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TDR Citizens Guidebook

Meghan Ryan

University of Georgia School of Law

Wes Rochester

University of Georgia School of Law

Laura Ingram

University of Georgia School of Law

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TDR Citizens Guidebook

**Meghan Ryan
Wes Rochester
Laura Ingram**

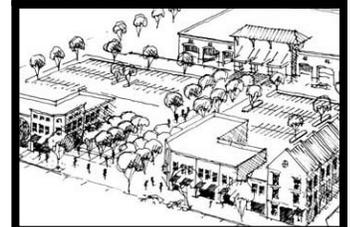
Spring 2009

Land Use Clinic



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The **UGA Land Use Clinic** provides innovative legal tools and strategies to help preserve land, water and scenic beauty while promoting creation of communities responsive to human and environmental needs. The clinic helps local governments, state agencies, landowners, and non-profit organizations to develop quality land use and growth management policies and practices. The clinic also gives UGA law students an opportunity to develop practical skills and provides them with knowledge of land use law and policy.

For more information about the UGA Land Use Clinic contact:

Jamie Baker Roskie, Managing Attorney
UGA Land Use Clinic
110 Riverbend Road, Room 101
Athens, GA 30602-1510
(706) 583-0373 • Fax (706) 583-0612
jroskie@uga.edu
<http://www.law.uga.edu/landuseclinic/>

TDR Citizens Guidebook

Authors: Meghan Ryan, Wes Rochester, & Laura Ingram

**Editor: Jamie Baker Roskie
University of Georgia Land Use Clinic**

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TDR Citizens Guidebook

Meghan Ryan
Wes Rochester
Laura Ingram

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I. Executive Summary

The purpose of this guidebook is to provide information about transferable development rights (TDR) for communities considering adoption of a TDR program. This book defines the basic elements of TDR and explains how these programs can be used to balance the competing goals of land preservation and development. It is designed to prepare communities to get involved with their local planning process and shape TDR programs to best fit their needs.

TDR is a market-based land use planning tool that allows landowners to preserve property with unique characteristics by transferring their development rights to other areas designated for increased development.¹ Section II of this guidebook, “An Introduction to Transferable Development Rights,” describes how this TDR mechanism works. It defines the key components of TDR programs, such as sending areas, receiving areas, and TDR banks. This section also shows how TDR can be used as a flexible planning tool to accomplish any number of land use goals, ranging from the preservation of open space to the revitalization of historic landmarks and downtown areas.²

Section III, “Benefits of TDR Programs,” describes the wide range of benefits that a TDR program has to offer. It explains why TDR programs are advantageous to receiving area communities, sending area landowners, developers, and of course, the municipality itself. The benefits for receiving

areas can include providing affordable housing³ and promoting healthy development where adequate infrastructure already exists.⁴ TDR programs benefit municipalities by permanently protecting valued property without using tax money or other public funds.⁵ TDR programs also compensate sending area landowners for the lost development potential of their property and generate higher profits for developers by allowing development at increased density.⁶ These benefits help explain why many communities have implemented TDR programs in recent years.⁷

Section IV, “Community Involvement in Creation of TDR Programs,” emphasizes the importance of public involvement to implement a TDR program that meets the diverse needs of all members of the community. It identifies key issues to consider in the planning process and provides guidance for making decisions to develop a successful TDR program. For example, this section describes the process of selecting the objectives of the TDR program, forming a citizens advisory committee, and creating a TDR bank. It also explains how to determine the density threshold in receiving areas and how to allocate TDRs to sending area landowners.

Finally, Section V, “Getting Involved with the TDR Process,” provides specific steps a community can take to ensure that a TDR program reflects the goals and concerns of everyone who may be affected. For example, it advises communities to organize into neighborhood groups, educate themselves about TDRs, and then share this knowledge by distributing flyers, walking door-to-door, or holding neighborhood meetings. It also explains the importance of arranging neighborhood visits with planning authorities and attending all meetings hosted by city planning departments. Finally, this section suggests strategizing about the goals important to the community and seeking assistance from experts to submit draft proposals for the TDR program. Following these steps will better prepare the community to shape a TDR program to meet its needs.

¹ See generally, Rick Pruetz, *Beyond Takings and Givings: Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges* 29-33 (2003).

² *Id.* at 36.

³ *Id.* at 40.

⁴ *Id.* at 36.

⁵ *Id.* at 75-76.

⁶ *Id.* at 30-31.

⁷ *Id.* at 36.

