of development rights. This is largely dependent on the supply of unused development rights in areas that fit the community's preservation goals and match the demand for additional development rights in areas that would be appropriate for higher intensity development.

Often, the only way to effectively evaluate the market potential of a new TDR program is through a formal study of market conditions. This type of study looks at property value differences between similar parcels with different development conditions and recent conservation easement transactions to estimate the value of unused development rights in areas targeted for preservation. It also compares sale prices between properties in areas with different permissible levels of development intensity to estimate the value of additional development rights.

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Designating Sending and Receiving Areas

Assuming there is sufficient market potential for TDR, the next step in establishing a new TDR program is to designate sending and receiving areas for development rights transfers. Because these designations will likely affect the nature and intensity of future development in both sending and receiving areas, it is important to ensure that the local comprehensive plan establishes clear policy support for land-use changes in these areas.

For programs focused primarily on environmental protection or farmland preservation, sending areas are typically wildlands or working farms on the urban fringe, and receiving areas are places in town with access to jobs, schools, infrastructure, and services. Meanwhile, TDR programs aimed at supporting historic preservation may designate historic resources in any land-use context as sending areas and often permit transfers to receiving areas within the same zoning district.

Determining Allocation and Exchange Rates

The allocation rate for TDR sending areas is the number of development rights an owner can sell per site. In the simplest program design, this allocation is equal to the number of undeveloped dwelling units permissible under the site's current zoning designation. That is, if the zoning for a 10-acre site permitted two dwelling units and the site has only one dwelling unit, the city or county would allocate one transferable development right to the owner. However, market conditions or program goals may justify a greater allocation rate to incentivize property owner participation.

The exchange rate is the relationship between the number of development rights on a sending site and the amount of bonus development intensity on a receiving site. Again, in the simplest program design, this rate may be one to one, meaning each dwelling unit transfer from a sending site equals one additional dwelling unit permitted on a receiving site. However, market conditions or program goals may justify a higher exchange rate to incentivize purchases. The program exchange rate may also translate sending area dwelling units to other measures of development intensity, such as floor area, lot coverage, or height.

Updating the Zoning Code

After a city or county has designed a new TDR program, it must translate the program into new zoning regulations for it to take effect. At a minimum these new regulations must clearly delineate sending and receiving areas, specify the TDR allocation and exchange rates, and establish the procedural requirements for development rights transfers.

Conclusions

To succeed, a new TDR program must be well aligned with both community desires and market conditions. Practically speaking, this means receiving areas need strong demand for bonus development as well as adequate infrastructure and community support to accommodate higher intensity development. Meanwhile, sending areas need market conditions or access to incentives that make selling development rights more profitable than on-site development.

After a city or county has implemented a new TDR program, market conditions often change. Consequently, all successful TDR programs require careful monitoring and periodic adjustments to maintain alignment with community desires and market realities.

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FURTHER READING

1. Published by the American Planning Association

Pruetz, Rick, and Noah Standridge. 2009. "Is Your Community TDR Ready?" *Zoning Practice*, September.

"Transfer of Development Rights." 2018. Research KnowledgeBase Collection. Chicago: American Planning Association. Available at planning.org/knowledgebase/tdr.

2. Other Resources

Ryan, Meghan, Wes Rochester, and Laura Ingram. 2009. *TDR Citizens Guidebook*. Athens, Georgia: University of Georgia Land Use Law Clinic. Available at http://bit.ly/2KH6pvF.

Walls, Margaret, and Virginia McConnell. 2007. *Transfer of Development Rights in U.S. Communities: Evaluating Program Design, Implementation, and Outcomes*. Washington, D.C.: Resources for the Future. Available at http://bit.ly/2IXvJjK.