

**LEGISLATIVE**

**# 100001**



PLANNING DEPARTMENT  
PO Box 490, STATION 11  
GAINESVILLE, FL 32602-0490

306 N. E. 6<sup>TH</sup> AVENUE  
P: (352) 334-5022  
P: (352) 334-5023  
F: (352) 334-2648

**TO: Community Development Committee**  
**FROM: Ralph Hilliard, Planning Manager**  
**SUBJECT: Transfer of Development Rights**

**DATE: July 25, 2012**

---

Transfer of development rights (TDR) programs represents a way to direct growth away from lands that should be preserved (sending areas) to areas suitable for higher density developments (receiving areas). The attached documents further explain this concept in more detail. The literature points to three areas that are important in order to implement a successful TDR program. The foundation of any TDR program is a resource area that requires protection; these sending areas of resource protection must be clearly identified. There must be consensus regarding the location of receiving areas that will receive the higher densities, communities receiving the higher density may not want it. In order to increase density in the receiving areas there must be a strong market demand for either residential or commercial development in those areas.

One question for Gainesville is whether we have already increased the densities within the city to the point where there is no need for additional densities beyond what can be achieved within the existing system? Completion of a real estate market analysis by a qualified professional is highly recommended to address this question. The analysis will validate whether the demand for growth is available for TDR's to succeed. Alachua County has had a TDR program for several years with no takers as of yet, however the economic downturn may have played a role in the lack of interest in the program. Within the City there have been few if any projects that have requested or needed density bonus points in recent years, because the City now allows density up to 100 units per acre in some areas, and 150 units per acre in the downtown.

It is staff's opinion that in the current economic situation that there may not be a market for TDR, but only a real estate market analysis would be able to provide a definitive answer to this question.

Attachments:

- Exhibit 1 - Smart Growth/Smart Energy: Transfer of Development Rights Programs
- Exhibit 2 - Transfer of Development Rights Program
- Exhibit 3- Alachua County Transfer of Development Rights Ordinance

# Smart Growth / Smart Energy



## Toolkit



HOW TO USE THIS TOOLKIT

INTRODUCTION

STATE POLICIES AND INITIATIVES



## Transfer of Development Rights (TDR)

Modules

Case Studies

Slideshows

Model Bylaws

Links

Glossary

**In Brief:** TDR is a regulatory strategy that harnesses private market forces to accomplish two smart growth objectives. First, open space is permanently protected for water supply, agricultural, habitat, recreational, or other purposes via the transfer of some or all of the development that would otherwise have occurred in these sensitive places to more suitable locations. Second, other locations, such as city and town centers or vacant and underutilized properties, become more vibrant and successful as the development potential from the protected resource areas is transferred to them. In essence, development rights are "transferred" from one district (the "sending district") to another (the "receiving district"). Communities using TDR are generally shifting development densities within the community to achieve both open space and economic goals without changing their overall development potential. While less common, TDR can also be used for preservation of historic resources.

### The Problem

**Conventional zoning** has failed to prevent, and is often the cause of, suburban sprawl in Massachusetts. As ideas regarding land use planning have evolved, it has become clear that conventional zoning is an obstacle to the goals of many communities. Even highly valued areas of forest or farmland are zoned for low-density residential or residential/agricultural development - otherwise known as sprawl. At the same time, in existing or potential community centers current zoning often does not allow for density levels appropriate to a vibrant commercial or mixed-use district. Traditional planning techniques to address these situations, such as large land acquisitions in open space areas, whole-sale rezoning of downtown centers, or down-zoning of agricultural areas, are politically sensitive, costly, and often impractical as they reduce the development potential of a landowner's property.



Preservation and revitalization can both be hampered by existing zoning codes that allow for extensive sprawl but do not allow for higher densities in what would otherwise be viable economic activity centers. These pictures illustrate what can happen to conventionally zoned areas. TDR offers an alternative that protects agricultural lands from this type of sprawling growth.

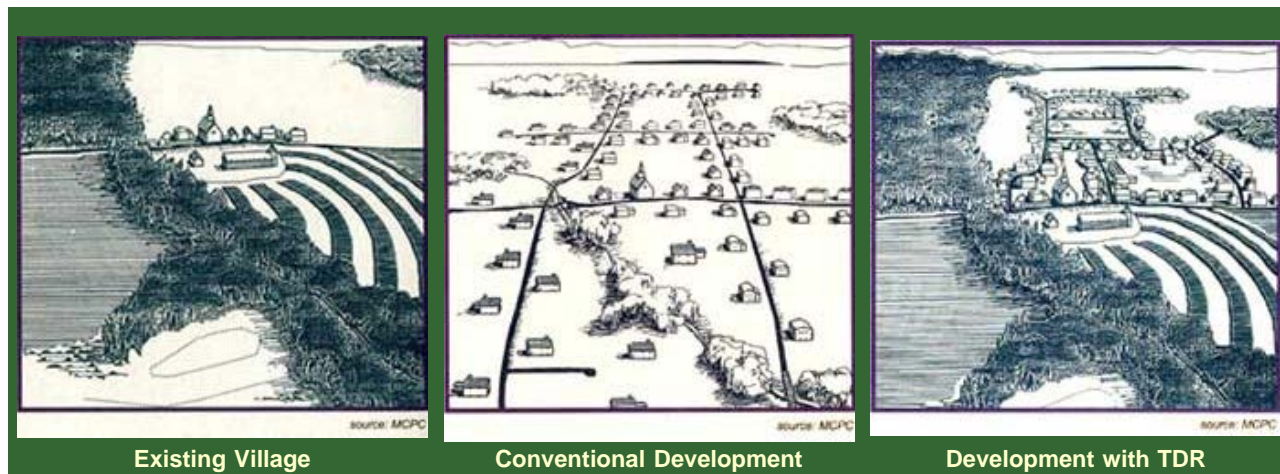
Images taken from *Above and Beyond, Visualizing Change in Small Towns and Rural Areas*. Campoli et. al. APA Planners Press, 2001

## Introduction to Transfer of Development Rights

**Transfer of Development Rights (TDR)** represents an innovative way to direct growth away from lands that should be preserved to locations well suited to higher density development. Areas that may be appropriate for additional development include pre-existing village centers or other districts that have adequate infrastructure to service new growth.

The approach begins with planning processes that will identify specific preservation areas as "sending areas" and specific development districts as "receiving areas". In Massachusetts, this level of town-wide or city-wide planning is best addressed in the [comprehensive planning](#) process. Once these areas are identified, Zoning Bylaw amendments can be adopted which authorize landowners in the sending areas to sell their development rights to landowners in the receiving areas. The amount of money required to purchase these development rights is influenced by the Zoning Bylaw provisions, but is generally negotiated between the landowners. This approach allows market forces to enter into the transaction and requires land owners to negotiate the final value of development rights.

In return for the purchase, landowners in the sending area place a restriction on their property, which is generally recorded as a [deed restriction](#). This restriction can be determined through explicit zoning provisions or can be negotiated as part of the permitting process, perhaps via a [special permit](#). Restrictions can limit the level of potential development, the type of development, or some combination of both. Developers who buy development rights are acquiring the capacity to build higher density in a receiving area, which can mean different types of the same use (apartments in addition to single family homes), higher densities of the same use (single family homes on ¼ acre lots instead of 1 acre), or different higher intensity uses (commercial or industrial use in addition to residential).



TDR can be an effective tool to simultaneously limit development in valuable open space areas while stimulating additional development in areas well suited to higher densities. Although some transfers are based on a "one to one" ratio (one housing unit in the sending area grants one housing unit in the receiving area) in order to provide an incentive other programs have increased the value of a development right if it is transferred. For example, a single development right in the sending area could provide multiple development rights in the receiving area. This "scaling" process can act as a tremendous economic incentive for both landowners in the transaction.