II. An Introduction to Transferable Development Rights

A. What is a Transferable Development Rights (TDR) Program?

Communities that wish to preserve open space, important environmental areas, historic landmarks, or other unique local features face a dilemma: regulations put in place to achieve these goals restrict the development potential of the land affected, thereby potentially reducing property values.⁸ Local governments could opt to protect these types of valuable property by simply adopting restrictive zoning regulations, but government officials are generally reluctant to hinder development and decrease property values without offering some sort of compensation in return.⁹

Increasingly, cities and counties are turning to transferable development rights (TDR) programs to reconcile these competing goals of preservation and development.¹⁰ Essentially, TDR programs are market-based planning tools that encourage “the voluntary redirection of growth from places that a community wants to save, called sending areas, to places that a community wants to grow, called receiving areas.”¹¹ TDR programs provide a flexible means by which a community can achieve its individual planning and preservation goals while still allowing for smart, responsible economic development.¹² Collectively, the public benefits from the logical direction of development and the preservation of features that the community has deemed worthy of protection. The benefits of a successful TDR program, however, are not limited to the community as a whole; developers also benefit from greater profits due to increased development, and sending area owners benefit from the ability “to liquidate the development potential of

their properties,”¹³ without having to actually develop the property.

Since the adoption of the nation’s first TDR program in New York City in 1968,¹⁴ TDRs have become more and more popular. As of 2003, 142 TDR programs had been enacted in 31 states and the District of Columbia, all designed to protect various features unique to the local communities in which they were adopted.¹⁵ In Georgia, legislation was passed in 1998 by the Georgia General Assembly that specifically enables local governments to create TDR programs.¹⁶ TDR programs can also be designed to bring specific benefits to receiving area property owners, as described in Section IIIA below.

B. How Do TDR Programs Work?

TDR programs can be understood by conceptualizing property rights as a “bundle of sticks.”¹⁷ This “bundle of sticks” metaphor has been used to explain property rights in the United States as a “collection of rights.”¹⁸ The right to develop a piece of property is a stick in this bundle, and the underlying premise of TDR programs is that this particular stick of “development rights” can be separated from the rest of the bundle and sold.¹⁹ TDR programs use these “development rights” to facilitate a market that directs development toward pre-selected areas and to compensate property owners in areas selected to be preserved for the loss of the development value of their properties.²⁰ For example, a TDR program in Montgomery County, Maryland, that was enacted to preserve agricultural land, allows owners of agricultural land to sever the development rights from their properties and to sell those rights to developers in approved receiving

8 *Id.* at 29.

9 *Id.*

10 *Id.*

11 *Id.* at 26.

12 Lincoln Institute of Land Policy & Regional Plan Association of New York, New Jersey, and Connecticut, *Transfer of Development Rights for Balanced Development* 3, May 1, 1998, available at: <http://www.rpa.org/1998/05/transfer-of-development-rights.html> (last visited November 24, 2008).

13 Lincoln, *supra* note 12, at 31.

14 Pruetz, *supra* note 1, at 34.

15 *Id.*, Table III-2, at 47-49.

16 See O.C.G.A. §36-66A-1 to -2 (2008).

17 See Pruetz, *supra* note 1, at 31.

18 Denise R. Johnson, *Reflections on the Bundle of Rights*, 32 Vt. L. Rev. 247, 247 (2007).

19 Rick Taintor, *South County Watersheds Technical Planning Assistance Project, Transfer of Development Rights Report* 8, available at: <http://www.dem.ri.gov/programs/bpoladm/suswshed/pdfs/tdrreprt.pdf> (last visited November 24, 2008).

20 See Pruetz, *supra* note 1.

areas.²¹ The landowner retains all other rights in the bundle of sticks, and, in exchange for giving up development rights, is compensated by the purchasing developer.²²

After a community decides to incorporate a TDR program into its zoning ordinances, the first thing it must do is to identify “sending areas” and “receiving areas.”²³ Sending areas can be any properties whose preservation is important to the community for agricultural, environmental, or historic value, or for other reasons.²⁴ Under a typical TDR program, the properties in these sending areas are subject to a form of dual zoning that gives property owners a choice.²⁵ They can elect not to participate in the program, in which case they can use and develop their land according to the baseline zoning regulations (from here on out referred to as the “baseline option” or “baseline zoning”) or they can choose to use the TDR program.²⁶ Under the TDR option, the property owner in the sending area can sell the development rights from his or her “bundle of sticks.” The development rights become a commodity referred to as a TDR (though some communities use other labels for these units²⁷), and the ordinance establishing the TDR program typically specifies how many TDRs a property owner in a sending area can sell.²⁸ Once a property owner chooses to use the TDR program, he or she enters into some sort of deed restriction, such as a conservation easement, that specifies how much development, if any, can subsequently occur on the sending parcel.²⁹ In almost all TDR programs, the

development rights cannot be returned to the sending parcel after the easement or deed restriction that severed those development rights has been recorded. The sending site property owner only has a limited number of TDRs to be sold, and once each is sold, it is gone forever.³⁰

