

Guidebook: Transfer Development Rights

October 2003



North Logan - Cache County
Sensitive Lands and TDR Study

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Project Background

Many communities have little difficulty identifying open space, agricultural, recreational, and wildlife habitat areas that should be conserved. However, few communities have developed the full array of tools necessary to preserve these lands. While there are many tools available, only a handful are being utilized to their fullest potential to effectively preserve the lands that communities feel are essential to their identity.



Rural Farm: Wellsville, Utah

Transfer of development rights (TDR) is a preservation tool that can be used to help communities preserve the resources they feel are important. In many instances these are sensitive lands such as hillsides, or wetlands. In other instances, prime farmlands, or historic structures are preserved. The

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wide variety of uses of TDR is due to the flexibility of the tool. Because TDR is flexible, a program can be tailored to fit nearly every community's needs for preservation.

This guidebook provides a framework for those who desire to explore the feasibility of a TDR program in their community. It is important to note that while TDR is an effective tool, it only works when it is structured to fit the specific needs of a community. Some TDR programs have failed to fulfill the land preservation goals of the community due to inadequate research and preparation. However, when a TDR program works properly, the community meets its preservation goals. Those selling development rights receive fair compensation, and those purchasing development rights receive greater development profit.

Project Team

Quality Growth Commission

This project was made possible by a grant from the State of Utah Quality Growth Commission.

Governor's Office of Planning & Budget

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This project has been partially funded by North Logan City. North Logan's portion of the project has been coordinated by the City Planning & Economic Development Director, Cordell Batt.



Rural Farm: Near Nibley, Cache County, Utah

Cache County-Countywide Planning

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A portion of this project has been funded by Cache County. Oversight for the County's portion of the project has been provided by Mark Teuscher, Countywide Planner.

Advisory Committee

The project advisory committee worked with the community as well as the consultants to determine the proper course of action for the project. Additionally, the committee worked with the community, neighbors and other residents involved with the process of creating and adopting a TDR program. As public participation is crucial, the advisory board is an important portion of the overall effort to being a TDR program. Both North Logan City and Cache County have an advisory committee.

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Planner, assisted with development of TDR Scenarios and guidebook development.

Portions of “*Saved by Development*” and “*Beyond Takings and Givings*,” books written by Rick Pruetz, AICP, have been utilized in the creation of this document.

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Envision Utah is a partnership of citizens, business leaders and policy-makers, working together to create a strategy that will preserve critical lands, promote water conservation and clean air, improve our region-wide transportation system, and provide housing options for all residents.

Envision Utah, although not a member of the TDR consultant team, was heavily involved with helping North Logan City facilitate the update of its General Plan. Dated March 2003, the *North Logan Community Vision*, outlines the General Plan update process. The proposed North Logan City TDR program is based on data generated from the General Plan update. Additionally, Envision Utah provided charts, graphics, and photos for this document.

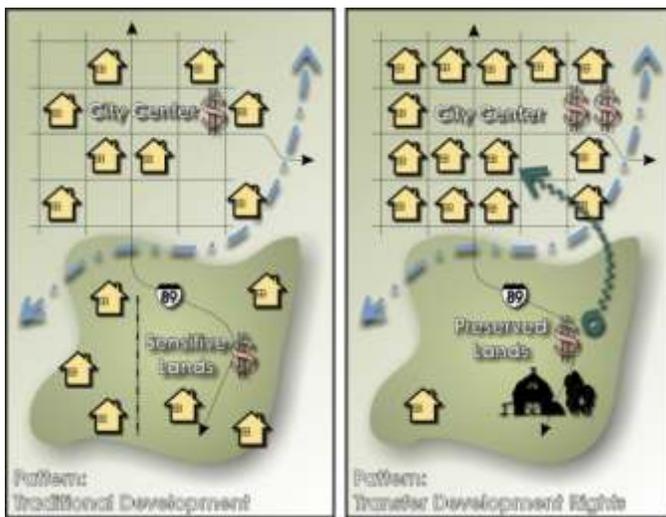
Mechanism of TDR

What is TDR?

Although the details of a transfer of development rights (TDR) program are relatively complex because of the wide variety of programs in existence, conceptually the transfer of TDRs is fairly straight forward. Developers *have the option* to buy development rights to increase the intensity of development at a location deemed appropriate by the community. These rights are purchased from the owners of property at another location who *opt* to not develop their land. Community-important sensitive lands, farmland, historic landmarks, and other valuable assets are preserved through an easement or other legal restriction on the land.

their land against future development and selling only their development rights. If they choose not to participate they can continue to use it as they have historically (farming, for example) or they may choose to develop their land. While there are different ways to deed restrict the land, TDR is an additional option that allows landowners to retain their land, potentially continue to use it as they have historically, and earn a portion of the income they would have received if the land had been developed.

Development rights are purchased by owners or developers of receiving sites. Receiving sites are designated by the community as locations where future growth is deemed appropriate. These sites are typically near existing development that is already served by utilities, transportation corridors, etc. By purchasing development rights, receiving site owners get a density bonus that allows development beyond a baseline density specified in the zoning ordinance. The developer can earn a larger profit in doing so, despite the added cost of purchasing development rights.



*Conceptual Diagram:
Transfer development rights*

Basic Mechanism:

A voluntary TDR Program is typically developed when a community identifies an area worthy of preservation. Owners of these lands are given the *option* to participate in the TDR program by deed restricting

While TDR is commonly used to preserve farmland, it can also be used for many other purposes. A complete discussion of the components of a TDR program and what it can be used for is found on subsequent pages.

Components of TDR

The following pages explain basic components found in many TDR programs. While the steps involved in creating these components are described in subsequent pages, it is important to understand which elements are found in most programs, and how these elements function.

Development Rights

Property ownership has been compared to “a bundle of sticks” where each “stick” represents a different right that comes with owning land. For example, some land may



Rural farm: Wellsville, Utah

have a “stick” that represents water rights, or a “stick” that represents the right to lease the property. Development rights are simply another “stick” in the “bundle” of rights associated with property.

The number of development rights available on a parcel is determined by the community’s land use regulations. Simply multiply the number of acres by the number of units allowed to be constructed per acre (designated in the zoning code.) In many instances

land unbuildable due to slope, wetland, or other restraints, is subtracted from the total acreage before the calculation takes place. Once the number of development rights is determined (yield), an owner in a designated sending zone can choose to sell those rights if so desired. (Additional methods of determining TDR allocation are described further in this document.)

Deed Restrictions

If a land owner decides to sell development rights, or one of the “sticks from the bundle,” that stick can no longer be sold in the future. To ensure that a property owner cannot sell the “stick” more than once, a deed restriction is recorded on the parcel within the sending zone giving notice that the development right is no longer available on the parcel.

The deed restriction is typically an easement of some type. It may be an agricultural easement, or an open space easement, depending on the preservation goals of the community. Additionally, an easement also typically describes the uses allowed on the property. While it is clear that development is not allowed, it does need to be clarified what uses are considered appropriate for the land (should match the preservation goals of the community). For example, an open space easement may allow the construction of trails, an interpretive center, or other features that would allow the land to be utilized as open space.



The goal of most communities is for the deed restriction, or easement, to become permanent. Since land preservation goals of a community can change in the political environment surrounding elections, many TDR programs require that the deed restriction be held by a third party organization, other than a government agency or the original landowner. This third party often is a non-profit organization such as a land trust.

A deed restriction can be reversed, but only if all parties involved agree to the change in designation. For instance, if a landowner decides that preservation of the land is no longer appropriate, the community would also have to agree to this decision. Additionally, if the deed restriction is held by a third party, it would need to agree to extinguish the easement so development would then be allowed. Extinguishing an easement would in many instances represent the mechanism of repurchasing the development rights of a parcel of land. While this is an option that can take place, it is rare that a conservation easement is removed if held by a third party organization.

Convey Title

Some communities go beyond deed restriction to meet land preservation goals. In some instances, stronger preservation can occur if the land is no longer held and used by the original landowner. In this instance greater compensation to the landowner is required as all the rights to the property are foregone. Some communities choose to purchase property outright to achieve this goal. However, it is more cost effective for

communities to provide additional compensation to a landowner for conveying the title to the property, along with the development rights.

TDR Market

Many who hold land in a sending or receiving zone may not see the benefit of opting to use a TDR program. In fact, many view such programs with skepticism. This can be expected with any new program. The key to making a TDR program successful, is to ensure that it provides a benefit to landowners if TDR is utilized. This is done by building a program based on market conditions of the area. A TDR program will only function if there is a willing buyer and a willing seller. When a community adopts a TDR program it is merely setting conditions in which a free market for the trading of development rights can exist.

It is important to keep in mind however, that even if a market exists to transfer development rights, a land owner is not obligated to do so. TDR is merely an additional option available. This type of transaction can be compared to the buying and selling of water rights. When property is purchased, water rights may be described as part of the transaction. If a landowner chooses to sell their water rights to others, the price of the water right is negotiated between the buyer and seller. This is the same process that takes place when development rights are bought and sold.

Incentives

TDR programs typically offer incentives to encourage landowners to take part in the program. While

participation remains optional, an incentive program tends to make TDR's more enticing. A typical Incentive in a sending zone grants a landowner a more favorable transfer ratio (the ability to sell more development rights than are allowed to be built.) Landowners in receiving zones are encouraged to purchase development rights by granting density bonuses, that is they are allowed to build at a higher density than they otherwise could.



Rural Countryside: Near Mendon, Cache County, Utah

Transfer Ratio

The TDR transfer ratio is set when a TDR program is developed. The TDR ordinance defines how many development rights can be sold in comparison to how many can be built by right. A one-to-one ratio describes the situation when a landowner is allowed to sell the same number of development rights as is allowed to be constructed.

In some instances, a one-to-one ratio will not provide sufficient compensation to induce potential

landowners to participate. In this instance, a higher ratio is set. In other situations, a one-to-one ratio is adequate to encourage participation in the program. However, a community may encourage a higher level of participation by allowing a higher transfer ratio.

There are a number of ways to restrict development on a piece of property. It may be helpful to discuss the different deed restrictions by level of preservation. Listed below are preservation options on, for example, existing farmland near a trail head:

- 1-*Deed restriction* (Landowner continues to farm land)
- 2-*Deed restriction with public easement* (Farming continues, public can cross property to access trail head)
- 3-*Convey title* (A local land trust takes ownership, provides public access, leases land back to farmer)

In this situation, a landowner may be encouraged to meet a higher preservation goal, such as conveying title to a land trust, by providing a more favorable transfer ratio. For example:

- 1-A **one to one** ratio may be provided for placing a deed restriction on the land.
- 2-A **two to one** ratio may be granted for allowing public access.
- 3-A **three to one** ratio may be granted if the title is conveyed; that is, the owner is allowed to sell three development rights for every one that is allowed to be built.

The exact ratios for these types of incentives must be determined by



each community. They should be based on the areas market conditions and set to encourage participation. Careful study should take place to ensure that ratios are set correctly. A ratio set too high could glut the market with development rights, or require more high density development in receiving zones than the community is willing to accept.

Bonus Densities

When developers or landowners who hold property in a receiving zone purchase development rights, they are granted a density bonus. This density, many times described as a percentage, allows a developer to increase the density beyond the threshold that is allowed without TDR.

The community must determine how much additional density it will allow in a receiving zone. While the bonus density should take into consideration market conditions, the community must also strive to ensure that the resulting development is compatible with the surrounding community. In fact, many communities require developers to follow a different set of design guidelines better suited to higher intensity development. Alternative design guidelines to be applied in the case of the purchase of TDR's should be considered as part of a TDR program.

TDR Banks

Some communities have chosen to implement a TDR bank. A bank becomes a willing buyer when a landowner wants to take part in the preservation program and a willing buyer cannot be found. The bank,

which can be administered by a community or a third party (such as a land trust), agrees to purchase the development rights in order to meet the preservation goals of the community. The price for this transaction is negotiated.

TDR banks can also be useful in the instance when a willing TDR seller cannot be found. The TDR bank may sell its development rights that have been previously purchased. Although the purchase price for development rights from a bank is usually negotiable, sometimes the price is set by legislation. This takes place when the community administering the TDR bank wishes to ensure that the development rights are not sold at a loss. In many cases this is essential when public funds have been used to fund the bank.

Some TDR programs, like that of Laramie County, Colorado, allow developers to pay an in lieu charge instead of actually securing TDRs. Under this approach, the municipality can use the proceeds from the in lieu charge to acquire TDRs after the receiving site project has been approved.

A TDR bank requires additional administrative effort from a community. Additionally, tax dollars may be needed to provide the start up funds for the bank. However, these efforts can create the additional incentive needed for transactions to take place. As development rights are traded as a commodity, landowners may find it easier to approach a TDR bank rather than dealing with another

landowner. Additionally, the TDR bank may make it easier for a willing seller to locate a willing buyer.

It is possible, in the instance that a transaction is proposed in a poor TDR market, that TDRs would be required to be sold at a loss. This is a potential draw-back for a tax supported TDR program, but in many instances is a necessary step (as all incentive programs are) to ensure that



Public workshop: North Logan City general plan update.

preservation occurs even when conditions for transactions to occur are poor. In essence, TDR banks can moderate the TDR market and help to ensure that favorable conditions are almost always available.

Related Land-Use Tools

Transfer development rights (TDR) is only one tool available for land preservation. There are many others that are useful, and in fact have been used for many years in a number of communities. While TDR provides a number of unique features, TDR should not be used exclusively as a way to meet all land use preservation goals. Simply, TDR should be used as one of many strategies.



