

# ZONING PRACTICE

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**PRACTICE PLAN-CONSISTENT TDR**

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# Is Your Community TDR-Ready?

By Rick Pruetz, FAICP, and Noah Standridge

A transfer of development rights program, or TDR, reduces or eliminates development potential in places that should be preserved by increasing development potential in places where growth is appropriate.

TDR is used in at least 33 states and has saved more than 400,000 acres of farmland, open space, and environmentally significant land, often with minimal public funding. Despite that track record, only a fraction of U.S. cities, counties, towns, and villages use TDR, possibly because they assume that TDR program adoption is always complicated and time consuming. However, many communities are positioned to create a workable TDR program relatively painlessly.

Admittedly, adoption of a TDR program can be a long, labor-intensive process when it requires increases in the development limits depicted in a community's current general plan. However, many communities prefer a TDR mechanism that requires no changes in the future density described in their general plans (typically depicted in future land-use maps or general plan maps). We distinguish this "plan-consistent" TDR approach from a more ambitious process that calls for increases in general plan densities, often triggering infrastructure studies, extensive environmental review, and community resistance. In contrast, plan-consistent TDR works within the development limits of the current general plan through a simple requirement, described below, which is inserted into the zoning code.

We recently wrote an article for the *Journal of the American Planning Association* that ranks the factors most often found in the top 20 TDR programs in the United States. From that study, we isolated four questions that planners can use to evaluate whether their communities are likely candidates for speedy adoption of a plan-consistent TDR program. By taking the following four-question quiz, planners may decide to give TDR a second

look, since a plan-consistent TDR ordinance could be preserving farmland, open space, or natural areas in their communities in one year or less.

But sometimes communities intentionally separate receiving areas from existing development to promote community acceptance, often using new-town or new-village concepts.



All photos by Rick Pruetz

➔ King County, Washington has used TDR to preserve 138,000 acres so far, including the 90,000-acre Snoqualmie Forest.

## TDR BASICS

To review the jargon of TDR, the places that a community wants to preserve are called sending areas and can consist of wildlife habitat, watershed protection areas, forests, farmland, scenic views, recreational land, historic landmarks, open space, and just about anything else of special significance to a community. The places that a community finds suitable for future development are known as the receiving areas. Receiving areas are often places that are near jobs, schools, shopping, and infrastruc-

ture. With TDR, developers are allowed to exceed a specified baseline level of development in the receiving areas in return for preserving land in the sending areas. When TDR works, sending-area landowners are compensated for unused development potential while retaining ownership and the ability to use their property for farming and other rural activities in compliance with a permanent easement. Receiving-area developers achieve greater profit from the higher development potential despite the extra cost of TDR, and communities are able to

## ASK THE AUTHOR JOIN US ONLINE!

Go online from October 6 to 16 to participate in our “Ask the Author” forum, an interactive feature of *Zoning Practice*. Rick Pruetz, FAICP, and Noah Standridge will be available to answer questions about this article. Go to the APA website at [www.planning.org](http://www.planning.org) and follow the links to the Ask the Author section. From there, just submit your questions about the article using the e-mail link. The author will reply, and *Zoning Practice* will post the answers cumulatively on the website for the benefit of all subscribers. This feature will be available for selected issues of *Zoning Practice* at announced times. After each online discussion is closed, the answers will be saved in an online archive available through the APA *Zoning Practice* webpages.

### About the Authors

Rick Pruetz, FAICP, ([arje@attglobal.net](mailto:arje@attglobal.net)) is a planning consultant specializing in TDR and the author of *Beyond Takings and Givings* (Arje Press, 2003), a book on TDR. More information and updates to the book are available at [www.BeyondTakingsAndGivings.com](http://www.BeyondTakingsAndGivings.com).

Noah Standridge ([noah@centrusplanning.com](mailto:noah@centrusplanning.com)) is president of Centrus Planning ([www.centrusplanning.com](http://www.centrusplanning.com)), a consulting firm providing rural planning strategies throughout Florida. He previously managed the Rural Lands Stewardship Program for Collier County, Florida.

achieve their preservation goals as well as their growth objectives with little or no public cost.