Equally important to the operation of a successful TDR program is the designation of appropriate receiving areas. Receiving areas are areas that the community has decided are suitable for further development.³¹ Often, but not always, these areas are chosen because of their proximity to “existing development, jobs, shopping, schools, transportation, infrastructure and other urban services.”³² Receiving areas tend to be identified based on the community’s desire to concentrate development in certain appropriate areas and developers’ desires to build close to existing development in order to minimize the costs of building new infrastructure.³³

TDR ordinances also generally create dual zoning for receiving areas,³⁴ giving developers an option similar to that of property owners in the sending areas. A developer can choose not to use the TDR program at all, instead using the baseline zoning for the receiving area to create a lower-density development.³⁵ Using the TDR program, the developer can purchase TDRs from sending area property owners. Having acquired these rights, the developer can then apply them to the receiving area, achieving a higher-density, more profitable development.³⁶

Ordinances creating TDR programs generally do not set the price for TDRs; instead, price is usually “freely negotiated between willing buyers and sellers.”³⁷ TDR ordinances can influence prices and otherwise facilitate the market for TDRs in a community. The price of a TDR can be affected by the number of TDRs that a sending site owner can sell.³⁸ If for example, the

21 *Id.* at 33-34.

22 *Id.*

23 Jamie Baker Roskie & D. Jacobsen, *Transferable Development Rights*, Georgia County Government 66, May/June 2007.

24 *Id.*

25 Pruetz, *supra* note 1.

26 *Id.*

27 See Pruetz, *supra* note 1, at 31 (explaining that some communities refer to TDR units as TDCs (“transferable development credits”), SURs (“severable use rights”) or some sort of community-specific name, such as the “Pinelands Development Credits,” or PDCs in the New Jersey Pinelands).

28 *Id.* at 30.

29 *Id.*; see also Jeffrey Tapick, Note, *Threats to the Continued Existence of Conservation Easements*, 27 Colum. J. Envtl. L. 257, 259 (2002) (defining a conservation easement as an interest in land, held by a charitable organization or government entity, that restricts the landowner’s use of that land in order to achieve a conservation purpose).

30 *Id.* at 32.

31 Roskie & Jacobsen, *supra* note 11.

32 *Id.*

33 *Id.* at 67.

34 Pruetz, *supra* note 1, at 30.

35 *Id.*

36 *Id.*

37 *Id.* at 31.

38 *Id.*

baseline zoning for a particular sending site property would allow one housing unit to be built per ten acres, the number of TDRs the owner of the site can sell does not have to also be one TDR per ten acres (this would be expressed in the ordinance as a 1:1 ratio).³⁹ Often a 1:1 ratio would not encourage very many transactions, so communities can establish more favorable ratios in their TDR ordinances.⁴⁰ Under a 3:1 ratio, for example, a sending area property owner would be allowed to sell three TDRs for every one unit that could be built on his property under the baseline zoning option. A TDR ordinance also generally dictates the amount of additional development allowed for each TDR a developer purchases.⁴¹

Ordinances establishing TDR programs also often include measures designed to facilitate market transactions of TDRs. One means of facilitating the development of a successful TDR market is to create a TDR “bank” that matches buyers and sellers, keeps records of transfers, and, in some cases, even purchases development rights from sellers who cannot find a ready buyer.⁴² TDR banks are generally government-funded agencies that serve as points of contact between potential buyers and sellers, thereby catalyzing TDR sales.⁴³ Some TDR ordinances also treat TDRs as a “commodity that can be purchased by investors, held and resold before being finally used in a receiving site project.”⁴⁴ In this way, TDR sales and purchases can occur even if there is not a seller or a buyer ready to engage in a direct two-party transaction.

