Maryland’s Experience with Transfer of Development Rights

With Preliminary Review of Cecil County TDR Proposal

H. Grant Dehart
Presentation

- Review Maryland’s TDRs experience
- Why TDR programs fail
- Key principles and steps for TDR design
- Findings of Phase I ESLC TDR Study
- Criteria for a workable TDR
What is a TDR?

“The right to create a residential building lot or construct a dwelling unit, which right may be severed from a property in the sending area resulting in a perpetual conservation easement, and transferred to a property in the receiving area in the form of bonus density, according to procedures established in regulations.”

Note: MD Department of Planning definition does not apply to some urban TDR programs
Transferable Development Rights - TDRs

5 TDRs per Additional lot

Farm Community and Resource Preservation Districts

Transfer zones in Rural Community, in R-1, R-2, in Town Centers,
Reclaim Conventional lots
Basic Elements of a TDR Program

- State enabling legislation
- Amendments to the text and maps of the local comprehensive plan and zoning ordinance to permit TDRs
- Easements or covenants protecting the sending sites from further development
- Local approval of bonus density and site plan for use of TDRs on receiver site
Benefits of a TDR Program

- Directs growth from rural, agricultural areas to existing developed areas with infrastructure
- Preserves farmland, natural and historic resources at low cost to the public
- Helps regulate the rate of growth
- Maintains landowner equity and support for preserving agriculture
Transfer of Development Rights Programs

American Farmland Trust Fact Sheet, Jan. 2001

National Experience

- 50 Farmland TDR Programs
- 8 (16%) preserved more than 1,000 acres
- 15 (30%) preserved more than 100 acres
- 22 (44%) preserved no land
- 67,707 farmland acres preserved with TDRs in U.S.

Maryland Experience

- 9 Farmland TDR Programs
- 5 (55%) preserved more than 1,000 acres
- 6 (66%) preserved more than 100 acres
- 3 (33%) preserved no land
- 53,749 farmland acres preserved with TDRs in Maryland

American Farmland Trust Fact Sheet, Jan. 2001
Successful TDR Programs in other States

- Boulder County, Colorado
  4,700 ac.

- Palm Beach County, Florida*
  6,573 ac.

- Blue Earth County, Minnesota
  3,000 ac.

- New Jersey Pinelands, N.J.
  43,684 ac.

* includes county purchased TDRs for TDR banks in Florida & Washington
## Maryland TDR Programs - 2006

<table>
<thead>
<tr>
<th>Counties with TDR</th>
<th>Acres</th>
<th>Counties with limited density transfers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Calvert *</td>
<td>13,000</td>
<td>Carroll</td>
</tr>
<tr>
<td>Caroline</td>
<td>345</td>
<td>Harford</td>
</tr>
<tr>
<td>Charles</td>
<td>2,028</td>
<td>Howard</td>
</tr>
<tr>
<td>Queen Anne’s</td>
<td>2,644</td>
<td>Queen Anne’s</td>
</tr>
<tr>
<td>Montgomery</td>
<td>48,584</td>
<td></td>
</tr>
<tr>
<td>Talbot</td>
<td>770</td>
<td></td>
</tr>
<tr>
<td>St. Mary’s</td>
<td>1,800</td>
<td></td>
</tr>
<tr>
<td>Wicomico</td>
<td>0</td>
<td>* Includes 1362 acres County purchased TDRs</td>
</tr>
<tr>
<td><strong>TOTAL:</strong></td>
<td><strong>69,185 ac.</strong></td>
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</table>
Calvert County TDR Program

13,000 acres preserved
Montgomery County
TDR Program

48,584 acres preserved
Land Preserved by TDRs in Montgomery County

Rural Legacy Area only
Why TDR Programs Fail

- Economics
- Insufficient Planning and Zoning
- Politics
- Alternative tools exist
Why TDR programs fail #1

- Economics -

- Insufficient demand for development in either sending or receiver areas
- Imbalance of supply and demand for TDRs
  - Too many sellers - too few buyers
  - Too few receiver areas with insufficient absorption capacity
- Base zoning density in receiver areas satisfies market
- Developers can obtain density bonuses in receiver areas without buying TDRs
- Landowners can sell lots for more than TDR values
Why TDR programs fail #2
- Planning and Zoning -