At a minimum, a TDR ordinance establishes three parameters for the sending side of a transfer. The area that qualifies as a sending site is established by map, by reference to existing zoning districts, or by criteria (like prime farmland or significant habitat.) The ordinance also determines the nature of the restrictions that must be placed on the site before the community will grant TDRs to the owner. Finally, the ordinance states the number of TDRs that the community will award to property owners when they record the required restrictions.

### PLAN-CONSISTENT TDR

In the plan-consistent approach described in this article, we simplify the receiving-side mechanism of a TDR ordinance to just four definitions and one requirement.

*TDR receiving sites* are defined as upzoned land, meaning land where future changes in zoning allow additional development potential. This additional development potential is usually in the form of increased residential density, meaning bonus dwelling units. However, many communities choose to apply the requirement to increases in nonresidential development capacity such as building floor area, height, or lot coverage. For this article, we confine our discussion to residential-density programs to reduce confusion. In this simplified TDR ordinance, *baseline density* is defined as the maximum density allowed by the zoning in effect for a receiving site prior to the upzoning.

*Maximum with-TDR density*, as the name suggests, is the higher development potential only available to developers who choose to use

the TDR option. *Bonus dwelling units* are those dwelling units in excess of baseline density that a developer gains by complying with the TDR requirement. Finally, the TDR requirement itself is the number of TDRs that developers are required to retire per bonus dwelling unit. Developers comply by buying the required number of TDRs from sending-site landowners at a price established by private negotiation. Alternatively, developers may buy TDRs from a TDR bank or some other intermediary, a person or organization that buys, holds, and sells TDRs.

Developers then relinquish these TDRs prior to final approval of the receiving site development project requiring the TDRs.

To provide policy support for TDR, the general plan should state that the densities depicted for the plan’s horizon may only be possible via TDR. If such a statement does not already appear in the plan, it should be added. However, a plan-consistent TDR program does not require any changes to the development capacity of the existing general plan, meaning the depiction of those areas suitable for an eventual upzoning. This saves communities the time and expense of conducting new infrastructure and environmental studies as well as countless meetings dealing with residents’ concerns about general plan revisions. Instead, the community can appoint a committee to make recommenda-

tions on the components needed for the TDR ordinance as sketched above.

Additionally, the local government may choose to adopt the TDR ordinance independent of an application to upzone any individual receiving areas. This approach is less likely to elicit controversy since the elected officials are only considering a zoning code requirement and not the development potential of any specific property.

Once communities have adopted the components of a TDR mechanism, they often wait for developers to apply for future upzon-

**The plan-consistent approach to TDR can increase public acceptance because it essentially implements the community’s land-use goals as already approved in an adopted general plan.**

ings. These future upzoning applications, if approved, essentially implement the TDR ordinance over time. Bear in mind that adoption of a TDR requirement does not compel the community to approve upzoning applications or make any other changes to its decision process. The community is still free to approve or deny the upzoning application based on relevant factors including potential environmental effects, compatibility with existing development, infrastructure adequacy, and of course, consistency with the general plan. However, if the upzoning is approved, the site’s new zoning will require the developer to retire a specified number of TDRs for all bonus dwelling units. These retired TDRs accomplish the preservation of the sending-area land at the ratios stated in the TDR ordinance.

## Some communities are capable of going far beyond the plan-consistent approach to TDR that we describe here by adopting a plan-amending TDR program.

The plan-consistent approach to TDR can increase public acceptance because it essentially implements the community's land-use goals as already approved in an adopted general plan. Hopefully, citizens will see a plan-consistent TDR program as superior to traditional zoning since it implements a community's preservation goals as well as its development objectives. We realize that not all citizens will embrace TDR just because it is consistent with an adopted general plan. Many, if not most, residents are unaware that their community has a general plan, much less what that plan contains. So there will still be opposition to individual upzoning applications as they are proposed. However, most residents will agree that the TDR component of the proposed upzoning does not cause any increase in development because the new maximum density is no higher than the density called for in the general plan. In fact, the amount of development is identical with or without the TDR mechanism.

The only difference is that the community is saving sending areas while it achieves the development called for in its general plan.