Rural Farm near Mendon: Cache County, Utah.

A solid comprehensive plan is critical for meeting preservation goals. While subsequent pages discuss how a TDR program should be structured to fit with other preservation techniques, this section discusses some similar preservation tools and offers communities an opportunity to compare and contrast TDR with other preservation programs. In many cases, the combination of some of these programs may reach the effectiveness of TDR by increasing options, and allowing greater flexibility.

Traditional Development/Zoning

Traditional zoning is the most common way of implementing a community's land use goals. While zoning can be changed at virtually any time, its ease of understanding and general acceptance makes it a useful tool. In fact, even TDR programs make use of traditional zoning to help with the implementation of sending and receiving zones.

The downside to preservation zoning is two-fold. First, landowners have no option to realize the development potential of the property (unlike in a TDR situation.) As such, there may be tremendous pressure, the second downside, for communities to rezone land. Rezoning land from preservation or agricultural use to allow development is common. Many communities see new development as a way to increase tax base. This, coupled with the goal of the landowner to profit from the use of the land can quickly pressure a community to allow a zoning change.

Realizing that open space is important, many communities have used large lot rural zoning to retain open space, while allowing development. However, unlike historic farming communities that may have utilized large lots for barns, equipment, etc., modern developments have little rural character. For example, many large lots are too large to be completely landscaped and too small to be farmed. Portions of the lots become

unattended, unsightly, and unusable as open space. Many communities find that it wasn't the large lots of historic communities that built rural character, but rather it was the vast open lands surrounding a community.

Advantages:

- *Commonly used*
- *Generally accepted*
- *Easy to understand*

Disadvantages:

- *Development limited to what is allowed by code, limits creativity*
- *Development potential is not realized by landowners in preservation zones*
- *Zoning can be easily changed*

tracts of land. For example, in the situation of large lot zoning addressed above, clustering can allow the unattended portions of lots to be consolidated in large tracts of usable open space that can be properly maintained. TDR is very similar to that of clustering; however, TDR allows clustering to take place between different landowners and non-contiguous parcels.

Clustering takes place when the allowed buildable units on a parcel (or contiguous parcels of a single owner) are built at a higher intensity on a portion of the property. While the development is constructed at a higher density, the overall density of the parcel remains the same (although in some instances a density bonus is granted in return for open space). The quantity of land that traditionally would have been needed to construct the development is not used. The saved land is left as open space, and may include farmlands, wetlands, etc.

The difficulty with cluster developments comes into play when small parcels are developed. In these instances, only small amounts of open space are preserved. Typically when this occurs, the open space is not contiguous, and becomes unrecognizable/unusable as open space. This is especially true when the remaining land is functioning farmland. While farming is difficult in non-contiguous parcels, a larger problem can be nuisance complaints against farmers from neighboring residents.

Summary: Traditional Zoning
Graphic by Envision Utah



<i>Permanent Protection:</i>	<i>NO</i>
<i>Fair to Landowner:</i>	<i>MAYBE</i>
<i>Low Cost:</i>	<i>YES</i>
<i>Achieves Comprehensive Land Use Goals:</i>	<i>NO</i>

Cluster/Conservation Developments

Many communities have adopted clustering ordinances in an effort to preserve open space. New development utilizing this technique, sometimes called conservation development, can effectively preserve, with some exceptions, large

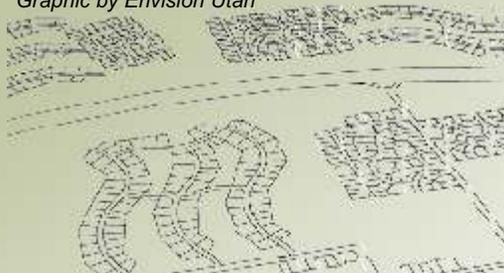
Advantages:

- *Allows consolidation of unattended portions of lots to be consolidated into open space*
- *Can preserve large tracts of land*
- *Creative design is encouraged*
- *Tax revenues are not lost*

Disadvantages:

- *Can result in a patch work of non-contiguous open space*

Summary: Clustering
 Graphic by Envision Utah



<i>Permanent Protection:</i>	<i>YES</i>
<i>Fair to Landowner:</i>	<i>YES</i>
<i>Low Cost:</i>	<i>YES</i>
<i>Achieves Comprehensive Land Use Goals:</i>	<i>MAYBE</i>

Examples:
Boulder County, Colorado
Collier County, Florida

See Appendix D for Contact Info

rights of that property, such as when purchasing property for parks, schools, etc. In a preservation scenario, a community may purchase property and place it in an open space zone. While this can be effective in the short term, zoning on the property could be changed in the future, and land can be sold. As such, purchasing property for preservation may not be an effective tool without the use of other strategies. To be most effective, a deed restriction should be placed and held by a third party organization, such as a land trust.

Alternatively, a community may not be interested in owning all the rights to a parcel, and may purchase just the development rights. The resulting deed restriction meets the preservation goals. Purchase of development rights (PDR) is much less expensive for a community, as only development rights are purchased. Much like a TDR transaction, the land owner retains the right to use the land as detailed in the deed-restriction or easement; for example, a farmer continues to farm the land.

In most PDR acquisition programs, the development rights are held by the community, and are not transferred or sold. As development rights are not sold, the community, usually through its general fund, must bear the cost of purchasing and holding these development rights in perpetuity. This type of program (ongoing tax revenue used to purchase land or development rights) is typically expensive, and may not survive as other community goals such as education and public safety compete for funds.

Acquisition Programs

Many communities have programs that purchase property or development rights to meet preservation goals. In many instances these programs are funded by impact fees, or the collection of taxes. In its simplest form, a community may purchase property in fee simple so that it can enjoy all the

A secondary financial loss to a community beyond the use of tax revenue to purchase property is that lands that are not developed will not generate new tax dollars. The goal to generate revenue in a community may pressure a community to sell purchased lands, or use them for necessary civic uses, instead of holding them for preservation. However, if development rights are sold, instead of land, revenue can return to the community.

Advantages:

- *Outright purchase gives community all rights to the property*
- *Landowners are fairly compensated*

Disadvantages:

- *Expensive to purchase property*
- *Development rights remain on the property*
- *Use/Loss of tax revenue*

Summary: Acquisition Programs

<i>Permanent Protection:</i>	<i>YES</i>
<i>Fair to Landowner:</i>	<i>YES</i>
<i>Low Cost:</i>	<i>NO</i>
<i>Achieves Comprehensive Land Use Goals:</i>	<i>NO</i>

Examples:
Sonoma County, California
Suffolk County, New York

See Appendix D for Contact Info

Mandatory Development Requirements

Another option that is used in many communities is the collection of impact fees, and the use of mandatory development requirements. In these instances, funds are collected from a developer, or a developer is required to build to certain requirements to meet preservation goals. This can be a useful tool for creating neighborhood park space, saving nearby wetlands, woodland, etc. Many communities also use this method for street and utility improvements. Land preserved with this tool typically results in permanent preservation, especially if deed restrictions are placed on the land.

However, there are limitations to the amount of preservation that can be accomplished in these scenarios. The U.S. Supreme Court has ruled that dedications and fees must have a nexus and be roughly proportional to the demand created by the proposed development. As such, while some preservation goals may be met, community wide goals may not be feasible without the use of additional tools.

Summary: Dev. Requirements

<i>Permanent Protection:</i>	<i>MAYBE</i>
<i>Fair to Landowner:</i>	<i>YES</i>
<i>Low Cost:</i>	<i>YES</i>
<i>Achieves Comprehensive Land Use Goals:</i>	<i>MAYBE</i>

Examples:
Davis, California
Livermore, California

See Appendix D for Contact Info

Advantages:

- *Useful for meeting site specific preservation goals*

Disadvantages:

- *Regional preservation goals difficult to meet*

Transfer Development Rights

There are generally two categories of TDR programs. Both provide options to landowners if they choose to participate. In both instances, the goal of the program should be meeting the community's preservation goals.

More Restrictive Programs:

Although highly restrictive programs (sometimes referred to as mandatory programs) are not prevalent, they are useful in certain situations. These programs are typically implemented when the underlying zoning requirements are very restrictive. The addition of a TDR program allows a landowner to achieve compensation in situations where development is severely limited.

Since the TDR program becomes the best option for a landowner to receive compensation, it is essential that a community ensures that a market for TDR exists. To do so, many communities have instituted TDR banks that can purchase development rights if a willing buyer cannot be found. These banks are often originally funded by the local community, making the start up cost of the TDR programs potentially high. However, revenues can be generated as the TDR bank sells development rights in the future, potentially at a profit.

Less Restrictive Programs:

The majority of TDR programs, including cluster & conservation development ordinances, are enacted to provide landowners additional options for the use of their land. Participation is encouraged through incentives rather than highly restrictive zoning. For this reason, these programs are sometimes called voluntary programs. However, it should be noted that all TDR programs are essentially voluntary.

Summary: TDR

Graphic by Envision Utah



More Restrictive:

<i>Permanent Protection:</i>	<i>YES</i>
<i>Fair to Landowner:</i>	<i>MAYBE</i>
<i>Low Cost:</i>	<i>NO</i>
<i>Achieves Comprehensive Land Use Goals:</i>	<i>YES</i>

Examples:

*Tahoe Regional Planning Agency, California/Nevada
Dade County, Florida*

Less Restrictive:

<i>Permanent Protection:</i>	<i>YES</i>
<i>Fair to Landowner:</i>	<i>YES</i>
<i>Low Cost:</i>	<i>YES</i>
<i>Achieves Comprehensive Land Use Goals:</i>	<i>MAYBE</i>

Examples:

*Calvert County, Maryland
San Luis Obispo County, California*

See Appendix D for Contact Info

As a transfer only takes place if there is a willing buyer and seller, a TDR bank is not as important (although a valid option) as it is in a highly restrictive program. With no TDR bank, the TDR program could cost a community less to implement, although there is no assurance that land preservation goals will be met. This is because low restriction programs are merely incentives for landowners to preserve their lands, whereas highly restrictive programs become the only alternative to preservation.

Advantages:

- *Allows for permanent protection*
- *Allows regional preservation goals to be met*
- *Doesn't require ongoing use of tax dollars for purchasing*
- *Land owners can realize development potential*

Disadvantages:

- *Added complexity to development*
- *Preservation only realized if landowners participate (less restrictive only)*

Combined Approach

While all the above tools may fall short in meeting all preservation goals, a combination of a few or all of them can be very effective. A solid comprehensive plan is the most effective way to accomplish preservation goals, and essential if TDR is expected to work. The goal would be to have other tools available in case potential TDR participants cannot work out a favorable deal.

Example of Combined Approach

Existing Zoning

A community, having the desire to maintain rural character in its community has zoned the majority of the city for one acre lots. In conjunction with this zone, there is an optional cluster or conservation ordinance that developers can utilize to increase the density of the development. In exchange for 25% open space, developers are allowed to construct 30,000 sq ft lots. For example, instead of eight units on eight acres, they could build nine units on six acres (approximately 30,000 sq. ft. lots with two acres preserved). This scenario allows the city to save a few acres of farmland for every development constructed utilizing the cluster ordinance.

Results from existing zoning

However, as time goes by, although much open space is preserved through the cluster program, the open space is scattered throughout the community. The patches are too small to farm effectively, and begin to sit as vacant weed patches. Although the cluster ordinance works effectively and is popular with developers, the remaining open space is not conserving rural character as intended. Realizing that the existing cluster ordinance is not preserving large tracts of farmland, a TDR ordinance is adopted. Large areas of the community that still contain contiguous expanses of farmland (also one acre zoning) are designated sending zones. Areas within the city that were previously being developed using existing zoning and cluster ordinances are designated as receiving zones.

TDR Ordinance

Now, a developer, owning eight acres of land in a receiving zone, has an additional option. As before, the cluster ordinance can be used to gain a slight increase in density. However, an additional density bonus is granted in exchange for purchasing development rights. Now, instead of eight units on eight acres (traditional one acre zoning), or nine units on six acres (cluster ordinance), a developer, after purchasing 8 development rights, can build sixteen units on eight acres (21,000 sq ft lots).

Potential Results

Depending on the transfer ratio, a significant amount of contiguous land is preserved in the sending area. If a one to one ratio is in place, eight acres will be saved by the purchase of eight development rights. If there is a two to one ratio, four acres will be saved. Even if the transfer ratio dropped all the way to four, two acres of open space would be preserved. Although the cluster ordinance would have saved two acres, these acres would not have been located in the sending area where contiguous usable open space is desired.

Combined Approach Summary:

Based on a hypothetical eight acre development in an area zoned one unit per acre. Preservation goal: Save rural character through saving farmland.

Traditional Zoning:

*1 unit per acre allowed
8 units on 8 acres
1 unit per acre
No open space*

Cluster Ordinance

*If 25% open space preserved, 30,000 sq. ft. units allowed
9 units of 6 acres
1.4 units per acre
2 acres open space (25%)*

TDR Ordinance

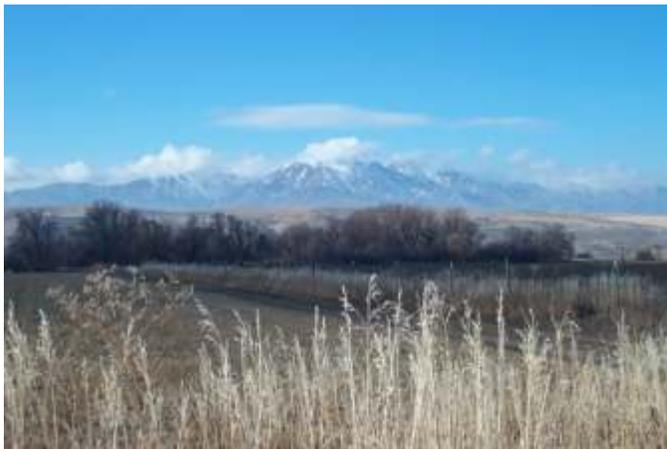
*1 additional unit allowed per acre for each development right purchased
16 units on 8 acres
2 units per acre
2-8 acres preserved in sending area (prime farmland) depending on transfer ratio.*

Base zoning in the receiving zone would have allowed one unit per acre. The cluster ordinance, if utilized, would have allowed approximately 1.4 units per acre. The TDR ordinance, if utilized, would have resulted in a development with a density of 2 units per acre. So, although density has increased, the overall density of the receiving area is still quite low.

