



by Rick Pruetz, AICP

Most communities still do not use transfer of development rights.

HARVEY
This is an article for planners like Blanchfield. It is interesting to note that even they regard "farmland protection" measures as a restrictive tool like zoning and environmental laws.

The New Jersey Pinelands Program has saved over 12,000 acres to date under a comprehensive plan that allows transfer between 60 different municipalities within a one-million-acre planning area.

Transfer of Development Rights Turns 30

Transfer of development rights (TDR) continues to be characterized as "innovative." Actually, TDR dates back to the New York City Landmarks Preservation Law of 1968. Now that it is turning 30, perhaps it is time to acknowledge that TDR has a history.

A nationwide survey recently identified 112 TDR programs in 25 states designed to achieve 29 different land use goals. The record of these programs over the last three decades demonstrates that TDR works, particularly when it is built into a comprehensive plan specifically designed to encourage the sale and purchase of development rights.

What is TDR?

To back up just a little, TDR is a market-based technique that transfers growth from places where a community would like to see less development, called sending areas, to places where a community would like to see more development, called receiving areas.

With TDR, sending site owners are compensated for permanently deed-restricting their property by selling their right to develop it. Receiving site developers buy these TDRs in order to build to a higher density than would otherwise be allowed. The increased profits created by the higher-density, receiving-site projects are used to pay for the TDRs.

In theory, everybody wins: sending site owners are compensated for preserving their properties; receiving site developers enjoy greater returns even though they have to buy TDRs, and communities achieve their land use goals using private sector money rather than tax dollars.

If TDR Is So Great, Why Doesn't Everyone Use It?

Questionnaires were sent to the 3,500 largest communities in the United States. Many respondents reported that they do not use TDR because their communities prefer to rely on traditional zoning and outright acquisition for preservation. This reliance is ironic since most of the respondents predicted that they will achieve no more than half of their land use goals, given the strength of their present zoning controls and the amount of funding currently available for acquisition.

Some respondents stated that TDR was not applicable because their communities are fully developed. Admittedly, of the 112 TDR programs studied, most are aimed at saving undeveloped areas — 63 are designed to preserve ecologically-sensitive areas, natural resources and open space while another 21 programs are intended to protect agricultural land and rural character. However, the remaining 28 programs are designed to work in fully-developed communities by preserving historic landmarks, revitalizing downtowns, creating housing, protecting infrastructure capacity, encouraging desirable land uses and promoting appropriate urban design.

Finally, many respondents reported that TDR is untested. However, in the 107 communities studied, TDR accounted for the preservation of over 51,000 acres of environmental/agricultural land as well as more than 39 historic landmarks. Admittedly, many TDR programs have not yet transferred a single

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Transfer of Development Rights

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development right. Nevertheless, the case studies from these unused programs are still valuable because they confirm the factors needed for a successful TDR program.

Success Factors

Successful programs typically encourage TDR sales by reducing the development potential of the sending sites through zoning restrictions, environmental regulations or farmland protection measures. In addition to prompting transfers, these sending site restrictions help to protect the resources that the communities want to save. Furthermore, the compensation offered by TDR often makes it politically possible for these sending site restrictions to be imposed.

Just as sending site owners need to be encouraged to sell their development rights, receiving site developers must be motivated to buy TDRs. Developers will only buy TDRs if they receive more profit from a project that uses TDR despite the extra cost of buying these rights. Unfortunately, in many communities, developers are content with the density allowed without TDR. Even worse, some communities simply rezone land for higher densities without requiring TDRs. Needless to say, a developer will not pay for extra density when the community gives it away for free.

Comprehensive TDR-Based Plans

In addition to sending site owners and receiving site developers, the general public must accept the extra development proposed at the receiving sites. Communitywide, comprehensive planning efforts are ideal for generating this kind of acceptance. In the context of a comprehensive plan, the public is encouraged to identify areas that need additional development as well as areas that need to be preserved.

Not surprisingly, the most successful TDR programs are in communities that specifically designed their comprehensive plans to be implemented through TDR. For example, Montgomery County, Maryland created an agricultural reserve containing more than one-third of the county's land area. Within that reserve, 91,000 acres of farmland were rezoned from one unit per five acres to one unit per 25 acres. But the owners of these sending sites are able to sell their TDRs because there is a strong demand for higher density development on the county's receiving sites which are within commuting distance of Washington, D.C. With one exception, for projects providing affordable housing, the county only approves this higher density of development to receiving site projects using TDR. Because of this integration of TDR within the comprehensive plan, Montgomery County has permanently preserved over 29,000 acres of farmland to date.

Multi-Jurisdictional Programs

Unlike Montgomery County, many of the communities that adopted TDR programs over the past three decades do not have good receiving sites within their boundaries. For example, in many rural communities, there is little or no demand for higher

density development. In these instances, a community can encourage appropriate, higher-density development that would require the use of TDR. In a more politically-problematic option, the community can rezone receiving sites so that TDRs must be used to achieve the density previously permitted as a matter of right.

Alternatively, some programs have overcome this problem when one or more jurisdictions with good receiving sites voluntarily agree to accept rights transferred from sending sites in other jurisdictions. Such voluntary interjurisdictional transfers occur in Morgan Hill, California and Boulder County, Colorado. In other cases, the state and/or federal government has imposed a TDR program that requires jurisdictions to accept development rights transferred from other jurisdictions. For example, the Tahoe Regional Planning Agency oversees a watershed protection program involving transfers between six different communities in the states of California and Nevada. In the most ambitious TDR program in the country, the State of New Jersey created the Pinelands Commission. The Commission manages transfers within a one-million-acre planning area encompassing 60 separate jurisdictions.

Planning With Optimism

Just as comprehensive planning can be good for TDR, TDR can be good for comprehensive planning. Communities often face a certain pessimism when faced with overwhelming problems like urban sprawl. They recognize that they do not have a fraction of the money needed to buy all of the land that ought to be saved, and they are reluctant to impose strong land use restrictions without compensating property owners for the loss of value resulting from stronger regulations. On the other hand, TDR can add optimism to a planning process by responding to concerns about publicly-funded compensation and allowing participants to concentrate on their goals for the future.

The Next Thirty Years

In the recent past, there have not been dramatic increases in the percentage of public funding earmarked for the acquisition of environmental areas, farmland or historic landmarks. The property rights movement has also had success lately convincing some state governments to require the payment of compensation when land use restrictions are adopted. Moreover, projections indicate that the U.S. will grow by 80 million or more people in the next three decades, creating an even greater demand to save the special places that remain. Given these trends, it seems likely that we will see a significant increase in the use of TDR over the next 30 years.

Rick Pruett is the City Planner of Burbank, California. He recently completed a comprehensive guide to TDR entitled Saved By Development: Preserving Environmental Areas, Farmland and Historic Landmarks With Transfer of Development Rights published by Arje Press.