- Comprehensive Plan does not clearly delineate receiving areas
- Infrastructure plans (water & sewer) cannot handle higher density in receiver areas with TDRs
- County continues to zone farmland for housing
- Rural-to-rural TDR transfers are allowed; defeats one purpose of TDRs and fragments farmland
Why TDR programs fail #3

- Politics -

- No support from farm community
- Community opposition to higher densities in receiving areas .. fears of traffic, congestion, higher taxes, change in existing character
- Higher densities are not offset by quality design
- Developers can get density increases without TDR
Why TDR programs fail #4
- Easier alternatives exist -

- Alternatives to protect open space or extinguish rather than transfer development rights
  - Purchase or Donation of Development Rights
    - 450,000+ acres protected in MD
  - Fee acquisition - 662,500 acres in MD
  - Protective Agricultural Zoning – 9 of 23 counties
TDR Design Guidelines

How to create a successful TDR Program
TDR Design Guidelines

Key Principles

- Build strong landowner support for TDR
- Make sure that the TDRs are worth something to developers and landowners
- Higher density with TDRs must be accepted by receiving area community
- Keep it simple
- Don’t give away the receiver area density without TDR
TDR Design Guidelines

Key Steps

- Amend Comprehensive Plan and Zoning
- Establish sending and receiver areas
- Establish bonus TDR density above base zoning in receiver areas to create demand for TDRs
- Balance TDR Supply and Demand
- Minimize uncertainty of TDR transactions
- Involve the public and explain the benefits
TDR Design Guidelines

1. Assess the Market for TDRs
   - Do you have an active real estate market where TDRs will work?
   - How many TDRs are allowed from sending areas?
   - Can all TDRs be absorbed in receiving areas?
   - Is there a market for higher density in receiving area that exceeds base zoning?

1. Identify and involve political leadership and farmers in the decisions
3. Amend Comprehensive Plan and Zoning
- Identify sending & receiving areas
- Zone sending area for agriculture & mitigate with TDR
- Zone receiver areas to create demand for TDRs and minimize local opposition to TDR density
- Provide infrastructure in receiver areas to absorb higher TDR density

4. Carefully balance TDR supply and demand
- Create demand for TDRs in receiver sites for each TDR available from sending sites
- Add new receiver sites as needed to maintain high demand for TDRs
“You have to downzone to make a TDR program work. There's no market if the land is actually zoned to the density you're willing to allow. It's time we stopped giving away zoning for free and started making developers pay for favorable zoning.”

William Hussmann, Former Chairman of the Montgomery County Maryland Planning Board, to visiting group of Michigan legislators
5. Keep it Simple!
- Minimize uncertainty of TDR transactions and government decisions
- Allow intermediate transfers of TDRs before use is approved
- Simple rules for TDR eligibility from sending sites

6. Create economic incentives for buyers and sellers of TDRs
- Both must make adequate return on investment
- TDR values must be competitive with PDRs, or on-site development
- Create sufficient bonus density for development with TDR
7. Manage the impacts of increased density from TDRs
   - Avoid development “overload” or significant change to community character in receiver areas
   - Adopt design guidelines for quality of receiver areas

8. Involve the public
   - Improve public understanding of TDRs and their benefits
1. Consider how TDRs can help mitigate restrictive land use regulations to avoid a “taking”

“While these rights may well not have constituted ‘just compensation’ if a ‘taking’ had occurred, the [transferable development] rights nevertheless undoubtedly mitigate whatever financial burdens the law has imposed on appellants and for that reason, are to be taken into account in considering the impact of regulation.”

Justice William J. Brennan, 1978

Penn Central Transportation Company v. New York City
Features of the Best MD TDR programs

- TDRs make economic sense to developers
- Forward thinking elected officials were willing to make tough decisions
- Connected with significant downzoning
- Large receiver areas with high bonus density
- Adjustments were made to maintain TDR demand
- County does not increase zoning density in receiver areas without TDRs
- Combines TDR with other preservation tools
- Sending sites are protected by easements
- Professional staff support
- These Co's protect more land with TDRs than with all other programs combined
Criteria for a Successful TDR Program

- TDRs have sufficient value to buyers and sellers to sustain an active market to accomplish preservation goals
- The County has strong Comprehensive Plan and Zoning policies that support use of TDRs
- Administration of TDRs is simple, efficient and predictable
- The TDR program has broad public support
The Challenge for Cecil County Land Preservation
Land Conservation Issues