TDR Advantages

Potential uses of a TDR Program:

Transfer of development rights (TDR) programs can be used to meet the objectives of a number of different preservation goals. In fact, while many programs have been used to preserve farmland or open space, one of the first programs in existence was developed to save the historic Grand Central Station in New York City. Yet, while TDR is a very flexible tool, the majority of existing programs have been developed around a few key goals. These are listed here.



Rural Farm: Near Paradise, Cache County, Utah

Environmental Areas:

The majority of programs around the county are considered to have environmental protection as their primary goal. Although most specify the type of protection the program is designed to protect, some simply are in place to provide economic relief to owners of properties with development restrictions imposed for the purpose of preserving environmentally sensitive lands. While this is a feasible option, in many communities it makes more sense to

specify for what purpose the TDR program has been developed. This will ensure that the primary preservation goals in the community are addressed.

There are many environmental TDR programs that specify for what purpose the program has been developed. These specific purposes include the preservation of coastal areas, groundwater, hillsides, mineral resources, scenic views, water quality, wetlands, wildlife habitat and environmental resources threatened by the existence of substandard lots in antiquated subdivisions. In addition, some TDR programs give equal weight to environmental protection as well as at least one other goal such as the preservation of farmland, historic landmarks, open space or rural character.

Farmland/Rural Character

Many programs exist for the primary goal of preserving farmlands. In many communities, agriculture is a large part of the local economy. Additionally, farmland often creates the rural atmosphere (quality of life) and provides the wildlife habitat that makes an area so desirable. Rural character also includes the preservation of key view sheds that contribute to the character of an area.

Historic Landmarks

Many communities around the county have implemented TDR programs to save historic landmarks. In many communities, land values have made the removal of historic landmarks for

new developments economically profitable. A TDR program can allow a developer to gain the economic benefit of the development rights in other areas while saving the historic structure.

Recreation

Many times environmentally sensitive areas are preserved for the additional benefit of recreational opportunities. Communities value trail systems, golf

Program Examples:

Environmental:

Palm Beach County, Florida

Malibu, California

Farmland/Rural Character:

Montgomery County, Maryland

New Jersey Pinelands, New Jersey

Historic Landmarks:

San Francisco, California

New York, New York

Recreation:

King County, Washington

Redmond, Washington

Urban Design/Infrastructure:

Cupertino, California

Washington, DC

See Appendix D for Contact Info

courses, and other outdoor activities. In many instances, lands best suited for recreation are also best suited for development, such as foothills and waterfronts. TDR programs can assist communities in maintaining public access to important areas.

Urban Design/Infrastructure

In many communities, new developments have become costly to provide services for. This may be because they are a large distance

from existing services, or require specialized equipment that is more expensive to maintain. Many communities are using TDR programs to guide new development to areas that don't require expensive infrastructure upgrades. Similarly, these programs can encourage new developments around transit stations and in redevelopment areas. These strategies save communities money that may translate into lower taxes.

Additional benefits

It has already been discussed that community land preservation goals can be met by the use of TDR. There are however, a number of other benefits that can come out of the implementation of a TDR program. Many TDR programs guide development from sensitive areas to areas of existing development. Although many new developments may require impact fees for service upgrades, an increase in taxes may be necessary to provide service to new developments long into the future. This is especially true if the new development is a large distance from existing services. Public revenue spent on new developments can be minimized if the development is guided properly. All residents benefit when new development is located and constructed properly. Many communities use this approach to increase development opportunities around transit stations, making transit more accessible to those who need it.

Local Examples

Transfer of development rights (TDR) programs from across the county have been used to generate much of the TDR background in this document. Many of these programs have been functioning successfully for a number of years. However, details of these programs have not been specifically referenced in this guidebook as each community must design a program to meet its specific needs. While each TDR program is slightly different from another, it is useful to study programs that have been implemented in similar environments, such as Utah and the inter-mountain west.

Mapleton, Utah

For Contact information, see Appendix D

The small town of Mapleton, located just south of Provo in Utah County, has had a TDR program in place since 1998. The primary preservation goal of this program is to preserve the foothills east of the community. These foothills provide rural character, wildlife habitat and access to recreational lands.

An extensive public process was used to design the program that is in place today. As of spring of 2003, a number of landowners have used the program to transfer development rights from the foothills to other portions of the city. The transfer ratio is variable depending on how the deed restriction on the sending property is handled, but can range depending on how the land is protected.

To date, approximately 100 acres have been preserved.

West Valley City, Utah

For Contact information, see Appendix D

West Valley City, the second largest community in Utah, has implemented a TDR program to meet the following goals:

- Promote development in appropriate areas
- Encourage preservation of open space, wetlands, and other habitat
- Establish a parks and trails system
- Discourage development of sensitive lands

Sending sites in this program are set with overlay sending zones. Transfer ratios have been set to provide incentive to sending zone landowners. A more favorable transfer ratio is granted to those who dedicate water rights to the City.

To ensure quality development in receiving zones, several design criteria including architectural design standards have been implemented. Additionally, no development can exceed 15 units per acre without approval by the City Council.

To date approximately 25 acres have been preserved in completed and pending transactions.

Summit County, Utah

For Contact information, see Appendix D

Summit County, desiring to preserve land in the Snyderville Basin area, allows density bonus incentives to developers who voluntarily provide



additional community benefits such as affordable housing, public facilities, environmental enhancements and open space. Additionally, developers may choose to offer cash in lieu of actual participation. In this scenario, the County uses the cash as part of its density transfer program.

This TDR plan, additionally, has been designed to allow maximum densities to be adjusted in village and resort center planning districts. This strategy has been particularly useful in this resort community.

To implement the plan, the County formed a TDR committee to review criteria for proposed TDR projects. Although little activity has taken place since this committee was formed, a number of transfers have been approved through individual development agreements. For example, at The Canyons Ski Resort, density bonuses were granted in return for open space preservation.

Program Features

The basic features that must be present for a transfer development rights (TDR) program to succeed are listed below. While these are not specific program elements, they should be considered as part of any discussion that explores starting a TDR program in a community.

Ease of Understanding

Perhaps the most important element of a successful TDR program is the ability for it to be understood by the community. While it is obvious that a local planning staff needs to be able to administer the program, in many



*Community Participation:
North Logan City General Plan Update*

instances, the program is too confusing for those who may participate in the program. The goal of a successful program is that it can be effectively understood, and easy to use.

Ease of understanding should extend to the broader public, not just landowners. A TDR program may not ever be adopted if there isn't a public recognition of community assets. In

short, the community must understand the need for the TDR program, and be able to understand how the program works to ensure success.

Managed Growth

Most communities have a zoning ordinance that regulates land use. Many also make use of cluster or conservation development ordinances. Some communities purchase land or development rights through the collection of taxes or impact fees. Each of these tools has advantages and disadvantages associated with implementation.

The goal would be to have a variety of tools available to be used in meeting a wide variety of goals, as well as solving a wide variety of problems. While TDR is more flexible than some tools, it is not flexible enough to meet the needs of every community's preservation goals.

For a TDR program to work properly, the community must ensure that the existing development code is coordinated to fit the new program. Simply adopting a TDR ordinance may result in conflicts with existing code. TDR programs work best when the general plan and development code has been designed to work with the program. Some communities have opted to update their general plan as part of the TDR adoption process. This allows the community not only to integrate the TDR ordinance, but allows a comprehensive look at preservation goals in the community.



Adequate Incentives

A TDR program will not function properly if landowners do not feel it is in their best interest to participate. Incentives, such as increased transfer ratios and bonus densities (also discussed previously as an important component in a TDR program) may need to be considered. The purpose of including incentives is to help create the market, or enhance the market, that makes transferring development rights possible. As TDR works in a free-market system, that is, a transaction is negotiated between a willing buyer and willing seller. Incentives can help make a transaction more profitable, and thus increase the likelihood that TDR will be used as an effective preservation tool.

Careful Management

Certainly any program administered by a community needs to be managed properly. And like other programs, it may need to be refined and updated as conditions change. Although updating the program is important, the most important part of making a program successful is to ensure that participating is “fast, easy, and certain.”

TDR programs, as noted earlier, should be easy to understand, and administered properly to ensure the process of transferring development rights can move as quickly as possible. If there is a likelihood that a potential transfer could get bogged down in red-tape, potential participants may choose to simply go through the usual process of developing their land. TDR, if much

simpler, can become a valid alternative to development if fair compensation is available.

When a participant decides to utilize a TDR program, there should be no questions as to if it will work effectively. If it appears that the goals of a landowner will be met through TDR, great care should be taken to ensure that the program will function as expected, and will meet the goals of the buyer, seller, and community.

It should also be noted that not all TDR programs will be easy to administer. Some programs, for example, may have a TDR bank that will require additional staff support. Communities should ensure that they can manage a program effectively before they adopt it. Most programs will require the community to track TDRs in some way. For example, some communities issue certificates to TDR holders, much the same way that stock certificates are issued to stock holders. This type of program will take some administrative work by the community.

Program Steps

Creating a transfer development rights (TDR) program can be a complicated process. In some instances, a community may be able to create a TDR program by simply inserting a few paragraphs into the existing zoning ordinance. However, a much more rigorous process will be needed to ensure that the program will succeed, and that it will be accepted by local residents and officials.

Step One: Establish Advisory Board

If a community is considering a TDR program, it is assumed that there is a need, or at least a perceived need, for additional help in meeting preservation goals. If this is the case, the first step, and perhaps the most important step, is to establish a citizens advisory board. A TDR program will never be effective if there is not broad support from those who will use, and benefit from the program. Existing committees such as a planning or landmarks commission could be used as an advisory committee, but it is important to



*Community Participation:
North Logan City General Plan Update*

Steps at a glance:

Step One:

Establish Advisory Board

Step Two:

Public Participation

Step Three:

Develop Preservation Plan

Step Four:

Develop TDR Scenarios

Step Five:

Study Scenario Feasibility

Step Six:

Develop Program Details

Step Seven:

Implementation

Step Eight:

Refine Program

include stakeholders from all aspects of the community. Landowners in potential sending and receiving zones, developers, real estate professionals, community activists, etc., should all have a hand in building a TDR program. The goal is to have all stakeholders have an opportunity to voice concerns, offer solutions, and learn about the potential opportunities of a TDR program. In this fashion a program can be established that meets the preservation goals of a community.

Step Two: Public Participation

It is very important that the public be involved throughout the TDR process. A presentation of each step in the process, such as after the scenarios in Step Four are established, should take place perhaps as an open house format. This will allow those directly affected by the proposed program to



comment. Residents, landowners, business owners, council and commission members, etc. should all be encouraged to comment on the progress to date. If necessary, the advisory board should re-work elements of the plan to avoid project-ending errors. It is essential that the proposed program not move forward and have it become based on flawed analysis, or improperly made decisions. If a program becomes politically unpopular, it will most likely never be adopted.

Step Three:

Develop Preservation Plan

Before a TDR program can be established, it is important that the preservation goals of a community are identified. A preservation plan, often times a sensitive lands plan in the case of land preservation, must be developed that sets and prioritizes preservation goals. Regardless of whether the goal is the preservation of a historic structure or a wetlands area, it must be clear what the goals of the TDR program will be.

Preservation Areas:

Many communities already have some form of preservation planning as part of their city wide general or master plan. These typically are used in conjunction with subdivision ordinances to help determine areas that are not suitable for development, such as steep slopes, or wetlands. Additionally, communities typically have available current land use maps, zoning and ownership maps, etc. This information, if not available, should be compiled as part of the creation of a formal preservation plan.

Receiving Areas:

The second element of a preservation plan determines where to locate development that is transferred from preservation areas. Receiving zones should be coordinated with public sentiment, infrastructure plans and site design standards. Development near existing utilities can decrease development expense, and decrease the cost to provide services to new developments. Additionally, site design standards will be an important part of ensuring that new developments are built appropriately and adequately integrate additional units into the overall design.

Community preservation goals, although primarily based on public comment, should take into consideration environmental and geologic concerns, if any. For example, steep slopes, flood-plains, ground water recharge areas, etc. It may be important to limit development in these areas for health, safety and welfare reasons, even if public comment does not identify the area for preservation. Additionally, qualified planning advice should be considered to ensure that proposed preservation plans do not have elements that could cause it to fail.

General Plan Update

An ideal way to create a preservation plan is in conjunction with an update to a community general plan. Typically community-wide land use, zoning, infrastructure, etc. are examined and updated in this process. As such, typically numerous open houses and public work sessions are made available. These meetings become

opportunities to allow all in the community to comment on future plans for the community, as well as plans for land use and other types of preservation. Even if a general plan update is not in process when a TDR advisory board is first assembled, it is important to hold community workshops to allow citizens to learn about TDR and other land use tools, as well as to gather comment as to what preservation goals in a community should be, and where higher density may be appropriate to help meet preservation goals.