C. What Can TDR Programs Accomplish?

One of the unique features of TDR programs is their flexibility; they can be tailored to serve nearly any purpose important to a community. While TDRs are traditionally used to preserve ecologically sensitive areas or agricultural land, communities across the country have been creative in using TDR programs

for all sorts of purposes: “to protect underground stone deposits...to revitalize downtown areas, promote desired urban design, stimulate housing production and ensure that development does not overwhelm the capacity of infrastructure systems.”⁴⁵ In some communities, one TDR ordinance is used for several different purposes.⁴⁶

As mentioned above, TDR programs are beneficial to all involved: the developer gains additional profit by purchasing TDR credits and building at a higher density on a receiving property, sending property owners can preserve their land without forgoing its development value, and the entire community benefits from the preservation of important land or landmarks and the direction of development to appropriate areas.⁴⁷

TDR programs also offer the benefit of permanence. Traditional zoning regulations can change with the election of new government officials. When a sending property owner opts into the TDR program, however, and records the conservation easement or other deed restriction that allows the sale of TDRs, that easement or restriction lasts forever.⁴⁸ Finally, TDR programs are a more appealing means of achieving preservation than traditional methods such as restrictive zoning or taxation to raise funds for compensation of landowners⁴⁹ because TDRs do not place financial burdens on individual landowners or force any property owners or developers to participate in TDR transactions. Rather, they are voluntary programs that use “market forces” to “accomplish two complementary goals in one transaction: open space preservation and responsible development in centers.”⁵⁰

39 *Id.*

40 *Id.*

41 *Id.*

42 Roskie & Jacobsen, *supra* note 23, at 67.

43 The Etowah Initiative, *Introduction to TDRs*, available at: <http://www.rivercenter.uga.edu/education/etowah/documents/pdf/tldr.pdf> (last visited November 21, 2008).

44 Pruetz, *supra* note 1, at 32.

45 Pruetz, *supra* note 1, at 36.

46 *Id.*

47 *Id.*

48 *Id.* at 33.

49 See Pruetz, *supra* note 1, at 29 (explaining that some communities have taxed themselves to raise funds to compensate landowners affected by zoning).

50 Lincoln, *supra* note 12.

III. Benefits of TDR Programs

TDR programs offer communities many advantages, especially as compared to traditional zoning regulations. The benefits of TDR cover a broad spectrum ranging from the preservation of property to the promotion of healthy development, not to mention the economic value that TDR programs create for landowners and developers alike. Furthermore, these benefits are spread to all those affected by TDR programs: the receiving area community, sending area landowners, developers, and of course, the municipality itself. This section explores the benefits that TDR programs offer each of these groups.

A. Benefits for the Receiving Area

TDR programs benefit receiving areas by promoting healthy growth where infrastructure, such as public transportation, already exists.⁵¹ TDR programs allow communities to choose receiving areas where growth is desired, particularly in areas with existing infrastructure to accommodate increased population density.⁵² TDR thus offers an “alternative to building out with sprawl-type development.”⁵³ Conversely, some states have also used the increased development from TDR programs to help generate infrastructure where needed.⁵⁴ For example, TDR may be part of a larger rezoning plan to make public transit more available to communities and connect neighborhoods with additional trails and sidewalks.⁵⁵ Finally, TDR programs make development more predictable,⁵⁶ provide municipalities with “greater control over design standards,”⁵⁷ and “attract a desirable mixture of residential and commercial” development.⁵⁸

51 *Id.*

52 *Id.*

53 *Id.*

54 *Id.*

55 Atlanta Beltline Inc., *Beltline Basics*, <http://www.beltline.org/BeltLineBasics/BeltLineBasicsOverview/tabid/1691/Default.aspx> (last visited Nov. 11, 2008).

56 Jason Hanley-Forde, et al., *Transfer of Development Rights Programs: Using the Market for Compensation and Preservation*, <http://government.cce.cornell.edu/doc/html/Transfer%20of%20Development%20Rights%20Programs.htm>. (last visited Nov. 11, 2008).

57 State of New Jersey, Department of Agriculture: State Agricultural Development Committee, Benefits of TDR, <http://liberty.state.nj.us/agriculture/sadc/tdr/benefits/> (last visited Nov. 11, 2008).

