Environmental Tools:

Transfer of Development Rights (TDR)

What is a TDR?

Transfer of Development Rights (TDR), also referred to as Transfer of Development Credits (TDC), is a tool to encourage high-density clusters of development on less sensitive lands within a defined region, while minimizing development on ecologically sensitive lands. With the use of TDRs, a landowner can achieve higher levels of density in development on his or her lands – above and beyond given base density levels – in return for the long-term protection of sensitive natural landscapes on other lands eligible for development (such as agricultural lands).

There are three basic elements to a TDR program: the sending district (where the credit is created), the receiving district (where the credit is used) and the TDR credits themselves. The sending district consists of the area or properties intended to be protected from development or redevelopment. The receiving district is located where additional density can be accommodated with minimal adverse consequences. The TDR credits are a legal representation of the abstract development rights that will be severed from property in the sending district and grafted onto property in the receiving district. TDRs can be voluntary or mandatory.

Where are TDRs used?

In the United States, TDRs are commonly used, and first appeared in the 1960s. These programs are present in cities, towns and cities; some are multi-jurisdictional.

In Canada, similar types of programs are under development, however, because Canada is different when it comes to land rights (i.e. constitutional protection of property rights in the U.S.), the tool is called Transfer of Development Credits (TDC). This recognizes the fact there are not the same set of "rights" attached to land ownership in Canada and therefore owners do not have the ability to transfer "rights" as such.

In Alberta, an effort was made to establish the first TDC program in the Cypress Hills, but a lack of understanding led the municipality to abandon the program. At the present time in Alberta, Red Deer County and Strathcona County are examining the concept but do not have an active program in place. Wheatland County has a modified program set up, but it does not mandate conservation on the property from which development credits are transferred and therefore does not guarantee future conservation.

Most American states have TDR programs. The following examples highlight successful applications:

New Jersey Pinelands

The "New Jersey Pinelands" covers one million acres between Atlantic City and Philadelphia, including seven counties, 52 small municipalities, marshlands and forests. The 1980 comprehensive management plan authorized a TDC program. As of 1991 a total of 10,920 acres of land had been permanently preserved through the transfer of development credits.

Montgomery County, Maryland
In 1980, Montgomery County downzoned agricultural land from a maximum density of one house per five acres to one house per 25 acres. The county also designated this land the Rural Density Transfer Zone (sending area), allowing landowners to sell one development right per five acres. The county established an initial receiving area, which could accommodate up to 3,000 development rights. Each development right purchased entitled receiving area landowners to build one more housing unit than would have otherwise been allowed.

Tool Performance:

Pros

- Provides for significant protection of open space, farmland, and environmentally sensitive areas.
- Provides for managed rather than haphazard development.
- Are more equitable than strict regulation.
- Are inexpensive relative to traditional forms of regulation and Purchase of Development Rights Programs.
- Are voluntary in the sense that landowners are never required to sell their development rights, yet provide market incentives to encourage land conservation.
- Promotes private financing of land protection rather than public financing.
- Ties private land conservation to growth management, downtown revitalization and infrastructure efficiency by directing growth to appropriate areas.

Cons

- It is possible that there are not enough credits, and/or the credits are too restrictive, as they often can only be used in the jurisdiction in which they were created.
- TDRs are technically complicated and require a significant investment of time and staff resources to administer, especially during the development stages of a program.
- Require an extensive public education campaign that may not appropriately balance benefits to cost.
- Depend upon a properly functioning real estate market, which if depressed, will cause few rights to be sold.

Special Considerations

The TDR credits are traded in a free market, although a TDR bank may be established to facilitate exchanges. When a TDR credit is purchased from a property owner in the sending district, that property owner records a conservation easement on the deed prohibiting development on his or her property. The TDR credit can then be applied to property in the receiving district as a density bonus or other zoning incentive.