Rural Countryside: Cache County, Utah

**Step Four:
Develop TDR Scenarios**

Based upon the community preservation priorities, the advisory board should establish scenarios that explore how a TDR transaction may occur in a community. These should be based on public comment, sound environmental study, and informed planning advice. The purpose of these scenarios is to study options for transferring development rights from preservation areas to receiving areas.

Preserving areas of a community, such as a sensitive hillside, often requires prioritizing values. Some in a community may want to save a hillside, but others may be reluctant to increase density in other areas of a community. Simply, there often times must be a compromise for TDR to work effectively. One way to picture TDR is to look at a community as a whole. Using existing zoning it is feasible to determine the total potential build-out of new development in a community. Much like clustering on a single parcel, TDR allows the clustering of the development units within an entire community. By allowing higher density in some areas, land can be preserved in others. If a community is not willing to increase the density in one area, it may not be able to save another from development. TDR scenarios provide a framework for understanding what value judgements must be made. Each scenario has pros and cons that must be weighed, and studied.

An example of a TDR scenario may be: “To preserve prime farmlands on the outskirts of the community, perhaps development rights could be transferred to an area near the university that is planned for student housing.”

**Step Five:
Study Scenarios Feasibility**

Before the TDR program can be implemented, the proposed scenarios should be studied for feasibility. This process may require the assistance of

real estate professionals, local developers, land use attorneys, etc.

A-Estimate value of development rights to receiving site developer.

Testing a TDR scenario involves determining if the transfer will be profitable for both the buyer and seller. In other words, how much is a receiving site developer willing to pay for a transferred development right?

B-Estimate profit to sending site owner

Is the fee that a receiving developer is willing to pay enough to fairly compensate a landowner for agreeing to transfer development rights to the receiving area?

C-Determine whether incentives are necessary

Will an incentive program, such as increased transfer ratio, provide enough profit to a buyer and/or seller to increase the success of a program? And, if so, how much incentive is needed?

Again, it is important that as program details are generated through this process, that landowners and other stakeholder are involved. The program will not be successful if those that are expected to participate in the program are not allowed the opportunity to comment and provide suggestions for improvement.

Once this analysis is complete, it may be necessary to modify the scenarios to ensure they are economically feasible. This is because TDR transfers take place in a free market system. It should be noted that while

a program should be implemented based on the best available information, it may be necessary to modify the program at a later date (see *refining program* on subsequent pages).

Step Six: Develop Program Details

The details of a TDR program will be determined based on the study of the proposed TDR scenarios. This study should provide insight as to what the market for development rights is in the area, and provide information that will help to set the proper framework for the proper TDR program in the community.

TDR allocation based on a yield plan

A TDR program should have a reasonable mechanism for indicating the number of development rights a landowner is entitled to. One way to accomplish this goal is to require landowners to submit a yield plan. This is typically a site plan submitted by a owner/developer depicting how many lots can be subdivided on a parcel. A yield plan is not based on the highest and greatest use of a property, or the desired density that a developer may wish to obtain. Rather, it is based on the zoning codes and subdivision ordinances currently governing the parcel in question.

In theory, if a landowner holds ten acres, and the zoning allows one unit per acre, the yield plan would potentially indicate ten development rights for that parcel. However, a completed site plan may indicate that less than ten units can be constructed. This is due to the fact that some land

may be needed for road construction, detention basins, etc. Also, there may be site constraints such as wetlands, or steep slopes. In this scenario, a submitted site plan will clearly indicate which portions of the property cannot yield constructed units, and give an accurate reasonable quantity of development rights for a parcel.

Using a yield plan to determine development rights typically is used in programs that do not allow undevelopable lands to transfer development rights. However, some communities do allow development rights to be transferred from lands that are undevelopable. This is an incentive that is sometimes used to encourage a landowner to participate in the TDR program. The following method for determining development rights is useful when this incentive is to be established.

TDR allocation based on development value

The yield plan approach discussed above can be used as the basis for a program that offers a one-to-one transfer ratio, meaning the landowners can sell one TDR for each dwelling unit foregone on the sending site. Many programs use a one-to-one transfer ratio because they are simple and maintain the overall development capacity of the community. However, one-to-one transfer ratios can also result in TDR values that are too expensive for developers to profitably use. For this reason, some TDR programs use the yield plan as the starting point for determining TDR allocations. For example, they may allow owners to transfer two TDRs for

each unit foregone on the sending site. These increases in transfer ratio are designed to allow sending area owners reasonable reimbursement for reduced development potential while maintaining a TDR price that developers will find profitable to use.

Rather than the two-step process described above, some communities begin with an estimated per-acre value of development rights in the sending area. For example, an appraiser working for the community may estimate that development value in the receiving area averages \$2,000 per acre. The appraiser may also estimate that receiving area developers should be willing to pay at least \$10,000 for each additional unit above the base line density allowed when developers decline to use the TDR option. With these hypothetical estimates, the community might decide that a TDR should allow one additional dwelling unit above baseline in receiving areas and that sending area owners should be allowed to transfer one TDR per five acres of preserved land. This scenario is designed to keep TDR's at a price that developers can afford (\$10,000) and still give fair reimbursement to sending area landowners (\$2,000 per acre.) Note that this approach does not rely on a calculation of the number of dwelling units that could be located in the sending area under current zoning and other regulations.

Zoning Changes

The TDR program may require updating the master plan of the community. Most significantly, the addition of a sending and receiving

zone is typically required. In many instances these new zones become “overlay zones” that are applied to existing zoning. The preservation areas identified early on in the process become sending zones, and receiving areas become receiving zones.

Changes to the development code may also be necessary, especially in a receiving zone. It is important to realize that an increase in density in a receiving zone may make it necessary to develop different design guidelines to apply to higher intensity development. In most instances, communities wish to hold higher intensity development to higher development standards.

Land Preservation



Rural Farm: Near Paradise, Cache County, Utah

When a program is begun, it is essential that a community determine how sending site preservation becomes permanent. As described earlier, a deed restriction is typically used to ensure protection. Protection is further enhanced if the deed restriction is held by a third party

organization such as a land trust. A community should spell out how this protection should take place. In many instances, the landowner is allowed to continue using the land as it has been historically.

Some communities will offer a higher transfer ratio if a landowner will convey title to the property. Although the landowner will no longer have the option of utilizing the land, additional compensation will be provided as they will be allowed to sell additional development rights.

Receiving Sites

As receiving sites will typically be developed at a higher intensity than previously allowed, it will be important for the community to develop strategies to ensure that proposed development meets the expectations of the community. One approach is to approve a set of dual development standards. One set applies to development of projects that do not use TDR, another set applies to projects that do utilize TDR. The goal would be to ensure that a quality project is constructed no matter what level of intensity is constructed.

TDR Transaction Process

Communities should identify as part of the TDR adoption process how a transaction will take place. Additionally, if a transaction is to take place between a private owner and a public entity, the framework for this transaction should be established. Some TDR programs must have a TDR bank established to provide the

market for the transfer of development rights. Explained in more detail earlier in this guidebook (*components of TDR*), the TDR bank most likely will need to be set up and adopted by the City/County Council, and may require the allocation of funding and additional staff assistance. This can be a drawback in a community that wishes to implement a program without allocating additional resources. Additionally, many communities choose to try allowing transactions to take place without government interference, as with most free market systems. A TDR bank can complicate the process in this regard. However, if the market for using TDRs is currently slow, a TDR bank can be a useful tool to help stimulate the market, and begin realizing preservation goals immediately.

**Step Seven:
Implementation**

The main goal in implementing a TDR program is to have it adopted. An ordinance will need to be written, reviewed, and adopted. As with any new ordinance, the proper public hearings should be held, and the ordinance should be written/reviewed by a qualified professional. Once this occurs, the program can begin to help meet preservation goals.

There may be, however a number of steps that need to take place in the adoption process. All the program elements described above should be enacted as part of the implementation of the TDR program. Sending and receiving zones must be established, and design guidelines may need to be

updated. The preservation plan, or sensitive lands plan needs to be included as part of the general plan, if it hasn't been already. The idea is to ensure that the TDR program becomes well integrated into a community's development code as to ensure that the program will work with the existing code, and not conflict with other portions of the code. To that end, the removal or modification of existing land use tools may be necessary.

Another item that should be considered in an interlocal agreement. Explored in more detail in subsequent pages, and in Appendix B, the interlocal agreement is what allows a TDR transaction to take place across jurisdictional boundaries. For example, a buyer in a municipality may purchase development rights from a landowner in the county.

**Step Eight:
Refine Program**

Part of the implementation process is having a strategy in place to monitor the program's success. The program may need subtle or substantial updates to ensure it is meeting community preservation goals. Development activity in the community should be monitored; with periodic reports generated showing the amount of land preserved, number of TDRs generated, and number purchased. This should be compared to preservation and development that occurs without the use of TDR. If TDR is not being used, study should take place to see what can be changed to encourage its use.

Legal Framework

To understand how TDR legally functions, three separate legal issues must be understood. These are government regulation, property rights, and contractual agreements. While this document does not attempt to fully describe each of these issues, it should be recognized that each is important in ensuring that TDR functions properly.



North Logan Area

Photo by Envision Utah

Government Regulation

The authority of a local agency to implement TDR and other land use programs comes from a state's authority to regulate land use to promote public health, safety, and welfare issues. Each state has in some way delegated this authority to local jurisdictions. Some communities have questioned whether transferring development rights programs are legal. The answer depends on state law in which the program is being considered.

Each state delegates authority differently. Some states do not

prohibit or regulate land use programs, that is communities can implement tools such as TDR's without state legislative approval. Other states require specific legislative approval before communities can implement specific land use programs. Each community, before implementing a program, should consult legal counsel, before implementing a TDR program. It should also be noted that a TDR program should be drafted by a professional well trained in land use law. This will ensure that the program will function properly, and be will integrated with existing community and state-wide land use laws.

Property Rights

Property ownership was previously described as a "bundle of sticks," where each "stick" represents a different right. While this idea has been around for a very long time, the idea of breaking off a development "stick" and treating it separately is still relatively new for some communities.

One example of trading individual "sticks" is in water law. In many areas, water rights can be bought and sold separately from the land to which the water originally belonged. Without this concept, it could be very difficult for a community with a water shortage to transport water from an area with a surplus. In a similar manner, many landowners feel there should be no limitation on the right to trade development rights. While some fear that a TDR program will in some way remove some of their rights, or cause

a “taking” to occur, a well-designed TDR program should provide a landowner with more rights than were previously allowed.

Many communities worry about adopting regulations that may regulate property to the extent that property is “taken” by the government



North Logan: Vacant Lands that have been proposed as a receiving zone.

Photo by Envision Utah

without just compensation. Although most TDR programs give landowners rights they didn’t previously have, some TDR programs (more restrictive) have regulations associated with other uses of the land that make participation in a TDR program nearly mandatory. That is, there may be no other way to gain compensation from the land other than participating in the TDR program. The U.S. Supreme Court has ruled that TDR programs can reduce the impact of government regulations, however it has not yet directly ruled on the ability for TDR to provide “just compensation” (required by the Fifth Amendment.) Therefore,

communities should not rely on TDR as a defense against a taking, rather they should allow the use of the TDR program as an additional option to landowners.

Note: The US Supreme Court has ruled that a taking occurs when a regulation deprives a property owner of all economic use. Few regulations go that far, however. Regulations that do not substantially advance a public purpose can also be held to be a taking.

TDR Approval

Communities must determine how their TDR program will grant approvals. Generally, there are two types of programs described below. It should be noted that both these methods can be used to create a “hybrid” program.

Administrative Program:

Many TDR programs are designated as administrative programs. As described in this document, administrative programs begin when sending and receiving zones are designated as part of the community’s general plan and zoning ordinance. This becomes the framework by which land owners are given the option to participate. While approval of the site plan may still be required by the planning commission and city/county council, the transfer of development rights does not need further approval. In theory, all TDR deals are pre-approved by the community.

Legislative Program:

In some instances, communities feel

that development right transfers should be reviewed on a case by case basis. In this instance while sending and receiving zones are identified in the general plan, participation in the program must gain approval from the community's planning commission and/or City/County Council through the rezoning of land. The draw back of this type of program is that potential participants, not wanting to go through the additional approval process, may not use TDR. The uncertainty of whether approval will be granted,

especially if costs are incurred in negotiating a TDR deal, will prevent many potential TDR transactions from occurring.

Consistency with Zoning and Land Use Laws

One area where a community could potentially have issues is if a TDR program is in conflict with other adopted regulations. It is essential, as with any land use regulation, that legal conflicts are identified and remedied before new programs are adopted.

Summary: TDR Approvals

Administrative

Advantages:

- *TDR approval already granted to potential participants*
- *May require less attention by planning staff, Planning Commission, City/County Council.*

Disadvantages:

- *Community does not have ability to regulate individual TDR transactions*

Legislative

Advantages:

- *Community retains ability to regulate individual transactions*

Disadvantages

- *Possible denial of transaction may prevent potential participants from utilizing program*
- *May require more attention by planning staff, Planning Commission, City/County Council*

Program Integration

There are a number of steps that communities must take to ensure a TDR program is consistent with existing ordinances. Exactly how this occurs depends on the elements that are included in the program, and whether it is a "legislative" or "administrative" program. A number of factors need to be considered in implementing a TDR program, beyond determining exact details and constructing an ordinance.