Bear in mind that plan-consistent TDR is not the only approach and not even necessarily the most appropriate TDR approach for any given community. For the purpose of this discussion, we use the term *plan-amending* to describe TDR programs involving general plan amendments that increase the development capacity of a community's general plan. The discussion below of the Chesterfield Township, New Jersey, TDR program highlights the advantages and disadvantages of a plan-amending TDR program.

Even though plan-consistent TDR resolves many political concerns, there may still be those who claim that this approach changes the rules midstream. They may argue that the community already granted the density depicted in the general plan without any preconditions like a TDR requirement. This argument

might prevail politically in some communities, particularly if the general plan did not originally mention the possibility of the later addition of a TDR requirement. When this argument prevails, communities would have to change the development capacities of their current general plans in order to institute a TDR program, and would not be considered TDR-ready as described in this article.

Some communities are capable of going far beyond the plan-consistent approach to TDR that we describe here by adopting a plan-amending TDR program. For example, Chesterfield Township maintained a multiyear effort that brought citizens and developers together to meticulously plan and rezone a receiving area for a pedestrian-friendly, smart-growth village. The extensive public involvement promoted acceptance and the rezoned land gave both citizens and developers certainty about where and how growth would occur. This certainty is a significant benefit to developers who do not have to apply for rezonings but are assured of exactly what they can build if they follow all the rules, including compliance with the TDR requirement.

Despite these advantages, many communities don't have the resources or the attention span to establish a comprehensive TDR program like the one in Chesterfield. For these places, a plan-consistent approach may be more appropriate since it allows communities to preserve land in the near-term future. Perhaps some of these places will prepare themselves over time to try a comprehensive effort like Chesterfield's.

### DECIDING IF YOUR COMMUNITY IS READY FOR TDR

The foundation for the following quiz is our study, "What Makes Transfer of Development Rights Work? Success Factors from Research and Practice," which appears in the Winter 2009 issue of the *Journal of the American Planning Association*. In that paper, we identified and ranked 10 success factors found in the 20 U.S. TDR programs that have preserved the greatest amount of land. Using the results of that study, we developed the four-question quiz below to evaluate whether a community is "ready-made" for plan-consistent TDR. Some readers will have no trouble answering these four questions without hesitation. However, if you are inclined to say *maybe* to any question, you may find it helpful to refer to notes that follow each question.



➡ Chesterfield Township, New Jersey, preserves agricultural land through a plan-amending TDR program, allowing developers to achieve planned densities when they comply with all regulations, including TDR requirements.

**Question 1: Does your community often receive applications for upzonings?**

TDR programs can work when developers want to exceed many types of development restrictions. But to minimize confusion, this paper focuses on changes in land-use regulations that allow increased residential density. Applications for upzonings indicate developer demand to exceed the limitations imposed under current zoning. This demand is one of the two essential ingredients in a successful TDR program, as discussed in “What Makes Transfer of Development Rights Work?” If developers

is a crude approximation of the acreage that could be preserved by your TDR program annually. If this seems like a meaningful amount of preservation, you should answer *yes* to Question 1.

For example, let’s assume that the zoning in your likely sending area requires five acres per dwelling unit and that you estimate that your community issues building permits for 20 dwelling units each year that are made possible by upzonings. Assuming one TDR is required for each of the 20 bonus units and assuming each TDR represents five acres of preserved land,

allow the community to incentivize the transfer of development rights without changing the maximum density set forth in the general plan. Specifically, a community can allow, if needed, more than one bonus dwelling unit in a receiving area for each dwelling unit precluded in a sending area without exceeding the general plan’s development capacity. This enhanced transfer ratio improves the conditions for a viable TDR market by making the TDR price high enough to attract sending area landowners yet low enough to motivate developers. Consequently, a *yes* response to this question is a positive indicator for two of the most important success factors identified in our *JAPA* article: receiving areas customized to the community and market incentives.

*NOTE:* Some respondents may be able to answer Question 2 without extensive thought because their general plans either designate no areas or many areas as appropriate for future upzonings. However, for communities in the middle of this continuum, we offer the following suggestion: Consider whether the areas designated in the general plan for future upzonings are capable of sustaining the bonus dwelling units that you consider necessary to achieve a meaningful rate of preservation.