## Characteristics that Support Transfer of Development Rights

**Communities** that can implement Transfer of Development Rights on a broad scale will generally have the following characteristics:

**Clearly Identified Resource Areas for Protection.** The foundation of any TDR program is a resource area that requires protection. Sending area communities should clearly identify the resources they would like to protect as these choices will shape many of the TDR program elements such as the method of calculating development rights, the types of incentives that will be offered to developers, and the type of restriction recorded.

**Consensus Regarding the Location and Extent of Receiving Areas.** Communities must develop consensus

regarding which areas will receive higher densities than what is allowed under existing zoning. Higher density development is a difficult, politically charged topic in communities and often requires a significant outreach effort to gain acceptance. Detailed discussion regarding the intensity and types of use should be a part of the TDR planning process.

**Infrastructure that can Support Increases in Density.** Another critical element to TDR program is the district(s) to which increased growth will be directed. Communities should be able to identify areas where existing infrastructure can accommodate higher densities. Infrastructure concerns include wastewater, water supply, traffic, and other utilities. Market considerations should also be evaluated when residential and/or commercial development rights may be transferred as the market in receiving areas must be able to support increased densities.

**A Clearly Written Bylaw.** TDR legislation can become very complex as municipalities attempt to create guidelines for market transactions with various incentives to the development community. The goal of a community should be to develop a concise permitting process that does not add unnecessary layers of review for the development community. Bylaws should include an attractive incentive for TDR transactions in the form of density above that otherwise possible in the receiving zone.

**Strong Market Conditions.** The goal of increased density in receiving areas must be supported by a strong market demand for either residential or commercial development. Communities should consider enlisting the help of a qualified real estate or economic development professional to assess whether the market in receiving areas is strong enough to support increases in growth.

**TDR Credit Bank.** Due to the complexity of TDR transactions, the timing involved with buying, selling, and developing properties may not always be seamless. In the event that specific elements of a transaction are delayed, it may be beneficial for a community to establish a TDR Credit Bank where development rights can be temporarily stored before being purchased by a developer. Communities can also use these banks to store credits that are purchased by the Town for parcels of high conservation priority.

**A Sophisticated Reviewing/Permitting Authority.** The permitting authority for a TDR transaction should have a clear understanding of the program guidelines to ensure that development rights and density increases are correctly calculated in permit applications. Reviewing agencies should also be able to prioritize those design elements that are most important to the final project and identify alternative approaches that may simplify the application process.

**Open Communication between Local Agencies.** The permitting authority for TDR transactions should have access to other agencies that may help to clarify opportunities or constraints associated with either the sending or receiving districts. Inter-agency cooperation can be formally integrated into the review process using the provisions of the TDR bylaw where commentary may be required from other agencies such as the Conservation Commission, the Board of Health or the Town Engineer. Other agencies or groups that could be involved in the review process, formally or informally, include local watershed groups, the local Open Space Committee, or the Agricultural Commission.

## Implementation

**Background Research:** Completion of a real estate market analysis (REMA) is highly recommended. The overall purpose of the analysis is to validate the transfer system prior to the adoption of the implementing bylaw or ordinance. Demand for growth is necessary for TDR to succeed, and a REMA will determine market strength. It will also help a community comprehend land values and the types of growth that the market will support. Knowing the economic value of development rights generated in the sending area and the capacity of the market to absorb that value in the receiving zone is critical. Moreover, a community must ensure that the rate of transfer (the number of development rights generated multiplied by the expected sale price of each right) adequately compensates the landowner in a sending area for forgone development on their parcel. Similarly, an understanding of the value of additional density in the receiving area is important to establishing the amount of additional density permitted per credit acquired. The REMA completed by Woolwich, NJ is an excellent example; [it can be found here](#).

**Drafting the Bylaw or Ordinance:** The process typically begins with translation of master plan goals into preservation or "sending areas" and specific development districts or "receiving areas". Once these areas are identified, zoning bylaw amendments can be drafted and adopted which authorize landowners in the sending areas to sell their development and developers in receiving areas to grow more intensely by purchasing them.

### 1. Designate sending areas

Sending areas are portions of the community that are ideal for preservation and very limited or no development. These are often areas of agricultural, environmental or historic importance. To preserve these areas, TDR enables landowners to sell the development rights associate with their property, thus transferring development to more appropriate areas.



## 2. Designate receiving areas

The preservation of agricultural lands conserves prime agricultural soils. The protection of naturally vegetated open space conserves wildlife habitat and maintains recharge to groundwater.

## 3. Create a formula for allocating rights

The development rights or credits can be assigned in a variety of ways, and can accommodate transfers involving (and between) residential, commercial, and industrial uses. Perhaps the simplest way to calculate the number of credits allocated to landowners in the sending area would be to make them equal the number of potential building lots in the sending area. The resulting number of credits generated could then be used as a starting point for calculating the amount of additional density each acquired credit provides in the receiving area.

## 4. Determine the value of a credit in the receiving area

After determining the number of credits generated in the sending zone(s) the community should be sure that more density is possible in the receiving zones than the number of generated credits will allow. This will help create demand for credits. Each credit acquired by a developer or landowner in the receiving zone must also have more "value" in additional density than its acquisition cost. In turn, the acquisition cost must be sufficient to compensate the landowner in the sending area. Due to the potential complexity of these calculations municipalities are encouraged to complete and use a REMA to determine credit values.

## 5. Establish administrative/permitting procedures

Administration of TDR systems requires different permitting procedures than conventional zoning. Communities should be prepared to address the recording of deed restrictions, tracking of credits, and other tasks associated with TDR.

## Benefits

Transfer of Development Rights benefits communities by providing a mechanism with which to achieve a municipalities land protection goals without spending local money. Market forces are harnessed to protect land while also encouraging greater prosperity, and tax revenue, in suitable locations of the community. Local governments also spend less for ongoing maintenance, as roads and other infrastructure are reduced and concentrated in city and town centers and other suitable locations as discussed under financial consideration below.

Depending on the design of the program, the benefits of TDR are also evident in how TDR implements many of the Patrick Administration's [Sustainable Development Principles](#) including:

- **Concentrate Development and Mix Uses:** TDR is designed to curb sprawl and encourage development in areas with adequate infrastructure.
- **Use Natural Resources Wisely:** The preservation of agricultural lands conserves prime agricultural soils. The protection of naturally vegetated open space conserves wildlife habitat and maintains recharge to groundwater.
- **Protect Land and Ecosystems:** Conservation restrictions that may be placed on sending areas can provide permanent protection for wildlife habitat and significant cultural or historic landscapes.
- **Expand Housing Opportunities:** TDR programs create higher density neighborhoods and can be designed with density bonuses or approval contingencies based on the inclusion of affordable housing in the receiving district.

## Financial Considerations

**TDR** provides several financial benefits to local governments, private developers, and the general community. First of all, limiting development in outlying open space or agricultural areas will reduce municipal infrastructure costs that would result from large scale subdivision development. Preservation of these areas therefore decreases the local tax burden required to keep pace with sprawl. Conversely, because this technique does not limit the overall development potential within a community, the act of preserving land does not translate into a loss for the community's tax base. In addition, TDR allows a community to preserve land without using public funds, a cost that otherwise would be borne by the municipality's taxpayers.

Land owners in sending areas and private developers can realize significant financial gains through TDR programs especially if development rights are increased through density bonuses



during the transaction. In these instances, landowners in the sending areas can actually demand a higher price for their land than if they were to convert it to residential development. Developers in the receiving district can also realize a higher investment on their property when it is developed at a higher density than what was allowed under conventional zoning.

[Case Studies](#)[Bylaw](#)[Slideshow](#)[Links](#)

# Transfer of Development Rights Programs

## Using the Market for Compensation and Preservation

*Jason Hanly-Forde, George Homsy, Katherine Lieberknecht, Remington Stone*

Local governments undertake transfer of development rights (TDR) programs to use the market to implement and pay for development density and location decisions. TDR programs allow landowners to sever development rights from properties in government-designated low-density areas, and sell them to purchasers who want to increase the density of development in areas that local governments have selected as higher density areas.