Usually the first step in creating a TDR program is designating sending zones (based on preservation goals) and receiving zones (based on areas indicated for growth). A TDR program is often based on the current existing zoning of the areas that are to have a sending or receiving zone applied. That is to say, if an area is zoned for one acre residential lots, the TDR program assumes that this area will continue to be zoned as one acre lots. For this reason, it is important that a community feel comfortable with its general plan, and has prioritized preservation goals (many times a sensitive lands plan or historic

preservation plan). If a community feels that it may change the zoning in a potential sending or receiving zone in the near future, it would not be appropriate to carry forward with implementing a TDR program, as it would be easily undermined. This would be especially true if the proposed zone change is in conflict with a sensitive lands plan or general plan. *In order to avoid undermining a TDR plan, it is essential that a community not stray from the strategies set to meet land preservation goals.*

For example, in receiving zones, an upzone would allow a developer to construct at a higher intensity without purchasing development rights. If a community is reluctant to accept higher density (or even if a community embraces it), higher than typically allowed density should only be allowed if it is in trade for preserving sensitive lands elsewhere. Undermining the TDR process by up-zoning in this example would allow higher intensity development, and preclude the potential preservation of sending areas.

Crossing Jurisdictional Boundaries

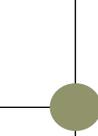
In some instances the preservation areas are in different jurisdictions than growth areas. In order to allow development rights to be transferred from one jurisdiction to another, from say a county to a city, an inter local cooperation agreement(ICA) must be in place (See Appendix B for more information.) The ICA describes the conditions by which each entity will send/receive development rights.

For example, a county wishing to preserve farmland, may allow county landowners to send development rights to a nearby city. This is common as many counties do not provide services (such as water and sewer), and thus don't have suitable receiving zones. The neighboring city, willing to help with the preservation goals of the region, agrees to accept these development rights. The county will need to have, at a minimum, a sensitive lands plan or preservation plan that specifies sending areas, and a mechanism for determining transfer ratios. The city should have a formal TDR program adopted that specifies receiving zones and other program details. There are many details that need to be agreed upon between the two jurisdictions, however the TDR program should work the same as if a transaction was taking place within a single jurisdiction.

Administrative Requirements

TDR Certificates

There are a number of items that the local jurisdictions must ensure are administered properly. Although it may require additional staff assistance, it is very important that a community have an adequate system for issuing and tracking TDR certificates. TDR certificates are issued to any landowner within a sending zone who may wish to acquire them. A TDR certificate is much like a stock certificate. It indicates how many development rights are owned. These certificates can become extremely important in TDR programs, especially in an inter-jurisdictional program. When an owner in a receiving zone wishes to



develop at a intensity higher than what is allowed by zoning, TDR certificates are required to show that the proper development rights have been purchased. This further demonstrates how development rights are often traded as a commodity.

Tracking TDR

A community enacting a TDR program must have a way to track when development rights are issued, and when they are extinguished. It is very important that the proper number of certificates are issued, and that no further certificates are issued for the same property. Additionally, when development rights are used to increase density, it is essential that a community ensure that the certificates are no longer in circulation.

Tax Benefits: Landowners

There can be a number of tax benefits for those who sell their development rights. Land is usually assessed at a lower value when development rights are removed and an easement is placed on the land (similar to a green-belt designation that reduces taxes to farmers). Also, in the instance that the land is deeded (donated) to a third party organization, tax benefits may also be realized.

Another task that will be necessary is ensuring that the County Assessor is notified of the implementation of a TDR program. Land values will change as development rights are transferred. It is essential that land is valued properly in the instance that development rights are no longer available on the property.

Those interested in these benefits should consult professional advice before entering into an agreement to transfer their development rights.

Tax Benefits: Municipalities

Often, communities worry about the loss of tax revenue that comes when development potential is removed from property (similar to farm land taxed at a lower value). However, when development rights are transferred, tax dollars are not lost. Merely, the development (and the associated tax dollars) moves to another location in the community. In fact, higher intensity developments in receiving zones (commercial, mixed use, etc) may generate more tax dollars than the lower intensity development would have in preservation areas. The exact change in revenue (higher or lower) will depend on the allowed transfer ratio and the granted density bonus.

As previously noted, many TDR programs guide development from sensitive areas to areas of existing development. Although many new developments may require impact fees for service upgrades, an increase in taxes may be necessary to provide service to new developments long into the future. This is especially true if the new development is a large distance from existing services. Public revenue spent on new developments can be minimized if the development is guided properly. All residents benefit when new development is located and constructed properly.

Conclusions

Transfer of development rights (TDR) has been utilized by a number of communities to help meet their preservation goals. Whether it be sensitive lands or preserving historic structures, TDR can be a very powerful and flexible tool. However, TDR is not always the best solution. It works best when it has been designed properly to fit the needs of a community.

The key to implementing a successful program is public participation. While a local government may feel it has a handle on what is best for the community, it is important to give residents, business owners, landowners, and other stakeholders an opportunity to voice their opinion on any new program, especially one as important as TDR. Participation should take place from the very beginning of the process, not just at a public hearing previous to adoption. A good TDR program is based on strong public participation.

The goals of the TDR program should be specific, and outlined as part of the general plan. Again, public participation is key in designating preservation areas that will become sending zones. Additionally, areas that are designated to receive development rights should be carefully explored. Improperly located receiving zones will cause a TDR program to be ineffective.

Before a TDR program is adopted, it should be studied to ensure that it will be a useful tool. Accurate background research, coupled with strong public encouragement will

facilitate success. As there are a number of issues that must be considered in any TDR program, it is recommended that professional planners, land use attorneys, real estate appraisers, etc. be consulted to assist with the program development, especially if the community doesn't have sufficient staff assistance.

Finally, as with many planning and land use preservation goals, it will take some time for a TDR program to meet the goals of the community. While many communities see transactions take place immediately, it may take some time before the TDR program is utilized. It will most likely take a number of years before preservation areas are fully protected. However, if a program is designed properly to meet market conditions, and if potential participants are involved in the creation of the program, transactions will most likely take place sooner than later.

Case Study North Logan City



North Logan - Cache County
Sensitive Lands and TDR Study

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TDR Process

North Logan City (Cache County, Utah) as of June 2003, is in the process of finalizing the sensitive lands plan described below. This, along with a draft ordinance and draft interlocal agreement (Appendices A&B) are to be considered for adoption by the City Planning Commission and City Council.

Referenced in this section is the general plan update that was facilitated for North Logan City by Envision Utah. The *North Logan Community Vision*, dated March 2003, details the public process that took place. This process produced the land use data on which the TDR preservation and receiving areas are based. See Appendix D for contact information.

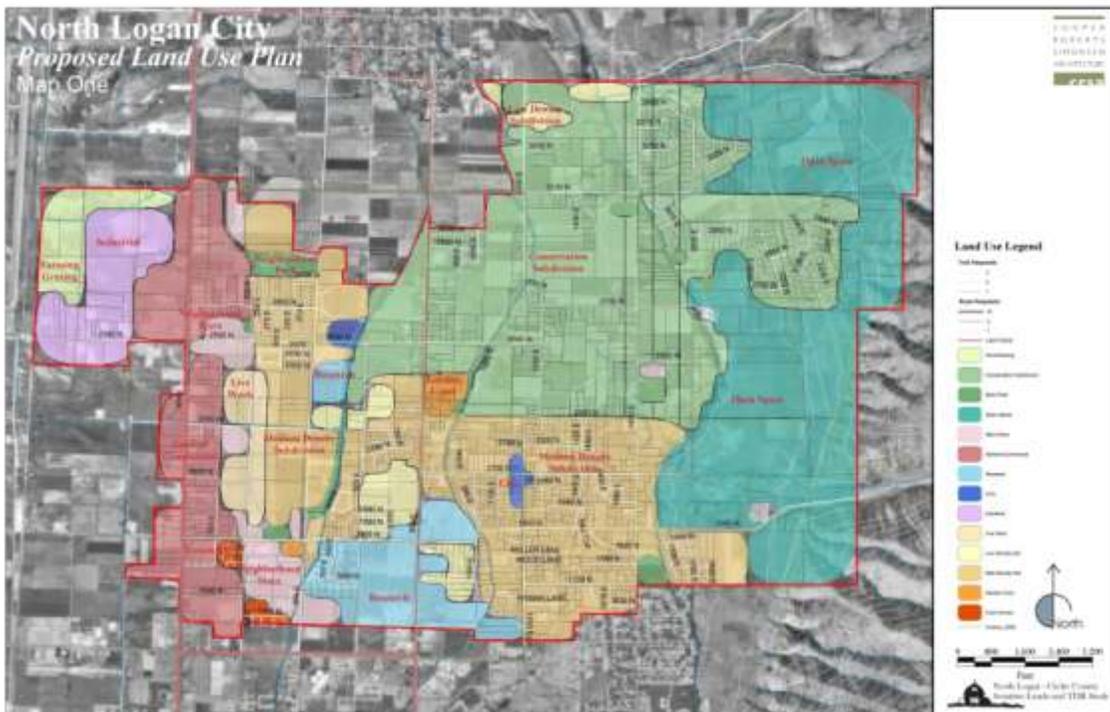
Process

1-Establish Advisory Board

An advisory board was established by North Logan City early in the process. The board (members listed on page 3) is made up of landowners, appointed officials, and other citizens. This board met with consultants and city officials monthly to discuss the progress of the TDR program. Decisions about program elements were made by this board.

2-Public Participation

An extensive public participation campaign was undertaken as North Logan began to develop its TDR ordinance. The City, also in the process of updating its general plan, held two community workshops (facilitated by Envision Utah) in which



Map One: *Proposed Land Use Plan. Developed by Envision Utah as part of North Logan City general plan update process, to be modified and adopted as necessary by North Logan City (to match desired sending and receiving areas).*

residents and other stakeholders were invited to share their vision for the city. The product of this process was a proposed land use map. This land use map indicates areas of potential preservation, as well as suggests

areas where higher intensity development may be appropriate. This land use map is the basis of the community sensitive lands plan.

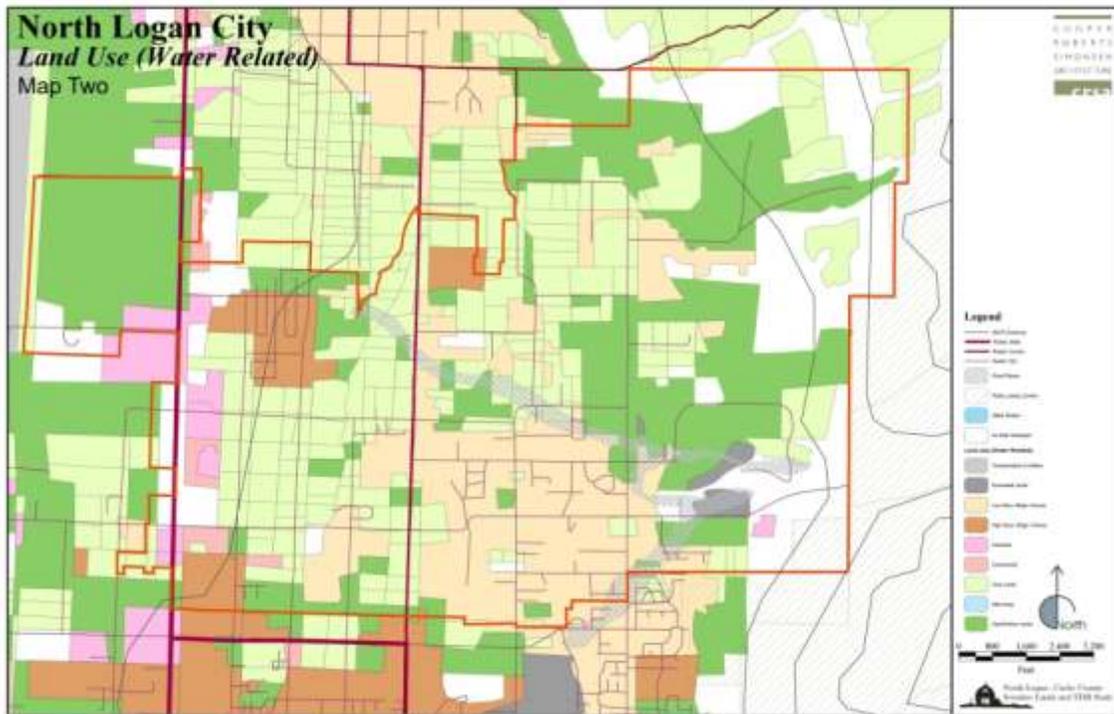
Additional public participation was encouraged as a draft of the sensitive lands plan was presented to the Planning Commission as well as in an open house format on a separate evening. Comment from these meetings was compiled and taken into consideration by the project advisory board.

3-Develop Preservation Plan
North Logan City's preservation goals are primarily associated with preserving open space,



North Logan Area

Photo by Envision Utah



Map Two: *Water Related Land Use: Data supplied by Cache County.*

scenarios that were envisioned for North Logan. However, they did find strong support for other scenarios that have been carried forward.

6-Develop Program Details

The details of North Logan's TDR ordinance were determined by the TDR advisory board. Acting on public comment, and professional advice, specific program details were generated. Although still under development at the completion of this document, a draft of the North Logan TDR ordinance is available in Appendix A.

Some of the key elements that have been suggested for the North Logan TDR program are as follows:

- Sending areas recommended to be created as part of the initial adoption process, potentially as a overlay zone. Development rights are granted to anyone within the sending zone who wishes to participate in program (administrative process.)
- Receiving areas are only created on approval of application by a landowner in an area generally accepted by the general plan as a receiving zone. This legislative process allows discretion by the City regarding new development.
- A TDR bank has not been recommended as North Logan has a relatively small planning staff. However, if a third party organization can be found to administer the bank, it could be a useful addition to the program.