For example, let’s continue the assumption that you want to preserve at least 100 acres per year and that this preservation rate will require the transfer of 20 TDRs per year, which represent 20 dwelling units resulting from upzonings. Assume that you estimate that your general plan designates 1,000 acres appropriate for an upzoning from one unit per five acres to two units per acre. If developers want to maximize this potential, a total of 1,800 bonus units would result ( $1,000 \times 2 = 2,000$  minus a baseline of 1,000 divided by five, or 200, yields a maximum potential increase of 1,800 bonus units).

However, you may want to create a more conservative estimate by, for example, assuming that developers only want to upzone half of this area and that they only want to build at an average density of one unit per acre. These more conservative assumptions still yield a total of 400 bonus units ( $500 \times 1 = 500$  minus a baseline of 500 divided by five, or 100, yields a maximum potential increase of 400 bonus units). This 400 bonus-unit capacity should theoretically generate the required 20 bonus units per year for 20 years, allowing you to answer *yes* to Question 2.



➡ The receiving area of Collier County’s TDR program is the new town of Ave Maria, which surrounds a new Catholic cathedral and university.

are typically satisfied with the development potential available under current zoning, they will have no need to exceed that density limit if it ultimately becomes baseline density under a TDR program.

*NOTE:* Some respondents may be able to answer Question 1 without much reflection because their communities experience either very few or very many applications for upzonings. However, for those who fall in the middle of those two extremes, we offer the following suggestion. Estimate the number of dwelling units built in a typical year made possible by upzonings. Assume, for this exercise alone, that your program will grant one TDR for each dwelling unit precluded by easement in the sending area and that each TDR will permit one bonus dwelling unit in the receiving area. Then multiply your estimated annual number of bonus units by the amount of sending area land needed per dwelling unit. The resulting number

your hypothetical TDR program would preserve 100 acres of land per year. If a preservation rate of 100 acres per year seems worth the effort of adopting a TDR program, you would answer *yes* to Question 1.

**Question 2: Does your community’s current general plan indicate an adequate number of areas appropriate for future upzonings?**

If your general plan designates areas that are appropriate for upzoning, your community can readily make these areas into potential TDR receiving areas. This can relieve you of the need to identify, discuss, and agree on individual receiving areas. The plan has already identified them. To use them, a provision is added to your zoning code that requires each unit resulting from a future upzoning to comply with TDR requirements, effectively making these plan-approved places into potential TDR receiving areas. These ready-made receiving areas also



➡ Livermore, California, saves agricultural land by requiring TDRs for all dwelling units resulting from density-increasing upzonings.

**Question 3: Are the existing zoning restrictions for the areas you want to preserve adequate to discourage inappropriate development?**

Question 3 is designed to test whether the zoning that currently applies to your sending areas is well suited to a workable TDR program. In our JAPA study, we found that 18 out of the 20 leading TDR programs in the nation have sending-site zoning that limits on-site development to no more than one dwelling unit per five acres. Consequently, we would suggest that you respond *yes* if your sending-site zoning is one dwelling unit per five acres or more. If your sending-area zoning allows higher density, consider repeating the evaluation method described in the note to Question 1. The following note provides an example.

*NOTE:* Assume the zoning in your likely sending area requires only one acre per dwelling unit and you estimate that your community issues building permits for 100 dwelling units each year that are made possible by upzonings. Assuming one TDR for each of the 100 bonus units and assuming each TDR represents one acre of preserved land, your hypothetical TDR program would preserve 100 acres of land per year. If a preservation rate of 100 acres per year seems worth the effort

of adopting a TDR program, you would answer *yes* to Question 3.

**Question 4: Is your community willing to require compliance with TDR requirements for all (or most) development in excess of current zoning limits?**

This question is designed to test whether your community will require TDRs for all or most bonus dwelling units or whether other mechanisms are in place (and are likely to remain in place) that allow developers to achieve bonus density without buying TDRs.

To offer just a few examples, some communities offer bonus density when developers include certain amenities in their projects or provide community benefits. Many communities grant density bonuses when developers cluster houses or use a planned unit development approval process. Needless to say, developers will not pay for TDRs if they can get bonus density free (or more cheaply) using an alternative to TDR.