58 *Id.*

In addition to improving infrastructure, TDR can be used to improve the quality of low income housing and provide additional affordable housing opportunities in receiving areas.⁵⁹ By purchasing TDR credits from sending area landowners, developers can build higher density neighborhoods in receiving areas.⁶⁰ Some cities have based approval of these developments on inclusion of affordable housing.⁶¹ Conversely, some TDR programs allow the owners of low income housing in sending areas to sell unused development rights if the housing “is brought into compliance with housing/building codes” and if it is “retained as low income housing for at least 20 years.”⁶²

Land preservation provides benefits not only for sending area landowners, but for the entire community, including receiving areas. Though TDR programs designate receiving areas for increased development, the receiving area community should also benefit from the preserved property in surrounding areas. For example, a TDR can be helpful in preserving greenspace⁶³ and revitalizing downtown areas while preserving historic character.⁶⁴ Where TDR programs are used to accomplish these goals, receiving area communities nearby will experience the benefits of land preservation.

B. Benefits for the Municipality

TDR programs are more beneficial than traditional zoning regulations because they permanently protect property with unique characteristics, such as greenspace and historic landmarks.⁶⁵ Traditional zoning laws designed to preserve valued property offer only temporary protection because they are subject to change when each new class of elected officials enters office.⁶⁶ In contrast, land preserved through

59 Smart Growth / Smart Energy Toolkit, *Transfer of Development Rights (TDR)*, http://www.mass.gov/envir/smart_growth_toolkit/pages/mod-tdr.html (last visited Nov. 11, 2008); Pruetz, *supra* note 1, at 233.

60 *Id.*

61 *Id.*

62 Pruetz, *supra* note 1, at 233.

63 Pruetz, *supra* note 1, at 37.

64 Pruetz, *supra* note 1, at 42.

65 Pruetz, *supra* note 1, at 75.

66 *Id.*

TDR programs is not subject to such changes.⁶⁷ When sending area landowners sell the development rights to their property, the resulting restrictions on development are recorded in the deed to the property, thus providing permanent protection.⁶⁸

TDR programs allow local governments to restrict development on property with unique characteristics without reducing the overall development potential of the community.⁶⁹ Elected officials are often hesitant to preserve property through zoning restrictions because this method reduces the total development potential for the community.⁷⁰ TDR programs, on the other hand, do not reduce the overall development potential of a community because the development restrictions placed on sending areas are counterbalanced by increased density development in receiving areas.⁷¹

Another key benefit of TDR programs is that they are primarily funded through private rather than public money.⁷² Developers pay sending area property owners the cost of preserving their land in exchange for the right to develop receiving area property at higher density.⁷³ Developers can then recoup this cost from the increased profits generated by higher-density developments.⁷⁴ TDR programs can thus be implemented with little public investment.⁷⁵

In contrast to traditional zoning regulations, TDR programs offer both sending area landowners and receiving area developers a choice of whether to participate.⁷⁶ Rather than selling TDR credits, landowners may choose to capitalize on the development potential of their property by selling to developers.⁷⁷ Likewise, developers may forego TDR programs, choosing instead to build at the lower density levels offered under the previously existing baseline zoning regulations.⁷⁸

TDR programs are advantageous because they can be easier to adopt than traditional zoning restrictions.⁷⁹ TDR programs are often appealing to communities because they are market-driven and thus do not require public funding, for example, through increased taxes.⁸⁰ Unlike traditional zoning restrictions, TDR programs are voluntary and compensate sending area landowners who choose to restrict future development on their property.⁸¹ A TDR program also allows developers to earn higher profits through increased density development in receiving areas.⁸² Since TDR is typically the fairest option for all parties involved, it tends to cause less community resistance⁸³ and less political pressure for elected officials than traditional zoning restrictions.⁸⁴

Another benefit of TDR is that it reduces the potential for conflict over future land use.⁸⁵ Conflict often arises when landowners or developers seek to put their property to a future use that will interfere with neighboring residential uses.⁸⁶ However, when sending area landowners sell their development rights through TDR programs, the existing character of the property is permanently preserved, thus minimizing the possibility of conflict over future land use.⁸⁷

C. Benefits for Sending Area Property Owners

TDR programs allow sending area landowners to receive compensation for the development potential of their property.⁸⁸ Where zoning regulations are used to preserve property, the restrictions placed on the property's future use may reduce its economic value.⁸⁹ TDR programs, on the other hand, allow landowners to receive development value from their property without selling to developers.⁹⁰ Through TDR

67 *Id.*

68 *Id.* at 76.

69 *Id.* at 29

70 *Id.*

71 *Id.* at 30-31.

72 *Id.*

73 Pruetz, *supra* note 1, at 76.

74 *Id.*

75 State of New Jersey, *supra* note 62.

76 *Id.*

77 *Id.*

78 *Id.*

79 Pruetz, *supra* note 1, at 77.

80 *Id.*

81 *Id.* at 75.