- A **three to one** ratio has been recommended for land owner who transfers fee title to the City or a third party land trust.
- A **two to one** ratio has been recommended for land owners who only place an easement on their property.
- A **one to one** ratio has been recommended for land owners who transfer development rights on unbuildable property, and transfer fee title.

Cache County, desiring to preserve economically important rural farmland, has approached a number of communities about accepting development rights. A draft interlocal agreement (Appendix B) has been drafted so that North Logan may consider interjurisdictional transfers as part of the TDR program. If adopted, it would allow the City to work with Cache County in an interjurisdictional TDR program.

7-Ordinance Implementation

At publication of this document, implementation of the North Logan TDR ordinance is an ongoing process.

8-Refine Program

Although it is not yet known how successful the program will be, there are already a few landowners who have expressed interest in participating in the program. These initial transactions will help North Logan City determine if the program is functioning to meet preservation goals. If it is not functioning as intended, modifications may be needed.

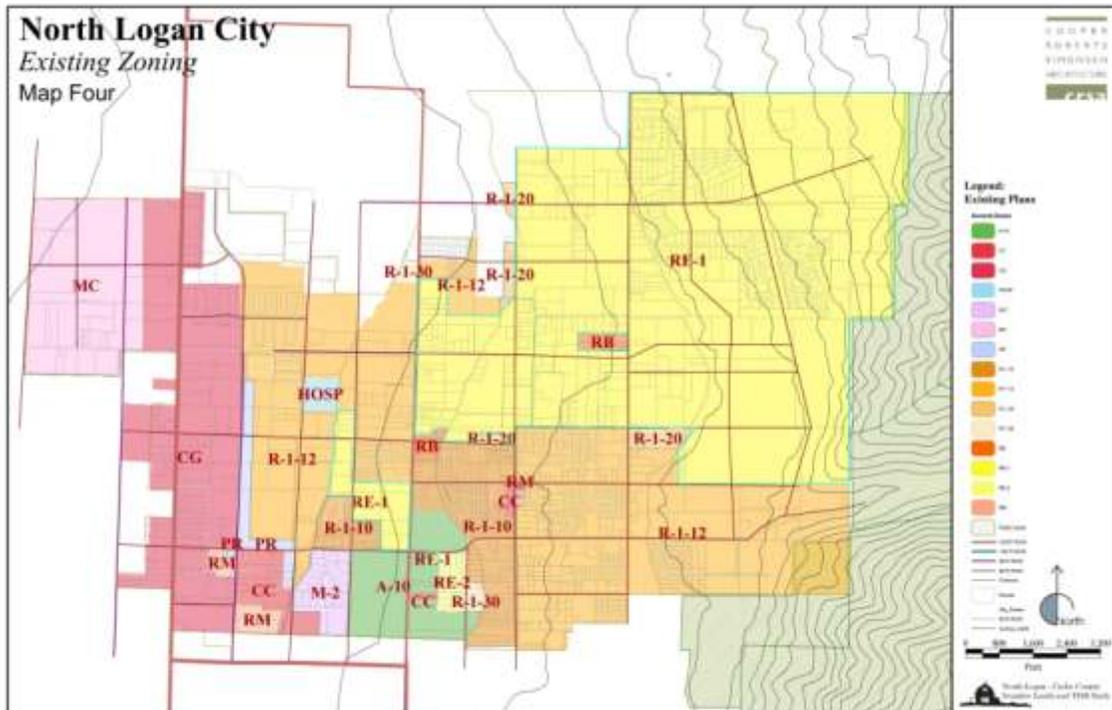
Sensitive Lands Plan

The North Logan sensitive lands plan is comprised of two elements. The first element is a series of maps. Map Five is the culmination of all the previous maps as well as suggestions from the public and the TDR Advisory Board. The second element is a written explanation of the TDR scenarios that were deemed economically feasible. These two documents will be incorporated into the community's other general planning documents and be used to guide TDR transactions, as well as the adoption of a TDR ordinance.

Land Use Mapping

A series of maps were generated to assist with determining preservation and receiving areas. Once a TDR program is adopted these areas will

become sending and receiving zones. As such, it is important for the community to understand the different elements that help to determine where these areas will be. In the case of North Logan City, the development of preservation and receiving areas were coordinated as part of the general plan update. This is a very effective way of completing this task. It gives city officials, residents, landowners, and other stakeholders the opportunity to look at the entire community and openly discuss options. A number of open house workshop (facilitated by Envision Utah) were held to give all stakeholders an opportunity to comment. At the completion of these meeting, a proposed land use map was produced (Map One).



Map Four: Existing Zoning: Data provided by Cache County and North Logan City. To be updated to indicate areas generally acceptable for sending and receiving.

The proposed land use map indicates areas where open space preservation should take place. Public comment clearly indicated that the foothills should be the number one priority for preservation (labeled as “Open Space”). Rural character was also high on the list of preservation goals (labeled as “Conservation Subdivision.”)

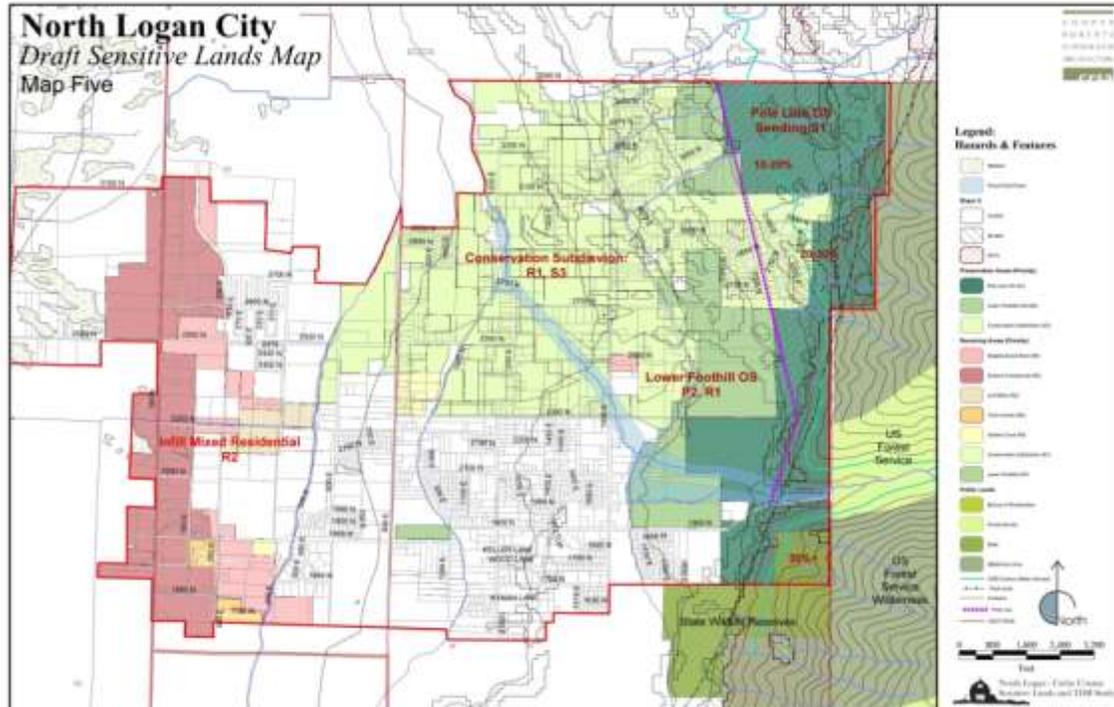
Sending Areas

A review of existing land use (Map Two) and existing natural hazards & features (Map Three) helped solidify the foothills area as a high priority preservation area. In conjunction with the *North Logan City Foothill Area Planning Study (July 1995, BIO/WEST, Inc.)*, the TDR Advisory Board recommended that the foothills area, indicated as open space on the

proposed land use map, be designated as the top priority preservation area in the city. It was further recommended that rural character be preserved where possible by designating the conservation development area on the proposed land use map as a secondary preservation priority.

Receiving Areas

Using the proposed land use map and the existing zoning (Map Four) as a guide, receiving priority was also recommended by the TDR Advisory Board. Receiving priority was placed in areas recommended by public comment as areas of higher intensity development (includes commercial and multi-family areas). These areas are generally near existing high intensity development. Nearby is the



Map Five: *Draft Sensitive Lands Map, to be adopted as part of General Plan: Actual sending and receiving areas to be determined and adopted by North Logan City.*

busy Main Street commercial corridor, and the expanding Utah State University Innovation Campus.

Sending and Receiving Priority

The draft sensitive lands plan (Map Five) indicates priority for both sending (S 1-3) and receiving (R 1-2) areas. Once a TDR program is adopted, these will become sending



North Logan Area

Photo by Envision Utah

and receiving zones. Note that these priorities have been studied for economic feasibility. Areas that were not found to be economically feasible have been removed as a priority, or given a low priority. The TDR impact statement, below, depicts the priority given to each sending and receiving area. Each is associated with a TDR scenario.

It should be noted that receiving zones indicated in this case study are based solely on the existing land use map. If North Logan determines that there are other areas that may be suitable for receiving areas, the land use map (Map Two) will need to be modified to reflect these changes.

It should be noted that although market analysis studies determined that transfers into commercial and mixed use areas may not be feasible, these areas have been included (Map Four) as potential receiving zones as they are already acceptable by the community as areas for higher intensity development.

SAMPLE TDR Impact Statement

The TDR impact statement is an overview of the suggested priorities for sending and receiving areas, as well as the scenarios that have been found to be economically feasible. It estimates the total acreage of land to be preserved, and projects the acres of receiving areas that will be needed to accomplish the preservation goals.

The final North Logan City TDR program will most likely include elements of each of the scenarios listed below in the receiving area section. This impact statement only suggests what densities will result if all the preservation acreage is transferred into just that particular scenario. Thus, these numbers are provided to give the community an idea of what level of density increase may be necessary.

Preservation and receiving priority calculations are based on broad generalizations that have been developed for the North Logan General Plan update process (visioning workshops facilitated by Envision Utah). This process indicated that although rural character

is a preservation priority, preservation of the foothills should be the primary preservation goal.

Notes: The following information is included as SAMPLE information for illustration purposes only. Actual market analysis and final TDR impact statement has been provided to North Logan City.

Identified Preservation Goals:

Foothill/Pole Line

Open Space (S1): ~668 Acres

All lands higher in elevation than pole line, with exception of all lands currently developed. Also includes select lands lower in elevation than pole line.

Lower Foothills

Open Space (S2): ~313 Acres

Select foothills lands primarily lower in elevation than the pole line.

Total Foothill (S 1,2): ~981 Acres.

Assuming one acre zoning

*-A **three to one** ratio would generate 2932 development rights*

*-A **two to one** ratio would generate 1962 development rights.*

*-A **one to one** TDR ratio would generate 981 development rights.*

Rural character/Conservation

Subdivision (S3): ~1263 Acres

Includes majority of northeast portion of city, primarily non-foothill lands.

This area is also indicated as a high priority (R2) receiving area. If this area is preserved for rural character through large lot zoning, limited areas for receiving will be available.

Total Rural Char (S3): ~1263 Acres.

If alternative priority is included in TDR program, assuming one acre zoning:

*-A **three to one** ratio would generate an*

additional 3789 development rights

*-A **two to one** ratio would generate an additional 2526 development rights.*

*-A **one to one** TDR ratio would generate an additional 1263 development rights.*

Identified Receiving Areas:

TDR Scenario A-Conservation

Subdivision (R1)

Conservation Subdivision: ~1263 Acres

Lower foothills: ~313 Acres

This area has also been designated as a lower priority sending area. If this area is not available for receiving, less than 100 acres may be available for accepting transferred rights.

- Cluster Conservation Development (S3) &
- Lower Foothills Area (S2)
Current Zoning: 1/Acre
TDR Receiving: Additional ??/Acre (restricted to large parcels)
Minimum 10,000sf lots at periphery to buffer surrounding areas

TDR Scenario B-Infill Mixed-Residential (R2)

Townhouses/Multi Fam Res.: ~20 Acres

Garden Court: ~26 Acres

Live/Work: ~38 Acres

- Multiple Family Residential:
Current Zoning: 4/Acre TDR Receiving: Additional ??/Acre
- Townhouse TDR Zone: Current Zoning: 4/Acre TDR Receiving: Additional ??/Acre
- Garden Court TDR: Current Zoning: 4/Acre TDR Receiving: Additional ??/Acre
- Live-Work TDR Zone: Current Zoning: General Commercial TDR Receiving: Additional ??/Acre Commercial or Standalone

Total (R1 & R2) = ~1660 Acres

If these receiving zones were expected to accommodate all development rights from the foothill priority (S1 & S2) area, the overall density would increase by the following:

*-A **three to one** ratio would increase the average density of the area by **1.7** units/acre*

*-A **two to one** ratio would increase the average density of the area by **1.18** units/acre*

*-A **one to one** ratio would increase the average density of the area by **.59** units/acre*

Note that North Logan City will be responsible for determining the maximum density in receiving areas (indicated as ?? In above examples.)

TDR Questions to be addressed

Preserve Rural Character (S3)

Meeting preservation goals S1 and S2 may be possible if receiving zones are considered in all the proposed receiving scenarios. Depending on how much additional density is allowed, and how many development rights are sent, it may be possible to receive all the development rights into the R1 and R2 receiving areas. However, if the R2 area is retained as a large lot rural conservation area, there will be limited TDR transfer potential. If the community truly feels foothill preservation is a higher goal than the preservation of rural character, a slightly higher density will need to be considered in the conservation subdivision areas.

