What is TDR?

Almost all communities want to preserve sensitive environmental areas, historic landmarks, open space or other features important to their way of life or their character. Sometimes, it is possible to achieve these goals through regulations alone. But often, elected officials prefer not to significantly reduce development potential, and therefore property value, without offering compensation, regardless of whether or not it is legally required. In some communities, the voters are so committed to these preservation goals that they agree to tax themselves to raise the needed compensation. But in other communities, public support is not strong enough to raise the necessary dollars through taxation and other traditional funding sources.

Transfer of development rights, or TDR, offers an alternative to this dilemma. TDR can be thought of as a way of encouraging the reduction or elimination of development in areas that a community wants to save and the increase of development in areas that a community wants to grow. In a traditional TDR program, the areas that the community wants to save are designated as ?sending areas? and the locations that the community wants to grown are designated as ?receiving areas?.

Sending Areas - Sending areas can be agricultural land, open space, historic properties or any other properties that are important to the community. In a traditional TDR program, sending area properties are rezoned to a form of dual zoning that gives the property owners a choice. The owners can choose not to participate in the TDR program and instead use and develop their land as allowed under the baseline option. Alternatively, they can voluntarily elect to use the TDR option. Under the TDR option, the sending site owner enters into a deed restriction that spells out the amount of future development and the types of land use activities that can occur on the property.

When that deed-restriction is recorded, the sending site owner is able to sell a commodity created by the community's TDR ordinance called a transferable development right or a "TDR". In a traditional TDR program, the TDR ordinance specifies the number of TDRs that the sending site owner can sell once the deed restrictions have been recorded. Typically, the community does not directly establish the price per TDR. However, if a TDR ordinance allows sending site owners to sell enough TDRs, the proceeds from these TDR sales can approximate the development value of the sending site. By selling their TDRs, sending site owners can be fully compensated for the development potential of their property without having to endure the expense and uncertainty of actually trying to develop it. Also, when the sending sites have non-development income-producing potential, such as farming or forestry, the owners can continue to receive that income. Of course, that farming or forestry income is in

addition to the proceeds from the sale of their TDRs.

Receiving Areas - In a traditional TDR program, receiving areas are places that the community has designated as appropriate for development. Often these areas are selected because they are close to existing development, jobs, shopping, schools, transportation, infrastructure and other urban services.

A traditional TDR ordinance creates a form of dual zoning for these receiving areas. Developers can elect not to use the TDR option provided under this dual zoning. Under the baseline option, they do not have to acquire TDRs but they also are limited to a lower, less-profitable level of development. Alternatively, under the TDR option, developers must buy and retire a specified number of TDRs in order to achieve a higher, more-profitable level of development. The price of TDRs is typically freely negotiated between willing buyers and sellers. But the TDR ordinance can influence the price through the number of TDRs that the sending site owners are allowed to sell. When TDRs remain affordable, developers are able to achieve higher profits through the extra development allowed under the TDR option despite the additional cost of the TDRs.

TDR programs are not always successful. If TDRs are not affordable, developers will not buy them because TDR costs will make the TDR option less profitable than the baseline option. Similarly, if the TDR ordinance does not allocate enough TDRs to sending areas, the property owners may decline to sell their TDRs. And if a TDR program fails to generate transfers, there may be calls to remove it from a community's zoning code.

However, when TDR ordinances work, they provide a solution with multiple benefits. The developers achieve greater profits from the higher level of development. The sending site owners are able to liquidate the development potential of their properties while still using these properties for non-development and, in some cases, income-producing activities. And finally, the community itself is able to implement its preservation goals without relying exclusively on tax revenues and other traditional funding sources, which are often difficult to adopt.

Example: Montgomery County, Maryland

> Montgomery County abuts Washington, D.C. The southern half of the county has absorbed much of the growth spreading from the nation's capitol. But the northern half of Montgomery County is still primarily rural. In an effort to preserve its character, and prime farmland, the county adopted a rural preservation plan and changed its agricultural zoning from one unit per two acres to one unit per five acres. Despite that downzoning, the county still lost 18 percent of its agricultural land to development in the 1970s.
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> To stem these losses, a task force concluded that it would be far too costly for the County to try to buy agricultural easements with tax revenues. It also rejected the option

of simply downzoning all farmland to a density of one unit per 25 acres without providing compensation. This alternative was considered unfair to the owners of farmland and also might have the unintended result of encouraging the development of 25-acre country estates.

So, the county turned to TDR-based zoning. A 110,000-acre area, called the Agricultural Reserve, was designated as the sending area, more than one third of the County?s total land area. Over 90,000 acres in this Reserve were rezoned to a Rural Density Transfer Zone. Prior to the rezoning, development could occur on-site at a density of one unit per five acres. After the rezoning, density was limited to one unit per 25 acres for development on the sending site itself. This rezoning alone provided a disincentive to build on sending sites. But in addition, the county added an incentive for farmers to deed-restrict their land through agricultural easements and sell their development rights for off-site use. The incentive is that the farmers can sell TDRs at the rate of one development right per five acres. In other words, the permitted density of sending site properties increases five fold when development rights are used to allow development on receiving sites rather than on sending sites.

Likewise, the county identified receiving areas. These are areas that are appropriate for higher density development because they can easily be served by transportation and other public services. These receiving sites were also rezoned and assigned two alternative densities: when developers have not acquired transferred development rights, they may build at a lower baseline density. But when the project incorporates TDRs, a higher "with TDR" density is permitted. Montgomery County has TDR receiving zones at various densities. In one of these zones, the baseline zoning allows five units per acre. With TDR, developers in this receiving zone can achieve seven units per acre.

Under the Montgomery County TDR program, sending site owners can continue farming but still receive some revenue from the development potential of their land through the sale of development rights. To date, farmers have sold TDRs from more than 40,000 acres, permanently preserving this farmland through recorded agricultural easements. On receiving sites, developers have found that it is more profitable to buy TDRs in order to achieve higher densities in receiving site projects. And, of course, TDR-based zoning has allowed the county to permanently achieve almost half of its farmland preservation goal in 20 years. Perhaps more importantly, the county has been able to achieve these land use goals by harnessing private market forces rather than using public funds.

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