TDR programs appear to offer many advantages to local governments that want to control land use but also compensate landowners for restrictions on the development potential of their properties. TDR programs can be easier to implement than typical zoning programs; they make development more predictable and use the market to compensate landowners for lost property value. TDR programs are also more permanent than traditional zoning regulations.

Although TDR programs appears to be a potentially powerful land use tool, few communities have had success in using these programs because of the associated challenges . TDR programs do not reduce the need for zoning and can actually be more complex to administer. Communities may not support TDR programs, and local governments may have to invest in community education programs to explain them to the public. Lastly, although the permanency of TDR programs can be an advantage, it may also be a liability, since a community's land use needs change over time.

Local governments that are interested in TDR programs should consider both how to create a strong market for development rights in their communities and how TDR programs interact with the 'takings' issue. The final part of this paper presents advice and information on both these topics and ends with an evaluation of TDR programs as a governing tool.

- [What is the history of transfer of development rights programs?](#)
- [What is a TDR program?](#)
- [How does a TDR Program Work?](#)
- [What are the advantages of TDR programs?](#)
- [What are the challenges of TDR programs?](#)
- [How can local governments build a market for a TDR program?](#)
- [Should local governments worry about TDR and 'takings' law?](#)
- [Is a TDR program a good governing tool?](#)
- [Conclusions](#)

Landownership was one of the first measures of citizenship in the United States. The passion to protect the right of property owners to reap economic gain from their land still burns strongly today. Because of this, local governments often encounter citizen resistance to land use controls that attempt to provide for a public good. As a result, zoning can be very difficult to implement.

Many planners tout transfer of development right (TDR) programs as a way to take the politics out of zoning. With TDR programs, the market makes land use and density allocations and compensates property owners whose development rights have been limited in order to preserve some societal good, such as open space, farmland or historic preservation. It is a potentially powerful tool, but in its thirty year history, it seems to have made little headway in communities across the country. This paper examines TDR programs, their benefits and their costs and suggests why the adoption of this tool has been limited.

## What is the history of transfer of development rights programs?



Zoning was the first widespread attempt to balance individual property rights against the good of society. Early advocates also suggested that zoning would enhance property values (Karkainen, 1994).

In 1916, New York City enacted the nation's first comprehensive zoning ordinance after a spate of skyscrapers blocked sunlight from neighboring properties. At the same time, warehouses and factories were encroaching on fashionable retail areas of Fifth Avenue. The new zoning ordinance set both height and setback requirements and separated incompatible uses, such as factories and residences (City of New York Department of Planning, 2002).

From the beginning, critics complained about the unfairness of zoning since it benefits some landowners and limits others. In 1926 the U.S. Supreme Court ruled in the landmark case of *Village of Euclid, Ohio v. Ambler Realty* that the legal system recognizes many kinds of unequal burdens (Karkainen, 1994). The *Euclid* case required two hearings before the high court narrowly affirmed a community's ability to zone. (Callies, Freilich and Roberts, 1999)

The idea of transferring development rights between properties was first introduced in New York City with the passage of that first American zoning ordinance in 1916. It allowed landowners to sell their unused air rights to adjacent lots, which could then exceed the new height and setback requirements. In 1968, the city Planning Commission changed the rules to allow transfers between lots several blocks apart (Johnston and Madison, 1997).

In the early 1980s, the command and control nature of many regulations came under fire as an inefficient. Policy makers searched for ways to govern using the market (Henig, 1989-90). In 1986, Australia created a system of tradable fishing permits to stabilize lobster populations. During the first half of the 1990s, a system of tradable pollution credits in the U.S. cut emissions of sulfur dioxide (which causes acid rain) in half (Brown, 2001). With these successes, market advocates found the world moving in their direction—toward answering all kinds of societal questions with economics. Land uses proved to be no exception.

## What is a TDR program?

Most people have a very two dimensional view of their property—just a piece of land on which to build a house or commercial building. But the bundle of rights that comes with a piece of property is much more complex. Some physical rights, depicted in Figure 1, include the rights to build, exploit natural resources, restrict access and farm. Other legally enforceable rights include the right to sell the land, subdivide it, rent it out or grant easements across it.

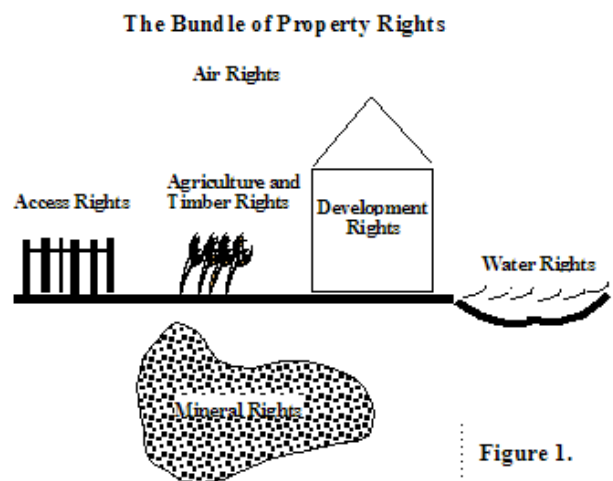
TDR programs allow landowners to sever the building (aka development) rights from a particular piece of property and sell them. Purchasers are usually other landowners who want to increase the density of their developments. Local governments may also buy development rights in order to control price, design details or restrict growth.

TDR programs strive for two main goals. First, communities can use TDR programs to preserve open space, agriculture, historic buildings or housing. And TDR programs make such preservation more equitable and politically palatable by compensating landowners who lose the right to develop their property.

## How does a TDR Program Work?

To demonstrate the operation of a TDR program, we have created a fictional farming community called Circle County.

At first, Circle County is completely devoted to agriculture (Figure 2). However, its farms face development pressure from a growing urban area not depicted on the



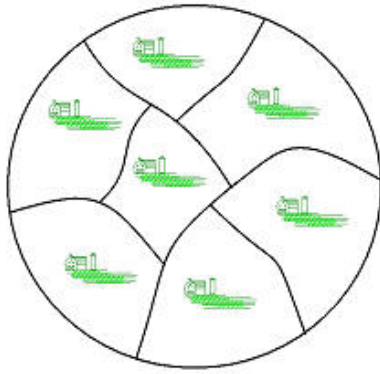


Figure 2 - Circle County

illustration.

At some point that pressure makes it economically less likely the land would remain in agriculture (Heikkila, 2000). Indeed many farmers call the option to develop their land their "retirement plan." When left to traditional zoning, market pressure often causes low density development, that is, suburban sprawl (Figure 3).

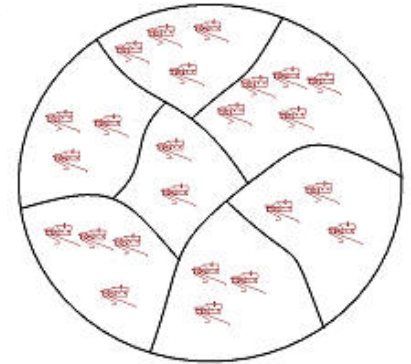
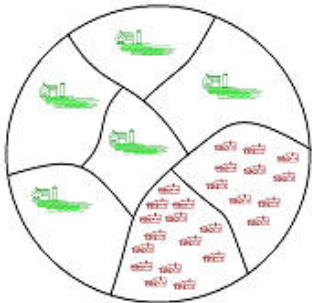


Figure 3 - Typical Sprawl Pattern

Figure 4 - Circle County TDR Program *TDR programs compensate property owners.*

However, Circle County government leaders decided to preserve their rural character. Under traditional zoning the only option would have been to tell some farmers that they could not sell their land for development. Instead the government instituted a TDR program. Farmers in the northern and western parts of the county could sell their development rights to builders in the southern and eastern areas designated for more density (Figure 4).

## What are the advantages of TDR programs?

Local governments use TDR programs to mitigate the economic impact of land use regulations, specifically to compensate landowners for perceived partial takings (Johnston and Madison, 1997). This planning tool offers landowners a way to recapture some lost economic value when a property is downzoned [\[1\]](#) from residential use to agricultural use for preservation purposes.