- Patterns of protected & developed lands?
  - sprawl, fragmentation
- Funding to meet Conservation Goals?
- State Funding for Land Preservation?
- Targeting limited resources to preserve the best and most threatened land?
- Protecting land until funds are available?
## Land Patterns

<table>
<thead>
<tr>
<th>Description</th>
<th>Acres</th>
<th>Percentage</th>
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<tbody>
<tr>
<td>Total County Land Area</td>
<td>222,868</td>
<td></td>
</tr>
<tr>
<td>Land in Priority Funding Areas</td>
<td>19,421</td>
<td>9.9%</td>
</tr>
<tr>
<td>Land outside of PFAs</td>
<td>175,854</td>
<td>90.1%</td>
</tr>
<tr>
<td>Developed</td>
<td>26,736</td>
<td>15.20%</td>
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<tr>
<td>Undeveloped</td>
<td>118,568</td>
<td>67.42%</td>
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<tr>
<td>Protected</td>
<td>30,549</td>
<td>17.34%</td>
</tr>
<tr>
<td>Roads, etc. not in Property View</td>
<td>27,593</td>
<td></td>
</tr>
</tbody>
</table>
Land Patterns

Cecil compared to other Counties

Fragmentation of Agricultural Land, 2000

The average number of parcels <=20 acres per 1,000 acres of unprotected agriculturally zoned land. Source: Maryland Department of Planning’s Maryland Property View 1997 and 2000 enhanced parcel data base.
Recent residential development pressure in agricultural areas is shown as the percent of unprotected agriculturally zoned land developed (improved parcels <=20 acres) during the ten most recent years for which data is available. Source: Maryland Department of Planning's Maryland Property View 1997 and 2000, enhanced parcel database, and County zoning overages.
Land Patterns
Cecil compared to other Counties

Easement Cost Per Acre

Source: MALPF Annual Report 2001. (Anne Arundel from Rural Legacy application 2002, Howard from local easement program price cap. Allegany and Prince George’s had no local, MALPF, or Rural Legacy easements in FY 2001.)
## Land Preserved

**Feb. 2005**

- MALPF easements: 12,861 ac
- MET easements: 3,398 ac
- Rural Legacy easements: 1,963 ac
- Private & DNR easements: 1,197 ac

**TOTAL EASEMENTS**: 19,419 ac

- Publicly owned open space: 14,868 ac

**TOTAL PRESERVED LANDS**: 34,287 ac

- % of County Preserved: 15.4%
- % of County outside PFAs Preserved: 17.34%

**Source**: Maryland Office of Planning 3/21/05
Analysis of Cecil TDR Proposal

Keys to success:

- Downzoning sending areas to 1:20 in SAR zone from 1:8, & to 1:10 in NAR zone from 1:5
- Upzoning receiver areas with TDRs to 5:1 in SR from 2:1 with Community Facilities & 12:1 in DR from 4:1 with Community Facilities
- Receiver areas are in designated development districts with water & sewer service
- No rural-to-rural transfers are allowed
- Mandatory clustering of major subdivisions in the NAR & SAR
Analysis of Cecil TDR Program

Concerns:
- Continued PUD bonus density in SR zone will compete with TDRs
- Market demand for TDR densities SR & DR
- Restrictive covenants to protect sending parcels vs. easements
- Availability of water & sewer service for TDR density in receiver areas

Issues & options:
100 acre eligibility
Option:
- Allow farms over 50 acres to sell TDRs (e.g. MALPF)

Impact of 5:1 TDR density in SR zone
Option:
- Maintain 4:1 density in SR with TDR; eliminate 4:1 PUD bonus & use for design only
Analysis of Cecil TDR Program

Issues & options: Supply - Demand Balance

Short term options
- Change transfer rate to 1 TDR per 8 acres in SAR
- Eliminate the PUD density bonus in SR and DR zones
- Require 2 TDRs per dwelling
- Downzone SR and DR zones by 50%; recapture with TDR bonus

Long Term options
- County policy not to increase density for new development without TDRs
- Interjurisdictional agreements with towns to accept TDRs
- Agree to use TDRs for increases in density for annexations
Thank You!

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