Transfer of Development Rights (TDR) in Washington State:
Overview, Benefits, and Challenges

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(Selected excerpts)

What Is TDR?

Transfer of development rights (TDR) is a market-based tool for helping implement a jurisdiction's growth policies. TDR uses the "economic engine" of new growth to conserve lands with public benefits, such as working lands (farms and forests), environmentally sensitive areas, or open space. It is also sometimes used to further a community's goals for historic preservation and/or housing affordability. Through individual transactions, development rights are transferred from privately owned farmland, forestland, and natural areas (known as *sending sites*) to areas that can accommodate additional growth (known as *receiving sites*). Landowners in sending areas receive compensation for giving up their right to develop, while developers in receiving areas pay for the right to develop at greater densities or heights than would otherwise be allowed. When development rights are removed from a sending site, a conservation easement is placed on it, allowing for permanent protection of the parcel (unlike zoning regulations, which can be changed). TDR does not limit growth; rather, it allows communities to plan more effectively by directing that growth into areas most appropriate for it. In their comprehensive plans and development regulations, communities can identify which areas are suitable to receive development rights and how much additional development is appropriate.

Here are three key features of TDR:

• ***It is voluntary.*** Generally, if landowners in the sending areas choose not to participate, they are entitled to develop as permitted by current zoning. Likewise, in receiving areas, developers not participating in TDR are allowed to build up to current zoning. But to receive additional uses, density, or height, they must purchase TDR credits. (In the most successful programs, participation in TDR is the *only* way developers can achieve higher-intensity development than current zoning allows.)

• ***It is market-based.*** TDR creates a marketplace that allows property owners to buy and sell development rights to one another. Individual property owners may freely negotiate prices for the purchase and sale of these rights. Development thus pays to conserve open space rather than the city or county having to use limited public funds.

• ***It is flexible.*** TDR can be designed to accommodate the needs of each community. Of the 181 TDR programs in the United States, the vast majority are oriented toward environmental and farmland conservation. Fifteen programs target historic preservation and 12 focus on infrastructure and urban design. The goals of each program reflect the conservation and development objectives of the jurisdiction.

TDR Program Fundamentals

While no two TDR programs are exactly alike, there are certain key features common to most programs. Following is an overview of TDR basics.

Goal-setting. TDR is a flexible planning tool that can and should be customized to support the planning goals of each individual community. While most TDR programs aim to protect natural areas, open space, and farmland, some are focused on low-income housing (e.g., Seattle) and historic preservation (e.g., San Francisco). Clear community goals with broad public support are essential to a successful TDR program.

Sending sites. A critical early step in designing a TDR program is the identification and mapping of sending areas from which development rights can be sold. In determining the size and location of sending areas, a number of factors must be considered: the number of development rights that could be transferred, the availability of receiving areas to accept the rights, the extent to which existing zoning supports land conservation, and the relative priority of saving “close-in” sites subject to strong development pressure vs. lands further from urban centers with less development pressure.

Receiving areas. Designating viable receiving areas is one of the most critical and challenging aspects of program development. Many programs strive to designate receiving areas that can accommodate an amount equal to or greater than the likely supply of TDRs from sending areas. Key factors in the designation include market demand for development, availability of infrastructure and services to support development, and community support for or opposition to increased development. While many programs establish both sending and receiving areas within a single jurisdiction, some larger programs have established cross jurisdictional exchanges through intergovernmental agreements. Receiving areas may be designated through an initial planning process, added through incremental designations over time, or both.

Development bonuses. Within receiving areas, developers are granted the option of added density or other development bonuses in exchange for purchasing TDRs. While most TDR programs offer increased residential density (either single family or multi-family) as a bonus, other incentives can be offered, such as increased floor area (Redmond, WA), added height (Issaquah, WA), increased lot coverage (Miami-Dade County, FL), or reduced limits on impervious surfaces (Issaquah, WA).

Allocation and exchange rates. The value of TDRs is directly affected by two key elements: the allocation rate (or number of TDRs each sending site can potentially sell) and the exchange rate (the number of added units or other credits available to a developer who purchases a TDR). These rates need to be carefully calibrated to make sure there are incentives for both buyers and sellers to participate. In some jurisdictions, allocation of TDRs to sending areas is based on how many units would be allowed under current zoning; other programs allow extra TDRs (e.g., 2–5 times what zoning would allow) to provide an incentive for landowners to sell their rights.

Transaction mechanisms. Many programs offer some form of facilitation for TDR transactions, such as providing an information clearinghouse to help link potential buyers and sellers. A good example of this is seen in Collier County, Florida. Other jurisdictions have created TDR banks to help facilitate private transactions and to act as the buyer or seller of last resort. An example of a bank is the King County TDR bank. In some cases – such as Malibu and San Luis Obispo, California – seed money has been provided to initiate a TDR bank and make initial purchases of TDR credits; in such cases, the credits are subsequently sold to developers, enabling the bank to create a revolving fund available for future TDR purchases.

Conservation easements. Once development rights have been sold from a sending site, those rights are relinquished and a conservation easement is placed on the property. These easements are generally held and enforced either by the city or county sponsoring the program or by a local land trust. Responsibilities for monitoring and enforcement of conservation easements over time need to be clearly assigned and funded.

Program administration. Certain staffing and administrative procedures are needed for smooth operation of a TDR program. These include outreach to landowners and developers, facilitation of transactions, recording of conservation easements, tracking of TDRs, and coordination of TDR transactions with a jurisdiction’s zoning and permitting processes. TDR programs should also be evaluated and updated over time.