*TDR programs are an easier way to implement zoning.*

TDR programs do not replace zoning, but make strong land use regulations more politically feasible and easier to implement (Barrese, 1983). Local officials feel less political pressure if landowners are compensated for their "lost" rights. And a well-constructed TDR program reduces the demand for zoning variances, since developers will use the market, not their connections to the local zoning commission, to secure additional development rights.

*TDR programs provide private funding for protection.*

Finding public funds to protect open space and historic buildings is increasingly difficult as governments carefully watch their bottom lines. One reason local governments created TDR programs was to leverage market monies to achieve such goals. (Wolfram, 1981).

*TDR programs make development more predictable.*

Developers benefit from the clarity and consistency that TDR programs offer (Pruetz, 1997). Instead of incurring the costs and risks of negotiating for variances, developers can exceed certain zoning regulations simply by purchasing

### Housing in Seattle

Seattle, Washington created a TDR program for affordable housing in 1985. The TDR program has created or preserved 559 units of affordable housing. It was recently reconfigured to create another 900 units.

(Walker, 2002)

development rights from other property owners.

*TDR programs are more permanent than zoning.*

Since TDR uses deed restrictions or conservation easements to sever and extinguish development rights, public values such as open space and historic buildings are permanently protected. In contrast, zoning rules can change over time and with new administrations.

“Zoning is just two public hearings and one vote away from changing.”

*Jim Lively, Planner  
Michigan Land Use Institute*

## What are the challenges of TDR programs?

*TDR programs do not reduce the need for planning.*

TDR programs only work in conjunction with strong zoning ordinances and good comprehensive planning. However, building political consensus on zoning issues is always a challenge. As a result, successful TDR programs require the commitment and political will of the community (Lane, 1997).

*TDR programs can require increased administration.*

In reality, TDR programs may be more complicated and expensive to implement than traditional zoning. Local governments must oversee (or contract out oversight of) the market; track and defend deed restrictions; and assist in proper preparation of easement documents. In many cases, the local government may regulate the market through TDR banks<sup>[2]</sup> or other tools.

*TDR programs require increased public education.*

Citizens, real estate professionals, lawyers, assessors, and planners all need to be educated in the TDR process. Since successful programs require community buy-in, local governments must market the program, using mailings, public meetings, and advertisements. For example, efforts to institute a TDR plan in Santa Fe, New Mexico started with an all-day workshop (Pruetz, 2002).

*Communities may not support TDR programs.*

Despite public education efforts, it may be difficult to find areas willing to accept higher density development (receiving areas), since many people perceive that high density development decreases property values and quality of life.

"[The process of creating] a valuable receiving area involves the kind of higher density zoning that many conservation-minded suburbanites want to prevent in the first place."

*(Haar and Kayden, 1989, p. 151)*

*TDR protects preservation values permanently.*

Although some consider the permanence of a TDR transfer to be a benefit, it also limits the future options of a community as societal values and community characteristics shift.

## How can local governments build a market for a TDR program?

*Comprehensive land use and fiscal planning*

Successful TDR programs start with strong comprehensive plans. Communities must encompass a enough land to have sufficient sending and receiving areas. Otherwise some kind of regional government or inter-municipal pact is needed to carry out the program and ensure the fair distribution of development and tax revenues. The planning process must also accurately gauge the desires of the

### **A Model TDR Program: Montgomery County, MD**

The Montgomery County, Maryland is touted as having one of the most successful TDR programs in the nation. Since its inception in 1980, the county has protected over 50,000 acres of farmland and open space. Montgomery County's

community for development and preservation.

*The supply side: sending areas*

In the areas where land will be preserved, property owners must be motivated to sell their development rights rather than fully develop the land themselves.

Commonly this is done by downzoning their land to a lesser density. Other factors may constrain development, such as environmental regulations, site problems or adequate public facility ordinances<sup>[3]</sup>. These factors can compel property owners to sell their development rights. In addition, a favorable transfer ratio from the sending area to the receiving may make the transfer lucrative enough to entice sellers. For example, in Montgomery County five times as many TDR credits could be transferred out as could be used on site.

achievement is due in large part to its success in forming a market for development rights.

*(Montgomery County Planning Board, 2002)*

*The demand side: receiving areas*

Designating the receiving areas can be the trickiest part of setting up a TDR program (Canavan, 1990). A working market requires that receiving areas face a demand for denser development than is currently allowed. For example, in Montgomery County developers used TDR credits to build, attractive transit-oriented-neighborhoods around the Bethesda and Silver Spring Metro transit stations.

Requirements that development projects use TDRs are an effective, if coercive, means of forming a market. And if communities eliminate alternative ways of achieving higher densities, such as variances, then the purchase of development rights becomes a necessity. This can have mixed results. The variance process is often viewed as flawed and tilted towards property interests. However, it can be much more responsive to changing community needs than a TDR program.

Other possible incentives for developers to buy building rights include maximum density bonuses, exemptions from some development impact fees, or even exemption from certain development standards like setback, open space, and parking requirements. (Pruetz, 1997)

Community participation in the comprehensive planning processes is particularly vital in receiving areas since many residents might believe that high density development lowers property values and diminishes quality of life.

*Rights as currency*

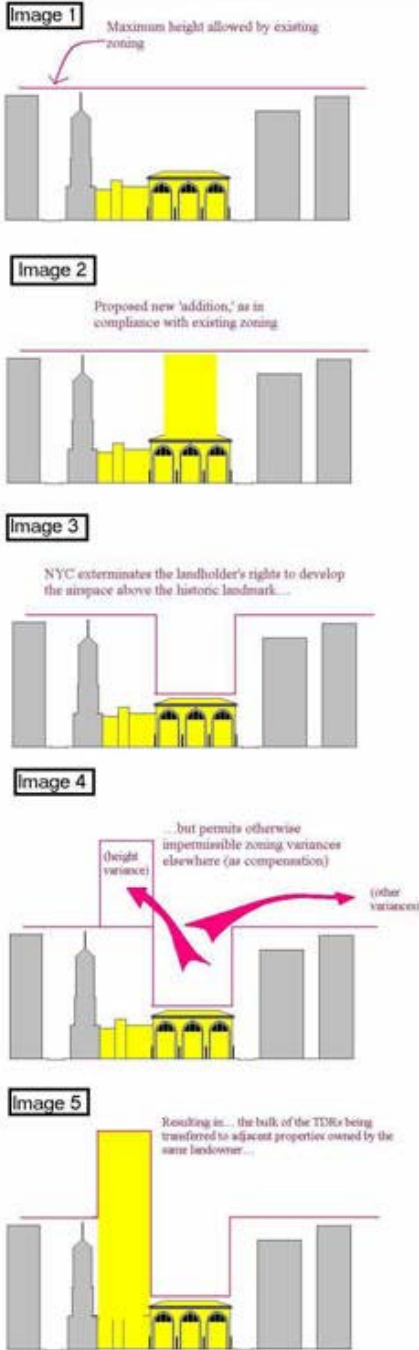
In communities with TDR programs, the rights become the currency of development. The development value (not price) of a TDR credit is set so that one equals another. Credits can be bought and sold at any time, not just when a particular development in the receiving site is pending. Also, a TDR should be a general investment available to anyone, not just possible developers. Local citizens, land trusts and investors may all have an interest in the market for other reasons aside from development.

**Grand Central Terminal, New York City**

Grand Central Terminal, constructed in 1913, is one of the city's architectural masterpieces. In the late 1960s, the Penn Central Transportation Company wanted to construct a 53-story 'addition' over the protected landmark. The city decided the tower would destroy the character of the Terminal, so they allowed Penn Central to transfer the development rights to adjacent properties. (Figure 5)

Transfer of Development Rights Programs

**Figure 5. Grand Central Terminal**



Sometimes a municipality may step in and act as a broker, buying TDR credits for later sale. This idea of a TDR bank is increasingly popular. Municipalities can act essentially as a federal reserve bank influencing the price of the development rights. Some communities also put conditions on the sale of rights from their bank in order to influence other aspects of development, such as design details or affordable housing requirements. Finally, if the government buys TDR credits without eventually transferring them to a developer, the program can be a tool for restricting growth, similar to the more common ‘purchase of development rights’ program.