82 *Id.* at 29.

83 *Id.* at 77.

84 Hanley-Forde, *supra* note 56.

85 State of New Jersey, *supra* note 57.

86 *Id.*

87 *Id.*

88 Pruetz, *supra* note 1, at 75.

89 *See id.*

90 State of New Jersey, *supra* note 57.

programs, developers pay sending area landowners for the development potential of their property in exchange for the right to develop receiving area property at increased density.⁹¹

D. Benefits for Developers

TDR programs benefit developers by reducing the transaction costs associated with developing property.⁹² Without TDR, developers may need to seek rezoning to develop property at higher and more profitable levels of density, which often provokes community resistance.⁹³ In many TDR programs, the local government specifically designates the receiving area for increased density and pre-approves the design standards for future development.⁹⁴ This process reduces the potential use of litigation to obtain development approval.⁹⁵ The approval process for developing pre-planned receiving areas is also more predictable,⁹⁶ so developers can expect to spend less time and money on site selection and planning.⁹⁷

TDR programs can also allow developers to generate higher profits.⁹⁸ To participate, developers must first purchase TDR credits to develop receiving area property at increased density, an added cost developers would not otherwise incur.⁹⁹ However, purchasing TDRs will allow developers to construct higher density projects that produce more income than would be possible at lower density levels.¹⁰⁰ With increased density, new development in receiving areas can accommodate a greater number of uses,¹⁰¹ and “well-planned receiving area neighborhoods appeal to potential buyers.”¹⁰² These improved development opportunities add economic value to receiving area

property.¹⁰³ Furthermore, developers can reduce “the costs of providing infrastructure,” such as road building, “by concentrating development in compact receiving areas.”¹⁰⁴ With reduced transaction and infrastructure costs and higher-density development, developers should net higher profits by purchasing TDRs than would otherwise be possible under existing baseline zoning regulations.¹⁰⁵

IV. Community Involvement in the Creation of TDR Programs

TDR programs can offer communities a wide array of benefits, but their success depends heavily upon the level of community involvement in the creation and implementation of the TDR process. A lack of community involvement could lead to undesired results for certain neighborhoods, making it very important for all members of the community to take an active role from the start. The following sections detail the importance of active community participation in the TDR planning process.

A. A TDR Program’s Objectives

The first step in the creation of a TDR program, and probably the most important, is to identify the ultimate goals of the program. Because TDR programs can be used for so many different objectives, it is important to identify exactly what the community wants to achieve with its TDR ordinance. Priorities are likely to differ among a community’s neighborhoods, making it very important that representatives from each of the different areas of the community get involved with the selection of the TDR program’s goals. Otherwise, the needs and concerns of unrepresented areas of the community may not be addressed by the TDR program ultimately adopted. As such, the community as a whole should participate in the creation of the TDR program to ensure that the program’s goals will accurately reflect those of the entire community.¹⁰⁶

91 See Pruetz, *supra* note 1, at 29-31.

92 *Id.*

93 *Id.*

94 *Id.*

95 *Id.*

96 *Id.*

97 *Id.*

98 Pruetz, *supra* note 1, at 29, 34.

99 *Id.* at 76.

100 *Id.* at 29.

101 City of Redmond, *Comprehensive Planning, Transfer of Development Rights: Frequently Asked Questions*, <http://www.ci.redmond.wa.us/insidcityhall/planning/compplanning/transfer2.asp> (last visited Nov. 11, 2008).

102 State of New Jersey, *supra* note 57.

103 Pruetz, *supra* note 1, at 29.

104 State of New Jersey, *supra* note 57; see also Pruetz, *supra* note 1, at 76.

105 Pruetz, *supra* note 1, at 34, 76.

106 TDR programs must be “carefully tailored” to the community’s goals and the development market in order to succeed.

B. A Citizens Advisory Committee

In the initial stages of creating a TDR program, many local governments opt to form a representative committee of citizens from throughout the community.¹⁰⁷ These committees are often called Citizens Advisory Committees, or CACs, and their purpose is to reflect the concerns and goals of different interest groups within the community in the planning and design of the TDR program.¹⁰⁸

Because CAC members have the ability to exert considerable influence in the TDR planning process, it is important that each area of the community is adequately represented on the committee.¹⁰⁹ Neighborhoods and community members should pay close attention to information released by the local government on how to run or be appointed to the CAC charged with assisting the TDR planning process.