Preserve Lower Foothills (S2)

As the foothill area is controlled by a handful of owners, there may be some desire to transfer or cluster development from the higher priority

sending zones (above the pole line, S1) to areas of same ownership below the pole line (S2). If the community feels it is acceptable to allow development on lower foothills to save lands above the pole line, this method can become an effective tool for meeting preservation goals.

Increase Multi-Family Housing Opportunities (R2)

Currently there is little potential for new multi-family housing development in North Logan City. There is however, a demand for multi-family housing in the North Logan area. Allowing developers to increase density will provide additional options for TDR receiving areas. Initial market analysis suggests that developers would be willing to purchase additional development rights in exchange for increase density in multi-family housing developments.

Although there has been a negative connotation associated with this housing type in the past, it has been found in many communities that well-designed and properly located housing alternatives can be an asset in building strong communities. Housing such as town homes, garden courts, etc can become a viable choice for those who do not wish to maintain large parcels of property, or who do not have large families.

Market Analysis

Although not listed in full detail in this report, there is some information obtained through the market analysis feasibility study that is important to the TDR program. Some of this information is listed below. It should

be noted however that the market analysis completed was preliminary in nature. While the information listed may be sufficient for North Logan City to make generalized decisions about land use in the community, no individual should make conclusions without seeking professional advice.



North Logan Area

Commercial/Office

The market research indicated that commercial development will continue to be a strong market in the North Logan area. However, it does not appear that there will be much market for increasing commercial densities through the use of TDR. Although some mixed use developments may occur that place commercial near other uses, it does not appear that there is any demand in the near future for mixed uses to be placed above a commercial use.

Multi-Family

There does appear to be a strong market for multi-family residential in the North Logan Area. This type of development need not be low-income or low end development. There may

be demand for high end multi-family housing. Market analysis suggests that it is economically feasible for up to approximately 30 units per acre to be developed in the North Logan area. This number is based on the physical constraint of including ample parking without constructing a parking structure.

Mixed Use

Market analysis concludes that some mixed-use opportunities may be available in the North Logan area. Although “stacking” different uses in one structure may not be economically feasible at this time, placing structures of different uses adjacent to each other may be viable. North Logan should explore the possibility of creating areas within the community where housing may be located near employment centers, the expanding Utah State University Innovation Campus, for example.

Live/work space could also be a viable option for the North Logan area. In this situation, an owner may live above a business; for example, an artist above a studio. There currently is a large group of residents who work out of their home in North Logan City. This type of living arrangement is economical for many who may want an “at home” business.

Case Study Cache County



North Logan - Cache County
Sensitive Lands and TDR Study

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TDR Process

Process

The Cache County portion of the study has not progressed as far as the North Logan study. Cache County, while interested in potentially enacting a TDR ordinance, has to date only studied the feasibility of such an ordinance by preliminarily addressing Steps One through Five noted previously. It should also be noted that, receiving areas have only been considered for areas within municipal boundaries. Cache County is not interested in receiving development rights, only transferring development rights for the primary purpose of agricultural land preservation.



Rural Farm: Wellsville, Utah

Cache County is in the process of developing a LESA system (See Appendix C). This system will in many instances replace some of the steps recommended in the development of a TDR program. As such, rather than complete these steps in detail as part of this feasibility study, information from the LESA has been substituted to develop the assumptions listed below.

1-Establish Advisory Board

A TDR advisory board has been established, made up of members of the Agricultural Advisory Board (also involved with the LESA), local officials, and other stakeholders. The purpose of this board is to direct the consultants as to which TDR scenarios would be appropriate to study.

2-Public Participation

Little public participation has been held directly in conjunction with the scope of this project. However, a number of studies have been completed that indicate the economic importance of the agriculture industry in Cache County. As the top agricultural producing county in the State of Utah, a large percentage of the local economy is supported by the availability of prime farmlands and accessible water. Additionally, as the home of Utah State University, the State land grant institution, Cache County is home to a number of facilities devoted to research and development in the agriculture industry. This information, along with long

standing public sentiment to retain rural character, is the basis by which TDR is being studied for farmland preservation (and by which the LESA is being developed).

3-Develop Preservation Plan

No official preservation plan has been developed for this feasibility study. Rather, using general public sentiment, potential preservation areas have been identified for study (See TDR Impact Statement on

following pages). These areas are rural in nature, but are located in areas that may soon have development pressure, contain significant farmlands, support critical wildlife, or provide access to recreational areas.

If Cache County intends to adopt a TDR program in the future, a preservation plan will be necessary to identify sending areas. The LESA system (see Appendix C) that the County is in the process of developing could potentially be used as part of the

mechanism of transferring development rights. In this instance, the LESA system potentially could take the place of the sensitive lands plan.

4-Develop TDR Scenarios

General TDR scenarios have been developed based on overall public sentiment. These scenarios explore potential TDR transfers in a number of areas of the County, based on the preservation sentiments listed above. These, explained in more detail on subsequent pages, are useful for value determinations to take place.

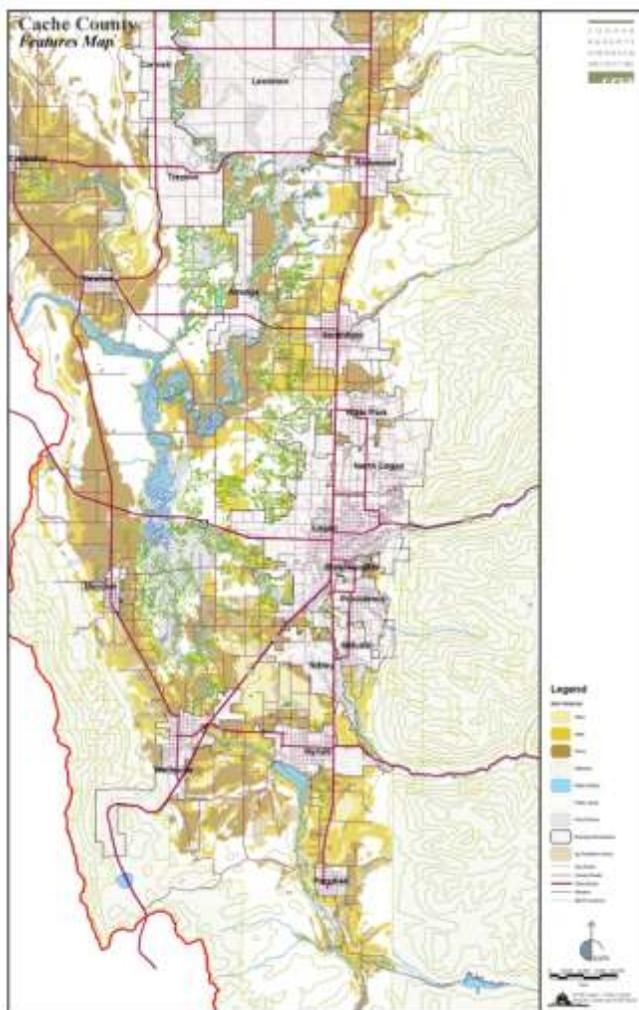
5- Study Scenario Feasibility

With the assistance of a professional real estate appraiser, preliminary estimates of scenario feasibility have been established.

The TDR scenarios have in part been determined by analyzing existing natural features and land use patterns. An effort has been made to pick sending areas that may see a TDR transaction take place in the future. These may be areas of prime farmland, wildlife habitat, etc. In the case of receiving areas, attention has been paid to existing land uses and existing zoning. For example, vacant lots that exist near other high density development may become a receiving area.

SAMPLE Feasibility Study

Although not developed to the detail that would be necessary in an actual development on an ordinance, these following



Map Six: Cache County (Cache Valley only) natural hazards and features map.

potential sending and receiving areas begin to outline the scenarios that may take place. It is feasible that a transaction could occur from any of the preservation areas (sending) to any of the receiving areas. However, if there is a sending area near a community that is participating in the program, it may be more appropriate for the development rights to be accepted by this community rather than one farther away in the valley.

Notes: Wellsville City, North Logan City, and Logan City have agreed to participate in this feasibility study. Also, the information listed here should not be considered as final analysis. Although this information is based on actual preliminary studies, This should be considered as SAMPLE information included for illustration purposes only.

Identified Preservation Goals:

Not Ranked by priority:

Wellsville Area

A-Farmlands West of City

- Prime Farmlands
- Flood plains

B-Foothills West of City

- Recreation
- Wildlife Habitat

C-Farmlands Along Highway

- Prime Farmlands
- Rural Character(View Corridors)

Mendon Area

A-Foothills North/West of Town

- Prime Farmlands
- Flood plains

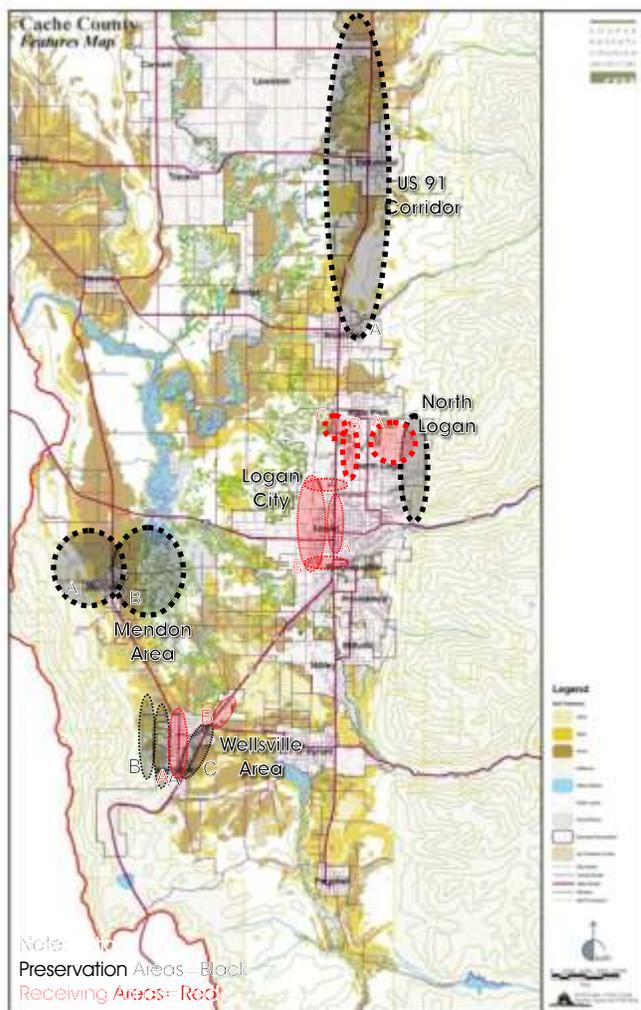
B-Lowlands East of Town

- Prime Farmlands
- Critical Wetlands
- Flood plains
- Wildlife Habitat

**U.S. 91 Corridor,
Smithfield to Idaho**

A-Surrounding Farmlands

- Prime Farmlands
- Accessible Water
- Development Pressure
- Rural Character



Map Seven: Cache County (Cache Valley only) preservation and receiving areas.

Identified Receiving Areas:

The County does not wish to receive development rights as The County does not provide services (water, sewer, etc).

Only North Logan City areas ranked by priority:

Wellsville City

- A-Downtown Core
- B-Strip Commercial Node, Highway 89

Logan City Receiving

A-Downtown Urban Core

- *Infill Development*
- *RDA Projects*
- B-Downtown Fringe Area
 - *North/South of Historic Core*
 - *Downtown to 1000 West/Industrial Areas*

North Logan City Receiving (More information available in previous case study)

A-Infill Commercial/Mixed Use (P 1-4)

- Community Mixed Use: Current Zoning: Professional Business TDR Receiving: Additional ??/Acre Commercial or Standalone
- Live-Work TDR Zone: Current Zoning: General Commercial TDR Receiving: Additional ??/Acre Commercial or Standalone
- Neighborhood Mixed: Current Zoning: Community Commercial TDR Receiving: Additional ??/Acre Commercial or Standalone

B-Infill Mixed Residential (P 5,6)

- Multiple Family Residential: Current Zoning: 4/Acre TDR

- Receiving: Additional ??/Acre
- Townhouse TDR Zone: Current Zoning: 4/Acre TDR Receiving: Additional ??/Acre
- Garden Court TDR: Current Zoning: 4/Acre TDR Receiving: Additional ??/Acre
- C-Low -Density Mixed Residential
 - Cluster Conservation Area & Lower Foothills Area(foothills with lower preservation priority) (P 7,8) Current Zoning: 1/Acre TDR Receiving: Additional 8/Acre (restricted to large parcels) Minimum 10,000sf lots at periphery to buffer surrounding areas

Actual units per acre (??) To be determined by extended economic analysis and sentiment of the community

Conclusions:

Based on preliminary appraisal results, it appears that TDR will work in Cache County. It will be economically feasible for development rights to be transferred into municipal areas from unincorporated areas of Cache County (both rural and larger communities). However, it is not yet clear whether this option will be politically feasible in some communities. Additionally, further study will be needed to determine the TDR transfer ratios and other pertinent program details. This is critical as development rights are worth less in the rural areas of the County. The goal would be to adjust the transfer ratios to ensure that development rights throughout the valley have generally the same value.