Brokers often step in to facilitate transactions, charging a fee of six to seven percent of the total price just as in regular real estate transactions. In some cases brokers may wind up advertising their TDR services, possibly taking over the marketing function from the government (Pruetz, 1997).

*Administration*





### **TDR and Land Trusts**

Public education is essential so that everyone remembers the program goals and learns the operation of the market. Mailings to and public meetings for landowners in sending areas, potential developers and residents of receiving areas are an integral part of the education effort. TDR program staff can also assist people with the legal aspects of the program.

When deciding on the number of TDR credits to make available, most literature recommends setting the ratio of sending credits to potential receiving credits to at least 2:1. This leaves room for receiving sites to be developed without fully using TDR credits to increase density to the maximum allowable. Montgomery County has used more than half of the sending TDRs but found that the ratio is down to about 1:1. (Montgomery County Planning Board, 2002) As a result, the price of development rights has dramatically decreased, so the county is in the process of looking for more receiving sites.

Communities must monitor the progress of the program to ensure that goals are met. If local governments do not have the expertise or interest in administering a program, they can consider hiring a local land trust or other service provider.

## Should local governments worry about TDR and 'takings' law?

The Fifth Amendment to the U.S. Constitution reads, in part, "nor shall private property be taken for public use without just compensation." Traditionally, a taking was defined as a physical seizure of property by the state.

However, in 1922 the U.S. Supreme Court ruled that governmental interference in the form of excessive regulation may be so burdensome to a landowner as to have the same effect as an actual physical invasion thus establishing the regulatory taking. (*Pennsylvania Coal Co. v. Mahon*). Land use zoning falls under this broad legally-murky category of regulatory takings.

To complicate matters, the High Court has ruled that a landowner must lose total use of the property before the government pays compensation. A *partial taking* need not be compensated at all. Consequently, the state has every incentive to have its actions deemed partial rather than full takings. Some municipalities view TDR programs as a way to achieve this goal.

In *Penn Central v. City of New York*, the Supreme Court seemed to indicate that TDR credits have a value that could prevent a total taking of property - and thus require compensation. However, in the more recent *Suitum v. Tahoe Regional Planning Agency*, this attitude seemed to change. In a concurring opinion, Justice Scalia wrote that "TDRs... have nothing to do with the use ... of the land to which they are attached. The right to use and develop one's own land is quite distinct from the right to confer upon someone else an increased power to use and develop his land." However, Scalia goes on to praise TDR programs as a valuable land use tool, but not as a way for the government to avoid a takings claim.

It must be noted that the *Suitum* case concerned only the legal outer bounds of the issue - situations in which parcels in a given sending area are stripped of all rights to build. So long as a bare minimum of development is permitted on a particular set of landholdings, there may be no 'takings' issue. Montgomery County cleverly kept within the bounds of this loophole because it rarely zones land as zero-growth. It implemented a baseline minimum of one dwelling per 25 acres in its sending areas. (The result has been a proliferation of overpriced rural 'estates', which may be less desirable than maintaining agricultural land, but may be more attractive than the sprawling alternative.) (Pruetz, 1998)

Since the land trust community has experience in the facilitation and administration of purchase of development right programs, local governments may want to explore the possibility of partnerships with private land trusts.

Local land trusts may be able to assist with education of the community, the marketing of the program and the facilitation of the conservation easements or deed restrictions. Clear and comprehensive contracts between the local government and the land trust are an essential element of any partnership.

So far, private land trusts haven't had much participation in local government TDR programs (Land Trust Alliance, 2002). One notable exception is that many municipalities donate the conservation easements that extinguish transferred development rights to a local land trust.

Also, the *Suitum* case heard by the Supreme Court might have been deemed a 'just compensation' if Lake Tahoe had some sort of TDR bank in place, whereby the owner could have quickly and easily sold TDRs at a fair minimum price without having to enter the marketplace. A TDR bank ensures liquidity and bridges the time gap between when an owner wishes to sell rights and when a developer needs to purchase them.

## Is a TDR program a good governing tool?

Salamon (2002) cites five criteria on which we can judge the quality of a particular governing tool: effectiveness, efficiency, equity, manageability and legitimacy. How do TDR programs measure up?

### *Effectiveness*

Does the governing tool achieve its intended objectives? This is the most fundamental question that must be asked. As previously mentioned, there are essentially two goals for TDR programs: preservation and compensation. The most highly touted programs do well at preserving land and the preservation is, by and large, permanent. However, even the model program in Montgomery County, Maryland has hit a few snags in terms of compensation. Due to a lack of receiving area demand, farmers in the sending areas that still hold development rights find them worth a lot less than when the program started.

### *Efficiency*

Are the results achieved at a reasonable cost? Again there are two ways to examine the efficiency of TDR programs. One is administrative costs. The other is the cost of preservation. Administrative costs can be somewhat higher than under traditional zoning. Markets must be formed and monitored. TDR credits must be created and administered. Also, there are no savings over traditional planning techniques since a comprehensive plan and complete set of zoning rules must already be in place for TDR programs to work.

On the other hand, sometimes the only way to preserve land or historic places is by buying property or development rights. That is impossible for many cash-strapped local governments to do with public funds. TDR programs allow private money to be used to achieve those goals.

### *Equity*

Are TDR programs basically fair and do they redistribute resources to people who need them? TDR programs try to spread the wealth of development by allowing landowners, especially farmers who equate their ability to develop their land with their retirement, to recoup their investment. To achieve this, the sending and receiving areas must be built properly to make sure that TDRs remain valuable. Otherwise, landowners in sending areas will find their TDR credits worthless and their land still unable to be developed.

However, creating value for landowners in the sending areas creates another equity problem for those in receiving areas. Residents of the receiving areas may not want the higher density development. This problem is particularly severe when the receiving area is an already existing suburb.

### *Manageability*

Creating TDR markets can be a complex task. Decisions must be made to set up sending and receiving districts, underlying zoning, density planning and credit ratios. Some programs also require government-run TDR banks. Every choice affects the demand for TDR credits, their price and the success of the program. As the number of successful models increase, manageability should become easier, but it remains a complex task.

### *Legitimacy and political feasibility*

A TDR program, with its inherent goal of compensating landowners, is naturally more politically palatable than typical

command and control zoning regulations. However, any kind of land use restriction generates controversy. Municipalities must build community support for the projects (Johnston and Madison, 1997). Successful TDR programs cannot be created by the will of an agency. Political legitimacy must be built over time.

For example, successful TDR programs typically have a pre-existing constituency built around the need for land use controls. In Montgomery County Maryland, the Planning Commission had extensively studied farmland economics. In Lake Tahoe, local residents faced an indisputable decline in water quality. In New Jersey's Pinelands program, the TDR program was the latest effort in a longtime farmland protection program (Johnston and Madison, 1997). Public education and buy-in are vital.

## Conclusions

As policy makers continue to search for ways to use the market as a governing tool, local governments will continue to consider transfer of development rights programs. TDR programs can be effective, equitable governing tools that make zoning more politically feasible. These programs offer two key benefits to local governments: they compensate landowners for lost property value due to zoning, and they use the market to pay for the preservation of public goods.

However, these programs can be costly and difficult to administer compared to typical zoning. Local governments must oversee (or contract out) regulation of the market, complex operation for such an unusual good. Even with education and program marketing efforts, communities may not support TDR programs, especially when they are on the receiving end of increased density. Lastly, TDR programs usually protect land or buildings on a permanent basis. This is both an advantage and a disadvantage of this tool.