C. The Sending and Receiving Areas

The designation of sending and receiving areas within the community is probably the most controversial aspect of any TDR planning process.¹¹⁰ It can be very difficult to decide which areas should be preserved with the use of TDRs and which areas can support an increase in development.¹¹¹ As such, neighborhoods and community interest groups should strive to make their preferences and opinions heard as early as possible in the planning process.

Some concerns that may arise for neighborhoods located within potential sending areas relate to the permanence of “sending” their development rights away, the subsequent inability to further develop the property, and the desire to maintain flexibility to handle any change in conditions which may occur in the future.¹¹² However, many of these issues can be

addressed through public discussion and compromise so that community members living in sending areas can participate in the TDR program happily and profitably without feeling unnecessarily constrained in the future.¹¹³

D. The TDR Threshold in Receiving Areas and the Allocation of TDRs in Sending Areas

A related concern to the determination of receiving areas is the designation of how much density the purchase of TDRs will allow for in the receiving area. Because the receiving area will be zoned at a certain level of density that can be increased through the purchase of TDRs, how much extra density TDRs will permit can be an important decision for community members residing in these areas to discuss.¹¹⁴ Too much density can lead to concerns of overcrowding in neighborhoods, strains on the infrastructure, and devalued property—so neighborhoods in receiving areas should strive to be actively involved in the determination of the TDR threshold from the start.¹¹⁵

Similarly, deciding how many TDRs property owners in sending areas have can be a delicate topic to address. It can sometimes be difficult to create a balance between TDR supply and demand.¹¹⁶ Sending area property owners should be given enough TDR credits to ensure they are adequately compensated for the loss of development potential on their land, but not so many that the market for TDRs is flooded, reducing

113 For example, TDR programs can be designed with an “escape hatch” so that the property in sending areas can be restored to full development potential in case of changed conditions. Pruetz, *supra* note 1, at 76-77.

114 *Id.* at 78.

115 *Id.* at 78-79.

116 Bruening, *supra* note 106, at 428. For example, some farmers are unhappy with the TDR program in the Manheim Township in central Pennsylvania because prices for TDRs have stagnated while the value of land has skyrocketed. While farmers in sending areas initially received just compensation for the sale of their development rights, this inconsistency in the market supply and demand for TDRs has led to a decrease in value for farmers selling their TDRs. Town officials are currently working to regulate the TDR market to recover the former balance between TDR supply and demand in the Manheim Township. Larry Alexander, *MT Land Swap Plan Holds Off Development*, *Intelligencer Journal*, March 28, 2008, at B3.

Ari D. Bruening, *The TDR Siren Song: The Problems with Transferable Development Rights Programs and How to Fix Them*, 23 *J. Land Use & Envtl. L.* 423, 428 (2008).

107 Pruetz, *supra* note 1, at 120-21.

108 Pruetz, *supra* note 1, at 120.

109 *Id.* at 121..

110 *Id.* at 77.

111 *Id.*

112 Hanley-Forde, *supra* note 56, at 3.

developers' demand for them.¹¹⁷ As such, property owners in sending areas should become involved with how the proposed TDR program will value their property's development potential.

E. Formation of a TDR Bank

Another issue that will be especially important to community members residing in future sending areas is whether a TDR bank will be created as part of the overall TDR program. TDR banks can be beneficial to both sending area property owners and developers because of the flexibility they can bring to the process.¹¹⁸ Because of the ways a TDR bank can affect the market value and transfer of TDR credits, community members should investigate their potential benefits and drawbacks and make their opinions about whether a TDR bank is desirable known early in the TDR planning process.

V. Getting Involved with the TDR Process

How can community members get involved with the creation of a TDR program? The answer will depend heavily on the particular circumstances of the local government or planning authority in charge of the TDR planning process, but here are some general pointers on becoming involved with the design of a community's TDR program.

- 1. Organize.** Make use of existing neighborhood organizations to inform others about the importance of getting involved with the planning of the community's TDR program. Many cities have neighborhood councils or planning units in place to assist with zoning decisions and other community matters.¹¹⁹ Use these organizations to unite with others and discuss the TDR planning process.

117 Bruening, *supra* note 106, at 428.

118 Pruetz, *supra* note 1, at 73.

119 For example, Atlanta has neighborhood planning units that are designed to "make recommendations to the Mayor and City Council on zoning, land use, and other planning issues." See City of Atlanta Online, *Neighborhood Planning Units*, http://www.atlantaga.gov/government/planning/npu_system.aspx (last visited Dec. 8, 2008).

