What are Transferable Development Rights?

Pennsylvania’s local governments continue to experience demand for both development and the protection of open space, agricultural land and historic sites. The transfer of development rights (TDR) is an effective tool to create smart growth plans, balance development and protect land for future public enjoyment.

As a dual-purpose, land use planning tool gaining use in Pennsylvania and across the country, a TDR program is a way to reduce and transfer development in areas targeted for preservation to areas a community wants to grow. Property owners have a bundle of land ownership rights, including the right to use land; lease, sell and bequeath it; construct buildings on it and mine it. Some or all of these rights can be transferred or sold to another person. TDR is a tool to unbundle and transfer development rights.

How do Transferable Development Rights Work?

Start with a Comprehensive Plan

Transferable Development Rights start with a land-use plan that identifies both growth and conservation areas. Conservation areas may be farmland, historic districts, or environmentally sensitive land. Transfer of development rights programs may be operated by a single municipality, or they may be multi-municipal and allow for the transfer of development from one municipality to another.

To Bundle or Transfer a Single Right

A TRD recognizes that property owners have a “bundle” of rights, some or all of which can be transferred or sold to another person. TDR programs allow owners of land that is targeted for conservation to sell their right to build on the “sending” parcel to a developer in the growth area or “receiving” zone. When the rights are transferred from the sending parcel, the land is restricted by perpetual covenant. By buying rights, a receiving developer may build at a density higher than that permitted by the base zoning. TDR enables a free exchange (buying and selling) of development rights without the need to buy or sell land. Private developers or local governments purchase the development rights from within the sending areas and transfer them to an area to be developed.

Sending and Receiving Property Rights

The parcel of land where the rights originate is called the sending parcel. When the rights are transferred from a sending parcel, the land is restricted with a permanent conservation easement. The parcel of land to which the rights are transferred is called the receiving parcel. Buying these rights generally allows the owner to build at a higher density than ordinarily permitted by the base zoning.

Municipalities Land Bank Brokers

TDRs enable private market transactions, where landowners and/or developers buy and sell their development rights. A TDR “bank” can help create a market for development rights by buying rights from willing sellers in preservation areas, and then selling them later to developers who wish to undertake higher density developments in receiving areas. A municipality(ies) must decide if it wants to serve as a broker in developing a land bank. Public land banking can be helpful, but is not necessary for a TDR.
TDR Benefits

- Preserves farmland, open space, environmentally sensitive areas, and properties of historic value, while maintaining private ownership
- Promotes orderly growth by concentrating development in areas with adequate services
- Allows landowners to retain equity without developing their land
- TDRs are market-driven; private parties pay to protect more land when development pressure is high
- TDRs can promote downtown commercial growth and compact urban areas

TDR Considerations

- Transferable development rights can be technically complicated and often require significant time and staff resources to implement.
- It is generally an unfamiliar concept, requiring extensive public education.
- The pace of TDR transactions depends on the private market for development rights. If the real estate market is depressed, few rights will be sold and little land will be protected.

Warwick Township, Lancaster County

When this community buys farmland easements, it has the ability to sell them to developers who want to increase lot coverage in the township’s industrial zone. The township put infrastructure in place in the receiving area, then partnered with the Lancaster Farmland Trust and the county agricultural board, allowing it to act as a broker (or TDR bank) for development rights. For more information, contact Warwick Township at (717) 626-8900.

Buckingham Township, Bucks County

Development in Bucks County continues to radiate out from Philadelphia. Buckingham Township has high density districts that serve as receiving zones. Sending areas consist of farms that are enrolled as agricultural security areas. Allowed density in agricultural areas for family lots is one unit per 1.8 acres, but if transferring out, is allocated at one unit per 1.17 acres. If cluster design is used with TDR, density can be transferred at one unit per .85 acres. To date, three farms, comprising about 300 acres, have been protected by TDRs. For more information, contact Buckingham Township at (215) 794-8834.

Additional Resources

Brandywine Conservancy Environmental Management Center
“Transfer of Development Rights, A Flexible Option for Redirecting Growth in Pennsylvania.”
http://www.brandywineconservancy.org/transfer_rights/tdr_page1.html

American Farmland Trust, Farmland Information Center
(800) 370.4879 | http://www.farmlandinfo.org

Pennsylvania Department of Community and Economic Development
Governor’s Center for Local Government Services
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