Communities should be aware that a TDR program is not a substitute for planning and zoning, rather TDR programs require strong zoning. Therefore, they may not provide a sure-fire way to avoid friction over property rights issues, although some innovative communities have designed their programs to lessen the likelihood of takings conflicts.

TDR programs will be most effective in communities facing strong development pressure, where officials believe it would be difficult to successfully implement traditional zoning restrictions to achieve preservation goals or where financial resources are not available for municipalities to buy land or development rights on their own. Montgomery County, MD offers the best example of how a community with these characteristics has formed and implemented a successful TDR program.

Despite its potential as a land use tool, transfer of development rights programs have been slow to catch on in communities. While there have been some visible successes, there have been many places where the schemes fail for one reason or another. So while policy advocates push transfer of development rights programs, it is likely that pragmatic local government officials are still reluctant to take the lead.

## References

Barrese, James. 1983. "Efficiency and equity considerations in the operation of transfer of development right plans." Land Economics. 59:2, 1235-241.

(This short paper gives an overview of a study of seven TDR plans and concludes that TDR is not superior to traditional zoning.)

Brown, Lester R. 2001. Eco-Economy: Building an Economy for the Earth. W.W. Norton and Company: New York.

(Long-time environmentalist Brown sets out the case for integrating environmental issues into the economy.)

Canavan, Dennis. 1993. "What is a TDR?" Presentation at a conference sponsored by the Land Conservancy of San Luis Obispo County, CA, March 20, 1993.

City of New York Department of Planning. 2002. <http://www.nyc.gov/html/dcp/html/zone/zonehis.html>

Haar, Charles M. and Jerold, S. Kayen, editors. 1989. Zoning and the American Dream: Promises Still to Keep. Planners Press: Chicago.

(A series of essays examining zoning sixty years after the U.S. Supreme Court ruled such land use controls are legal in the Euclid decision.)

Heikkila, Eric J. 2000. The Economics of Planning. Center for Urban Policy Research: New Brunswick, New Jersey.

Henig, Jeffrey. 1989-90. "Privatization in the United States: Theory and Practice," Political Science Quarterly. 104(4):649-670.

Hughes, Kristen. 2002. Ontario County Planning and Research Department. Personal Communication.

(As a state planner in Maryland, Hughes worked closely with communities on TDR programs.)

Johnston, Robert A. and Mary E. Madison. 1997. "From landmarks to landscapes." Journal of the American Planning Association. 63:3, 365-379.

(This clearly written academic article pays special attention to permit-based programs versus zoning-based programs. The article argues that TDR programs will not accomplish the large scale land protection needed for agricultural and environmental protection.)

Karkainen, Bradley. 1994. "Zoning: A Reply to Critics." Journal of Land Use and Environmental Law. 10:1, 2 - 46. <http://www.law.fsu.edu/journals/landuse/Vol101/karkkain.html>

Land Trust Alliance. 2002. Land trust listserv. [www.lta.org](http://www.lta.org)

(The Land Trust Alliance is the umbrella group for 1,200 private land trusts and conservancies across the United States. Their web page is a good source for information on land preservation activities, and a section of it archives the national land trust listserv correspondence.)

LaGrasse, Carol W. 1996. "Worth Commenting," New York Property Rights Clearinghouse 3: 2.

Lane, Robert. 1998. "Transfer of Development Rights for Balanced Development." Lincoln Land Institute of Land Policy: Boston. <http://www.lincolninst.edu/pubs/pub-detail.asp?id=424>.

(This white paper focuses on the potential problems of a TDR program and tips for success. It is illustrated with lots of good examples.)

Lee, Franklin G. 1998. "Transferable Development Rights and the Deprivation of All Economically Beneficial Use: Can TDR's Salvage Regulations that Would Otherwise Constitute a Taking?" University of Idaho Law Review. Review 679.

Liggett, Larry. 1998. "Density Transfer: The Pinelands Experience." [www.state.nj.us/pinelands/density.htm](http://www.state.nj.us/pinelands/density.htm)

(This web document introduces the Pinelands, New Jersey TDR project, a multi-jurisdictional program considered to be very successful.)

Lively, Jim. 2002. Michigan Land Use Institute. Personal Communication.

Montgomery County Planning Board. 2002. Meeting minutes of July 25, 2002. Available at: [http://www.mcmncppc.org/board/meetings\\_archive/02\\_meeting\\_archive/agenda\\_072502/item1\\_072502.pdf](http://www.mcmncppc.org/board/meetings_archive/02_meeting_archive/agenda_072502/item1_072502.pdf) )

O'Connell, John J. quoted from *Proceedings of the Second Annual N.Y. Conference on Private Property Rights (1996)*

Pruetz, Rick. 2002. "TDR Developments in the West." Paper presented at the Annual Land Use Conference of the Rocky Mountain Land Use Institute.

<http://www.law.du.edu/rmlui/HotTopics/Preuttz2002TDRDevelopmentsintheWest.htm>

Pruetz, Rick. 1998. "Commentary on Suitum v. Tahoe Regional Planning Agency decision." Viewpoint Planning, Chicago. January 1998

Pruetz, Rick. 1997. Saved By Development. Arje Press: Burbank, CA.

(This is the seminal work on the history and current use of TDRs in the United States, illustrated with many examples and case studies. Pruetz is a TDR advocate.)

Savas, E.S. 2000. Privatization and Public-Private Partnerships. Chatham House: New York.

(The author lays out the case for the greater privatization of public services.)

Walker, Laura. 2002. Seattle Office of Housing. Personal communication.

(Ms. Walker directs the TDR program for the Seattle Office of Housing. Seattle's TDR program has been used for multiple public benefits, including affordable housing and historic preservation.

<http://www.cityofseattle.net/housing/2001/TDR-BonusPrograms-2001.htm>)

Wolfram, G. 1981. "The Sale of Development Rights and Zoning in the Preservation of Open Space: Lindahl Equilibrium and a Case Study," Land Economics. 57:3, 398-412.

---

[1] Downzoning: The practice of reducing the zoning of a property from a more to a less valuable use (e.g. from commercial to residential or from residential to agricultural.)

[2] TDR bank: A market regulation tool in which governments directly purchase development rights from landowners at a set price and then sell the development rights to developers in the future.

[3] Adequate Public Facilities Ordinances (APFO) require that sufficient infrastructure, such as water and sewer services, be in place before any development construction can commence.



**Chapter 402. Development Application Review Procedures****Article 29. Transfer of Development Rights Program**

---

**Article 29 Transfer of Development Rights Program****402.180 Purpose**

It is the purpose of this article to implement the provisions of Section 9.0 Transfer of Development Rights Program, in the Future Land Use Element, as a tool that will protect the County's environmental resources and promote viable agriculture while encouraging efficient use of services and infrastructure within the Urban Cluster.

**402.181 Applicability**

Development rights may be sold or otherwise transferred in accordance with the provisions of this article to facilitate transfers of development rights from regulated conservation and viable agriculture areas (sending areas) to areas more suitable for development within the Urban Cluster (receiving areas). The County shall maintain a publicly accessible database of potential development rights for sale or transfer and completed transactions of transfers of development rights.