*NOTE:* To offer some guidance in answering this question, we would suggest that you answer *no* if your community already has one of these alternative density-bonus techniques and

not change your PUD ordinance and require TDRs for all dwelling units permitted in a PUD that exceed the maximum density of the underlying zone.

**SCORING THE QUIZ**

A *yes* response to all four questions suggests that your community is TDR-ready, meaning that a plan-consistent TDR program could be adopted with only moderate time and effort. If you responded *no* to one or more questions, it does not mean that your community is not suitable for TDR. Rather, *no* responses indicate that it will probably take more work to adopt a successful TDR program. For example, if a community rarely receives applications for upzonings, demand for additional development can still be created, but it will likely require a comprehensive plan revision with substantial public involvement. A major planning effort of this scale is not extraordinary but, in our opinion, suggests that a community is not TDR-ready.

**NEXT STEPS**

If your community is TDR-ready, it means adoption of a plan-consistent TDR mechanism



➡ In Berthoud, Colorado, additional dwelling units achieved via upzoning are subject to a TDR requirement, which developers can satisfy by paying a density transfer charge.

you strongly believe that your community will not change these techniques so that developers cannot easily circumvent a TDR requirement. For example, your community may have a PUD code provision that permits developments to exceed the maximum density limit of the underlying zoning district. You should answer *no* to Question 4 if you believe that your community would

could occur relatively quickly. Nevertheless, some work is still required even in TDR-ready communities. Your community, often with the help of a citizen advisory committee, or CAC, must make decisions on the most appropriate components for the receiving sites, sending sites, and compliance procedures. Early in the process, the elected officials should ide-



➔ As an example of a plan-amending program, all jurisdictions within the one-million-acre New Jersey Pinelands conformed their plans and codes to a new regional plan, which is implemented in part through TDR.

ally articulate whether or not they are willing to treat all units arising from upzonings as bonus units and therefore subject to a TDR requirement. If so, the CAC can develop recommendations on all the components outlined above—what areas should qualify as sending sites, what should constitute preservation, how many TDRs should be granted to preserved land, how many bonus units should be awarded per TDR, and if developers should be given a choice of compliance though cash-in-lieu payments as well as TDRs. These aren't snap decisions by any means. But they are considerably easier than those needed when a

Cover photo: West Hempfield Township, Lancaster County, Pennsylvania, uses TDR to save prime agricultural land, sensitive environmental areas, and community character, as represented by this covered bridge over Chickies Creek. © Copyright 2006 by Rick Pruetz; design concept by Lisa Barton.

community embarks on a plan-amending TDR program like the one described for Chesterfield, New Jersey.

Again, plan-consistent TDR is not necessarily right for all communities. But it can create a workable preservation tool, in one year or less, in communities that are TDR-ready.

### RESOURCES

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## ZONING REVIEWS

### ENVIRONMENTAL REGULATIONS AND HOUSING COSTS

Arthur C. Nelson, FAICP, John Randolph, Joseph M. Schilling, Jonathan Logan, James M. McElfish Jr., and Newport Partners, LLC (2009; Island Press; 262 pp.; \$35)

The effects of traditional zoning and subdivision controls on housing costs have been well documented in recent decades, but until now, relatively little was known about what impact environmental regulations have on housing affordability. According to the authors of *Environmental Regulations and Housing Costs*, the effect of environmental regulations on the cost of residential development has changed little in the past 30 years, despite assumptions to the contrary. While the authors do not deny the reality that all regulations add cost to the development process, they use data gathered from a case study of Metropolitan Washington, D.C., and focus groups in Dallas, Denver, and Tucson to make the case that the magnitude and nature of these costs as they relate to stormwater controls, site remediation, wetlands permitting, habitat protection, and open space set asides has been mischaracterized and misunderstood. Nelson et al. offer some much-needed ammunition for local planners on the front lines of the fight over land-use controls, but the authors punt on the issue of how to increase efficiencies in the development review process as a means to decrease the overall costs of regulatory compliance.

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AMERICAN PLANNING ASSOCIATION

122 S. Michigan Ave.  
Suite 1600  
Chicago, IL 60603

1776 Massachusetts Ave., N.W.  
Washington, D.C. 20036



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