- 2. Educate.** Learn about the proposed TDR program for your community. This may involve keeping abreast of local news coverage on the program, reading draft proposals, researching local government websites for more information, and attending public educational meetings about the proposed TDR program. For example, residents in Harford County, Maryland, became involved with their TDR planning process by reading and critiquing the county's draft proposal and presenting their concerns in a series of public meetings and workshops.¹²⁰ Due to their dedication, these residents have made a substantial impact on how the TDR program will be implemented in their county.¹²¹

- 3. Share the knowledge.** Neighborhood groups should share information on the proposed TDR program. This can be accomplished by distributing flyers, walking door-to-door, making phone calls, and holding neighborhood meetings to discuss how the neighborhood should respond to the proposed TDR program.¹²²

- 4. Designate leaders.** Because the planning and design of a TDR program can take several years, it is important for neighborhoods and community groups to designate leaders who can stay involved throughout the entire process. When asked what advice he would give to community groups interested in getting involved, Seattle City Planner Dennis Meier stated that having consistent leadership is probably the most important thing a neighborhood or community group could do.¹²³ Having the same few people attend every meeting or workshop will ensure that a neighborhood will stay on top of the TDR planning process for the long run.

120 Mary Gail Hare, *Zoning Critics Ready to Sound Off Council's Tuesday Hearing on Code Draft Expected to be Long, Lively and Crowded*, *Baltimore Sun*, September 14, 2008, available at <http://www.baltimoresun.com/news/local/harford/bal-ha.code14sep14,0,1145337.story> (last visited Dec. 8, 2008).

121 *Id.*

122 Telephone Interview with Dennis Meier, Seattle City Planning Department, (Nov. 4, 2008) (On file with Author).

123 *Id.*

5. Attend everything. The local government or planning authority will likely hold numerous open workshops and public meetings to discuss the different aspects of the TDR planning process. Because there is so much to cover, representatives from every neighborhood and community group should attend each meeting to ensure that the viewpoints from all members of the community are considered before any decisions are made.¹²⁴

6. Arrange neighborhood visits. Because city planners in charge of the technical aspects of the TDR program may not be familiar with the areas that they plan for, it may be appropriate to plan a neighborhood visit and meeting for the planners.¹²⁵ This will foster open channels of communication between the planners and the community members regarding the goals of the neighborhood.

7. Consider expert consultants. After the initial stages of the TDR planning process, the local government or planning authority may request draft proposals from the community itself. In the creation of Seattle's TDR program, for example, numerous community and interest groups hired consultants to help draft proposals for the TDR program.¹²⁶ Some experts may be willing to give some advice for free, so it is important to investigate resources.

8. Strategize. Residents of a sending area should consider what lands, views, or buildings are most important to the community and request that those be preserved through the TDR program. Residents of potential receiving areas should consider how development can be used to improve the neighborhood. For example, in Seattle's International District, a neighborhood being considered as a future receiving area for upcoming TDR legislation, community groups have advocated equitable development to ensure that the increase in density will not

lead to gentrification of the neighborhood.¹²⁷ To accomplish this goal, these groups have submitted a proposal requesting that one third of all new development be dedicated to low-income housing in the district.¹²⁸

These are just a few general ways neighborhoods and community groups can get involved with the planning and design of their community's TDR program. A local planning office may be a source of more specific information.

VI. Conclusion

If considering whether to adopt a TDR program, or deciding how to shape a TDR program to meet a community's needs, the first step is to learn about TDR programs and the benefits they have to offer. This guidebook explains how TDR works and what it can accomplish for a community. It describes the benefits TDR can provide to receiving area communities, sending area landowners, developers, and the municipality itself. With this information in hand, a group can take action to shape the TDR program to reflect the goals of the community. This guidebook identifies key issues to consider in the planning process and provides guidance for making decisions to create a successful TDR program. It also provides specific steps a community group can take to ensure that a TDR program addresses the concerns of everyone who may be affected. We hope this information guides communities in creating successful TDR programs.

¹²⁴ *Id.*

¹²⁵ Telephone Interview with Ken Katahara, Interim Community Development Organization, (Nov. 21, 2008) (On file with the author).

¹²⁶ Meier Interview, *supra* note 146.

¹²⁷ Katahara Interview, *supra* note 147.

¹²⁸ *Id.*

Land Use Clinic
University of Georgia River Basin Center
110 Riverbend Road, Room 101
Athens, GA 30602-1510
(706) 583-0373 • Fax (706) 583-0612
<http://www.law.uga.edu/landuseclinic/>