**402.182 Establishment of Sending and Receiving Areas****(a) Sending Areas**

1. Agricultural Sending Areas shall be defined as any legally created parcel or combination of contiguous parcels that meet the following criteria:
  - a. property has an approved agricultural classification from the Alachua County Property Appraiser;
  - b. property is located outside the Urban Cluster; and
  - c. property is  $\geq 160$  acres.
    - i. An exception to the size threshold may be permitted where the property is contiguous to a designated sending area;
    - ii. An exception to the size threshold may be permitted where the property is determined by the County to be of exceptional agricultural value based on factors such as the following:
      - a. Current agricultural use of the property,
      - b. Economic value of the use;
      - c. Types of soils;
      - d. Local marketing of products;
      - e. Sustainable farming practices such as low-loss irrigation and organic certification;
    - iii. If an exception to the 160 acre size threshold is granted, any agricultural sending area parcel or combination of contiguous parcels must still be a minimum of 40 acres in size.
2. Conservation Sending Areas shall be defined as any legally created parcel or combination of contiguous parcels that meet the following criteria:
  - a. property contains Strategic Ecosystems or is on the Alachua County Forever (ACF) active acquisition list; and
  - b. property is  $\geq 160$  acres.
    - i. An exception to the size threshold may be permitted where the property is contiguous to a designated sending area; or

**Chapter 402. Development Application Review Procedures**

## Article 29. Transfer of Development Rights Program

- ii. An exception to the size threshold may be permitted where the property is contiguous to a 160 acre or larger property designated as a Strategic Ecosystem or on the Alachua County Forever active acquisition list.
- iii. An exception to the size threshold may be permitted where the property is contiguous to an established Preservation area or an equivalent property designated on the Future Land Use Map of any adjacent jurisdiction or any other public park or preserve established for the purpose of preserving natural habitats.
- iv. An exception to the size threshold may be permitted where the property is determined by the County to contain critical resources and ecological value based on ground-truthing of the property.
- v. If an exception to the 160 size threshold is granted, any conservation sending area parcel or combination of contiguous parcels must still be a minimum of 40 acres in size.

**(b) Receiving Areas**

- 1. Any nonresidential development in the unincorporated area may become a receiving area through the purchase of development rights in order to reduce the amount of open space required on the development site, at a transfer rate of 10 development rights per acre of reduced open space. Mixed use areas shall use the same transfer rate proportionate to the amount of non-residential use in the development.
- 2. Any proposed amendment to expand the Urban Cluster must include a commitment to purchase development rights at a rate of two development rights per unit of proposed increase in density for residential or a rate of 10 development rights purchased per acre of non-residential land uses created.
- 3. Additional receiving areas may be established within municipalities through interlocal agreements. These agreements shall address development right purchasing procedures including the required rate of transfer.

**402.183 Calculating Development Rights and Residual Uses****(a) Calculation of Transferable Development Rights**

- 1. Development rights available for transfer shall be equal to the lesser of the following, minus the residual units not to be included in the transfer:
  - a. number of residential units otherwise allowed on the sending area property; or
  - b. number of upland acres on the sending area property.
- 2. As an incentive to transfer development rights away from a sending property, a total of 2 development rights in addition to the number of rights granted through the calculations identified above are allowed, plus one additional right per every 10 acres of conservation area on site and one additional right per every 20 acres of non-conservation area on site.

**(b) Residual Uses**

- 1. Agriculture – Residential densities of up to one dwelling unit per 40 acres may be retained in the sending area and continuation of agricultural uses in

**Chapter 402. Development Application Review Procedures****Article 29. Transfer of Development Rights Program**

---

accordance with the most recent best management practices (BMPs) adopted by the State. When a portion of the property contains mapped conservation areas, Conservation Sending Area residual guidelines apply.

2. Conservation – Residential densities of up to one dwelling unit per 200 acres may be retained on the sending parcel where consistent with a Conservation Management Plan.
  - a. Higher densities of up to one dwelling unit per 40 acres may be proposed where it can be demonstrated that there is no impact on resource protection and where consistent with a Conservation Area Management Plan to be developed consistent with ULDC Chapter 406 Article 17, Conservation Management Areas and Chapter 406 Article 20, Management Plans.
  - b. The amount of density to be retained shall be based on what is necessary to protect the integrity of the ecological system and conservation resources.
  - c. Continuation of agricultural uses is allowed in accordance with the most recent best management practices (BMPs) adopted by the State.
  - d. Residual units shall be developed in a clustered pattern to protect the integrity of the environmental resources on and adjacent to the site. Alternative design patterns may be considered if it can be demonstrated that an alternative layout and design protects the integrity of the resources and has less impact than a typical clustered pattern based on site characteristics and location, access issues, previous site impacts, and historic uses.
  - e. If the property is less than 200 acres existing homesteaded units may still be retained.
3. Development Plan approval by the Development Review Committee is required for development of the residual units. Development may not occur until the parcel has been rezoned to Ag-TDR or C-TDR as required by Section 402.185(a)3 below. The entire planning parcel, defined as the original parcel rezoned to a TDR sending district, must be used for determining development and placement of residual units.

**402.184 Application for and Issuance of a Transfer of Development Rights Certificate****(a) Application for a Transfer of Development Rights Certificate**

A potential sending property applicant shall submit an application for a Transfer of Development Rights Certificate. That application shall include the following:

1. Authority to submit an application, in a form approved by the County Attorney;
2. Legal description of the property;
3. Natural Resources assessment;
4. Statement of how the property qualifies as a sending parcel as consistent with the Comprehensive Plan and Section 402.182(a) above;
5. A statement of the number of development rights proposed for transfer from the sending parcel and calculations showing their determination;

**Chapter 402. Development Application Review Procedures**

## Article 29. Transfer of Development Rights Program

6. Applicable fees; and
7. Such additional information as may be required by the Director as necessary to determine the number of development rights that qualify for transfer.

**(b) Issuance of a Transfer of Development Rights Certificate**

1. Once the potential development rights for transfer have been calculated and an application for a Certificate has been approved, the Director shall issue a Transfer of Development Rights Certificate containing the following information:
  - a. Name of the Transferor;
  - b. A legal description of the sending parcel;
  - c. A statement of the number of development rights available for transfer;
  - d. A statement of the remaining development rights on the sending parcel;
  - e. A general description of the potential area for development of the remaining units, and
  - f. the date of issuance of the Certificate.
2. Alternate Review by the Development Review CommitteeThe Growth Management Director's determination, as shown on the Transfer of Development Rights Certificate, shall become final within 30 days of the date of determination. Alternatively, the applicant may submit an application to the Development Review Committee for a Preliminary Development Plan Review for Transfer of Development Rights Determination within 30 days of the Growth Management Director's determination. The Director's determination shall then become void and the DRC shall consider the matter anew and make the final decision on the application.

**(c) Authority to Transfer Development Rights**

1. Each transferor granted a Transfer of Development Rights Certificate shall have the authority to sever all of the development rights (minus the residual uses) from the parcel in a sending district and to sell or otherwise transfer those rights to a transferee in a receiving district consistent with Section 402.185 below.
2. The transferee may apply the rights to a property in the receiving area in accordance with Section 402.185(c) below.
3. Any transfer of development rights pursuant to this ordinance authorizes only a reduction in open space or is fulfilling a requirement of an application to expand the Urban Cluster. Development standards of the receiving district shall not otherwise be altered or waived including standards for stormwater, landscaping, floodplains, wetlands, or other environmentally sensitive areas.

**402.185 Transfer of Development Rights****(a) Development Rights Eligible for Sale or Transfer**

Prior to the development rights contained in the Transfer of Development Rights Certificate being eligible for sale or transfer to a receiving property, the owner of the sending property shall:

**Chapter 402. Development Application Review Procedures****Article 29. Transfer of Development Rights Program**

---

1. record a perpetual easement for conservation or agricultural purposes on the sending property in a form acceptable to and enforceable by the County and submit a copy to the Growth Management Department;
2. for sending properties retaining densities of one unit per 200 acres or greater, develop and submit for approval a Conservation Management Area Plan in accordance with ULDC Chapter 406 Article 17, Conservation Management Areas and Chapter 406 Article 20, Management Plans Conservation; and
3. submit an application for a rezoning of the property to a sending area zoning designation;

**(b) Sale of Development Rights - Instruments of Transfer**

An instrument of transfer must be completed and notarized prior to the transfer of development rights from a sending parcel to a receiving parcel. This instrument shall contain the following information:

1. The names of the transferor and transferee;
2. A legal description of the sending and receiving parcels;
3. A statement that the transferor grants to the transferee and the transferee's heirs, assigns, and successors, a specific number of development rights from the sending parcel to the receiving parcel and the method by which the rights will be sold or transferred to the receiving parcel;
4. A statement that the transferor acknowledges he has no further right of use with respect to the rights being transferred;
5. Any other relevant information as required by the Director to establish that rights have been transferred.

**(c) Use of Transferred Development Rights by a Receiving Property****1. Open Space Reduction**

Purchasers of Development Rights seeking to reduce the open space requirements for a proposed development shall submit a Development Plan in accordance with Article 10, Development Plan Review and with the following additional information:

- a. completed and notarized Instrument of Transfer as described in §402.184(b)1 above; and
- b. proof of purchase of the development rights.

**2. Comprehensive Plan Amendment to expand the Urban Cluster**

For applications to expand the Urban Cluster, the applicant shall submit the Comprehensive Plan Amendment application in accordance with Article 7, Comprehensive Plan Amendment with the following additional information:

- a. completed and notarized Instrument of Transfer as described in 402.184(b)1 above;
- b. proof of contract to purchase development rights; and
- c. prior to the adoption hearing for the amendment, the receiving property owner shall provide proof of purchase of the development rights.



---

**Chapter 402. Development Application Review Procedures**

Article 29. Transfer of Development Rights Program

**(d) Rezoning of Sending Parcel**

Once proof that a property owner has sold their development rights has been submitted to the County, the County shall process a rezoning to a TDR zoning district on the sending parcel.

**Chapter 402. Development Application Review Procedures**

---

Article 29. Transfer of Development Rights Program

## Chapter 403 Zoning Districts

### Contents

Article 1	Establishment of Zoning Districts.....	403-1
Article 2	Rural/Agricultural Districts.....	403-4
Article 3	Residential Zoning Districts .....	403-6
Article 4	Commercial Districts .....	403-11
Article 5	Industrial Districts.....	403-12
Article 6	Special Purpose Districts.....	403-15

### Article 1 Establishment of Zoning Districts

This Chapter provides for the establishment of zoning districts that implement the Future Land Use Designations adopted on the Future Land Use Map 2020. These zoning districts also implement the goals, objectives and policies of the Alachua County Comprehensive Plan and adopted maps. Zoning district standards, dimensional and area requirements are established in this Chapter. Permitted uses are provided for in Chapter 404 of this ULDC.

#### 403.01 Official Zoning Map Adopted

The Official Zoning Map of Alachua County, Florida on file in the Department of Growth Management (Department), together with all explanatory matter thereon, is hereby adopted and made a part of this ULDC.

#### 403.02 Establishment of Zoning Districts

- (a) The following zoning districts are established as listed in Table 403.02.1, Zoning Districts.

**Chapter 403. Zoning Districts**

Article 1. Establishment of Zoning Districts

**Table 403.02.1  
Zoning Districts**

<b>Abbreviation</b>	<b>Title</b>
<b>Rural/Agricultural District</b>	
A	Agriculture
A-RB	Agricultural Rural Business
AG-TDR	Agricultural (with Transfer of Development Rights)
C-TDR	Conservation (with Transfer of Development Rights)
<b>Residential Districts</b>	
RE	Single family, Estate Residential
RE-1, R-1aa, R-1a, R-1c	Single family, Low Density
R-1b	Single family, Medium-Density
R-2	Multiple family, Medium Density
R-2a	Multiple family, Medium-High Density
R-3	Multiple family, High Density
<b>Commercial Districts</b>	
AP	Administrative/Professional
BP	Business and Professional
BR	Business, Retail
BR-1	Business, Tourist and Entertainment
BH	Business, Highway
BA, BA-1	Business, Automotive
MB	Business Marine District
<b>Industrial Districts</b>	
BW	Wholesale/Warehousing
ML	Light Industrial
MS, MP	Industrial Services and Manufacturing

**Table 403.02.1  
Zoning Districts**

<b>Abbreviation</b>	<b>Title</b>
<b>Special Purpose Districts</b>	
PD	Planned Development District
RM	Manufactured-Mobile Home Park District
RM-1	Recreational Vehicle and Campgrounds District
RP	Residential Professional District
HM	Hospital/Medical District
C-1	Conservation District
P	Preservation District

- (b) Usable pervious open space shall be provided on at least 20% of a development site. Natural and landscaped open spaces or transitional development and design practices shall be provided to adequately integrate development along the edges of different land use categories. Standards for landscaping design practices and criteria for the required 20% pervious open space are provided in Article 4 and Article 5, respectively, of Chapter 407.
- (c) Permitted uses within each zoning district are established in Chapter 404.
- (d) Overlay districts, Activity Centers and Special Area Plans are established in Chapter 405.
- (e) Natural and historic resource protection standards are established in Chapter 406.

---

**Chapter 403. Zoning Districts**

## Article 1. Establishment of Zoning Districts

- (f) Development standards are established in Chapter 407.

**403.02.5 Traditional Neighborhood Developments and Transit Oriented Developments**

New development within any of the single or multi-family zoning districts, except for RE, shall comply with the following requirements.

- (a) Projects that are contiguous to a designated Rapid Transit or Express Transit Corridor and that include 150 or more residential units shall be developed as a Traditional Neighborhood Development or Transit Oriented Development in accordance with Chapter 407 Article 7, or shall be located within an Activity Center.
- (b) Projects that are not contiguous to a designated Rapid Transit or Express Transit Corridor but contain 300 or more residential units shall be developed as a Traditional Neighborhood Development in accordance with Chapter 407 Chapter 407Article 7, or shall be located within an Activity Center.

**Chapter 403. Zoning Districts**Article 2. Rural/Agricultural Districts

---

**Article 2 Rural/Agricultural Districts****403.03 Rural/Agricultural District Descriptions****(a) Agricultural (A) District**

The Agricultural District (A) implements the Rural/Agriculture designation on the Future Land Use Map, and the policies of the Comprehensive Plan to allow rural and agricultural areas to be developed in a manner consistent with the retention of agriculture, open space, and rural character; preservation of environmentally sensitive areas; and the efficient use of public services and facilities. Permitted uses are found on the Use Table in Chapter 404 Article 2 of Chapter 404. Any use with a blank cell for this district in the Use Table or that does not meet the requirements of §404.08 for similar uses is prohibited.

**(b) Agricultural Rural Business (A-RB) District**

The Agricultural Rural Business District (A-RB) implements the Rural/Agriculture designation on the Future Land Use Map, and the policies of the Comprehensive Plan to provide for those commercial or other uses on a limited scale serving or ancillary to agricultural activities. Properties zoned A-RB shall front a paved publicly-maintained road and shall be located at least a mile from all other properties zoned A-RB. Permitted uses are found on the Use Table in Chapter 404 Article 2 of Chapter 404. Any use with a blank cell for this district in the Use Table or that does not meet the requirements of §404.08 for similar uses is prohibited.

**(c) Agriculture (AG-TDR) District (with Transfer of Development Rights)**

The Agriculture Transfer of Development Rights district implements the Rural/Agriculture designation on the Future Land Use Map and the Transfer of Development Rights policies of the Comprehensive Plan, to provide principally for agricultural activities while allowing limited residential development at a density of up to one dwelling unit per 40 acres. A rezoning to this district shall occur when the owner of an Agricultural property, defined as having an approved Agriculture Classification from the Alachua County Property Appraiser, has voluntarily sold or otherwise conveyed associated development rights pursuant to the TDR program outlined in Chapter 402 Article 29.

**(d) Conservation (C-TDR) District (with Transfer of Development Rights)**

The Conservation Transfer of Development Rights district implements the TDR policies of the Comprehensive Plan, to provide principally for preservation of environmentally sensitive land while allowing limited residential development if resources can be protected at a density of up to one unit per 200 acres where consistent with a Conservation Area Management Plan. Higher densities of up to one dwelling unit per 40 acres may be proposed where it can be demonstrated that there is not impact on resource protection and where consistent with the Conservation Area Management Plan. A rezoning to this district shall occur when the owner of Conservation property, defined as properties that contain Strategic Ecosystems or are on the Alachua County Forever (ACF) active acquisition list, has voluntarily sold or otherwise conveyed associated development rights pursuant to the TDR program outlined in Chapter 402 Article 29.