As Cache County is in the process of developing a LESA program (see

Appendix C), it is recommended that a TDR program be tied to the implementation of the LESA. For example, it may not necessary for the County to adopt an official TDR program for sending development rights. The process of determining where sending zones may occur could take place through a LESA evaluation, rather than a formal land use or preservation study. The County will need to adopt a sending overlay zone that can be applied to sending areas. This zone will be granted only in areas where sending is appropriate, and will dictate the transfer ratio of the transaction. Another necessary requirement would be that the County properly record any deed restriction, or easement, that remains after development rights are transferred. An interlocal cooperation agreement will dictate how the development rights are transferred.

Additionally, it is recommended that any community wishing to adopt a TDR sending program ensure that the base zoning is applied appropriately. Rural zoning should match the development potential and preservation goals of an area. For example, if high density development is not possible due to limitations on water and sewer services, land should only be zoned for the development that is possible. Zoning in excess may cause landowners to have false expectations for the development of their property. Additionally, in the instance that a TDR program is implemented, landowners may wish to sell development rights at a price that is based on false expectations, causing a TDR program to fail.

Appendices



North Logan - Cache County
Sensitive Lands and TDR Study

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Appendix A

Model TDR Ordinance

Listed below is a model ordinance based on the draft of the North Logan TDR Ordinance. It should be noted that while this ordinance is a good model of what a TDR ordinance may entail, it should not be merely copied by another community and adopted without specific study on the feasibility of TDR. Primarily, a program will not work properly if a appropriate preservation plan is not in place to guide the TDR transactions. Additionally, market conditions will need to be studied to ensure that proper incentives are included in the program.

As previously discussed, it is also important to ensure that other portions of a community general plan and development code are amended if necessary. A TDR program will not function properly if the supporting materials are not in place. Specifically, it is important the community general plan designates areas appropriate for sending and/or receiving before a TDR ordinance is adopted. If a community wishes to rezone all preservation areas in advance (administrative program,) a sensitive lands plan will need to be completed and adopted as part of the general plan.

Before Adopting Ordinance:

Note: This ordinance assumes necessary steps for developing a program have been completed as recommended in this guidebook. The following steps should be completed when a TDR ordinance is adopted, or in advance.

Sending Areas:

- 1-Update of General Plan
- 2-Adoption of Sensitive Lands Plan
- 3-Adoption of sending zones/overlay zone (for example, TDR-S)

Receiving Areas:

- 1-Update of General Plan
- 2-Adoption of Sensitive Lands Plan (sometimes used to designate receiving areas as well as sending areas)
- 2-Adoption of receiving zones/overlay zone (for example, TDR-R)
- 3-Adoption of alternative design guidelines for TDR developments

General Details

- 1-Development of TDR certificates
- 2-Development of system to track transactions
- 3-Meet with County Recorder and County Assessor to explain the TDR program.
- 4-Adopt Interlocal Cooperation Agreement if necessary. *See Appendix B for more details*

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

SECTION I: Add the following definitions in Chapter ____ to read as follows:

1. Base zone. A zoning classification of a sending or receiving site without the addition of the Transferable Development Rights overlay zone.

2. Conservation Easement. An easement, covenant, restriction, or condition in a deed, will, or other instrument signed by or on behalf of the record owner of the underlying real property for the purpose of preserving and maintaining land or water areas predominately in a natural state, scenic, or open condition, or for recreational, agricultural, cultural, wildlife habitat, or other use or condition consistent with the protection of open land.

3. Development Right. The right held by a land owner to develop a legally established lot or parcel of land, measured in dwelling units, pursuant to the zoning classification of the land and as governed by the provisions of this Title. One development right is equal to the authority to establish and maintain one dwelling unit.

4. Development Rights Certificate. A certificate issued by the Planning Department of _____ City that denominates the total number of development rights recognized for and derived from a sending site that may be transferred to a receiving site.

5. Overlay Zone. A floating zone that is unmapped until applied to a specific lot or parcel or land in accordance with applicable provisions of this Title.

6. Receiving Site. A legally created lot or parcel of land which has been placed in the TDR-R overlay zone and to which development rights may be transferred in accordance with the requirements of Chapter XX-100 of this Title.

7. Sending Site. A legally created lot or parcel of land which has been placed in the TDR-S overlay zone and from which development rights may be transferred in accordance with the requirements of Chapter XX-100 of this Title.

8. Transfer of Development Rights. The conveyance of one or more development rights from a sending site to a receiving site as provided in Chapter XX-100 of this Title.

SECTION II: Add the following zone in Chapter XX of Title XX – Establishment of Zones to read as follows:

(X) Transfer of Development Rights Overlay Zone. To promote the preservation of agricultural lands, rural open space, scenic vistas, and natural features for the benefit of the citizens of _____; discourage development in areas unsuitable for development; provide compensation to the owners of property from which development rights are transferred; and provide a method whereby development rights may be transferred from sending sites to receiving sites in order to accomplish the foregoing purposes.

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

SECTION III. Add the following Chapter, XX 100 – Transfer of Development Rights Overlay Zone, Title XX Zoning, to read as follows:

XX-100 Transfer of Development Rights Overlay Zone.

XX-101. Transferable Development Rights Authorized. Pursuant to authority set forth in The Municipal Land Use and Management Act, Utah Code § 10-9-102 et seq., development rights may be transferred as provided in this Chapter.

XX-102. Scope. The procedures and requirements of this Chapter shall apply to the transfer of development rights from a sending site to a receiving site.

XX-103. Designation of Sending and Receiving Sites on Zoning Map. A Transfer of Development Rights ("TDR") overlay zone may be applied to a lot or parcel of land in accordance with provisions of this Title applicable to the rezoning of land. A TDR overlay zone located on a sending site shall be denominated as "TDR-S." A TDR overlay zone located on a receiving site shall be denominated as "TDR-R."

(A) The TDR overlay zone shall be used in combination with a base zone and shall not be applied to any land as an independent zone. Provisions of the TDR overlay zone shall supplement the provisions of the base zone with which it is combined. Provided, however, that the provisions of the TDR overlay zone shall prevail over any conflicting provision of the base zone or any other provision of this Title, except as may be expressly provided otherwise.

(B) The TDR overlay zone shall be shown on the official zoning map in parentheses as a suffix to the base zone with which it is combined. For example, if the TDR overlay zone were combined with a Single-Family Residence (R-1) base zone on a receiving site, the combined zone would be shown on the official zoning map as "R-1 (TDR-R)."

XX-104. Transferable Development Rights–Sending Site Procedure. The owners of land located in a TDR-S overlay zone may elect to develop such land as provided under the base zone in which the land is located, or may elect to transfer some or all of the development rights associated with the land.

(A) The number of development rights available to be transferred from a particular sending site shall be determined as follows, less any development rights that have been previously exercised or transferred:

(1) ____ development rights per acre of land where fee title to the land is transferred to _____ City, another government entity, or a qualified charitable organization as provided in Section XX-107 of this Chapter.

(2) ____ development rights per acre of land where the property owner retains fee title to the land and the land is subject to a conservation easement as provided in Section

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

XX-107 of this Chapter.

(3) ____ development right per ____ acres of unbuildable land under the provisions of this Title, where fee title to the land is transferred to _____ City, another government entity, or a qualified charitable organization as provided in Section 12C-1307 of this Chapter.

(4) ____ development right per ____ acres of unbuildable land under the provisions of this Title, where the property owner retains fee title to the land and the land is subject to a conservation easement as provided in Section 12C-1307 of this Chapter.

(5) The Planning Department of _____ City shall calculate the number of development rights associated with a given a lot or parcel of land, rounded to the nearest whole number. Such rights shall be evidenced by a development rights certificate issued by the Department.

(B) In order to be eligible to participate in the TDR program an owner of land in a TDR-S overlay zone shall request development rights certificates from the Planning Department for land, or a portion thereof, which is eligible for participation in the TDR program. Upon receipt of such request the Department shall calculate the total number of development rights which may be transferred from the land, pursuant to Subsection (A) above. Upon compliance with Subsection (C) below, the land owner shall be issued a certificate for each of the requested development rights certificates based on the available development rights. Thereafter, the land owner shall be eligible to transfer such development rights in accordance with the requirements of this Chapter.

(C) No development rights certificate shall be issued, and no development right shall be transferred, unless and until a conservation easement is recorded among the land records of Cache County, Utah, as required by Section XX-108, on the land from which a development right originates. If only a portion of the total number of available development rights are transferred, the easement shall be placed on the land which forms the basis for the development rights certificates calculated under Subsection (B) above, as determined by the Community Development Department.

(D) The transfer of any development rights from a sending site shall be evidenced by a notice recorded among the land records of Cache County, Utah, in a form approved by the City Attorney. Such notice shall indicate the following:

(1) The total number of development rights which may be transferred from the sending site.

(2) the number of development rights actually transferred at the time the notice is recorded.

(3) The number of development rights remaining.

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

(4) Notice to any potential buyer of the sending site that:

(a) Any remaining development rights may have been transferred from the property; and,

(b) The buyer should contact the Planning Department to determine the number of development rights, if any, remaining on the sending site.

(E) The Planning Department shall maintain a record of development rights which have been transferred.

(F) When all available development rights on a sending site have been transferred, only those uses enumerated in the applicable conservation easement shall be allowed.

(G) When a development right is transferred, the owner of the land from which the development right originates shall notify the County Tax Assessor and the holder of any lien or mortgage on the land.

XX-105. Transferable Development Rights–Receiving Site Procedure.

(A) Development rights may be transferred to a lot or parcel of land located in the TDR-R overlay zone as provided in this section. A land owner or contract purchaser of land may apply for and receive approval for a TDR-R overlay zone in accordance with provisions of this Title applicable to the rezoning of land. A preliminary subdivision or site plan, as the case may be, shall be submitted and acted upon concurrently with an application to rezone land to the TDR-R overlay zone. If a conditional use permit or other approval is also necessary to allow a proposed development, review and approval of such application may occur simultaneously with an application for rezoning to a TDR-R overlay zone.

(B) The number of development rights which may be transferred to a lot or parcel of land shall be limited to those areas described in the _____ General Plan as follows:

(1) Conservation development areas, ____ development right per acre of land.

(2) Garden court areas, ____ development rights per acre of land.

(3) All other multi-family areas, ____ development rights per acre of land.

(C) Notwithstanding Subsection (B) above, development within a proposed TDR-R overlay zone shall not exceed the density limitations set forth in the _____ General Plan.

(D) The applicant shall submit evidence that development rights are available to be transferred to land proposed for development. Such evidence shall be in the form of development rights certificates or an option to purchase needed development rights upon development approval.

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

(E) The City Council, after receiving a recommendation from the Planning Commission, may approve a TDR-R rezoning request and authorize the transfer of development rights to a receiving site if the proposed development:

- (1) Is located within a receiving area as set forth in the _____ General Plan.
- (2) Is consistent with and does not exceed the density limitations of the _____ General Plan.
- (3) Conforms to the requirements of this Chapter.
- (4) Conforms to applicable subdivision and site plan regulations set forth in this Title.
- (5) Achieves, as determined by the City Council, desirable development compatible with both site conditions and surrounding existing and proposed future development.

(F) Upon approval of a TDR-R rezoning request and associated preliminary subdivision or site plan, as the case may be, the land owner shall be eligible to transfer development rights to the subject land in accordance with the requirements of this Chapter.

(G) An approved subdivision plat or site plan which uses transferred development rights shall contain a note which states the applicable base zone and the number of development rights transferred to the land which is the subject of the approval. No such approval shall be final unless and until the applicant surrenders certificates for the requisite number of development rights to the Planning Department.

XX-106. Development Standards.

(A) The following development standards shall be applicable to a receiving site.

(1) Each development in a TDR-R overlay zone shall conform to the requirements of the base zone and this Title, except as may be modified by the provisions of this Chapter.

(2) Development standards of the base zone may be modified to permit clustering of lots.

(3) If density proposed on a receiving site exceeds the density permitted by the base zone, density, lot sizes, and other development standards shall be determined by the City Council, after receiving a recommendation from the Planning Commission, as part of the subdivision and/or site plan review process. In making a determination of final density, the City Council shall:

- (a) Consider the subdivision and site plan provisions of this Title.

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

(b) Consider whether a proposed plan has a design which:

(i) Provides a range of housing types;

(ii) Takes advantage of existing topography and other natural features;

(iii) Achieves a mutually compatible relationship between the proposed development and adjoining land uses; and

(iv) Implements the policies set forth in the _____ General Plan.

(c) Make findings regarding the matters set forth in subparagraphs (a) and (2) to support the Council's decision.

(B) The following development standards shall be applicable to a sending site.

(1) Each development in a TDR-S overlay zone shall conform to the requirements of the base zone and this Title except as may be modified by the provisions of this Chapter.

(2) The uses permitted on a sending site shall be those uses allowed by the base zone applicable to the site except as diminished by the transfer therefrom of development rights and by the terms of any conservation easement applicable to the site.

(3) The total number of dwelling units which may be constructed on a sending site shall be the number of units allowed by the base zone when the site is designated as a sending site minus all development rights transferred therefrom. No dwelling units may be constructed on a sending site located where all development rights have been transferred from the site.

(4) The City Council, after receiving a recommendation from the Planning Commission, may require that subdivision lots be clustered in one location to promote the purposes of this Chapter. If clustering is required, it shall meet the following standards:

(a) Lots shall be located in a manner that will least affect any environmentally sensitive land or open space area located on the site.

(b) Lots shall be located outside any known hazard area.

(c) Lot clustering shall make efficient use of land resources and infrastructure. In order to maintain large areas of open space, residential lots and dwelling units should be clustered adjacent to dwellings on surrounding properties wherever possible.

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

(5) The impact on existing uses and the rural character of the area shall be included in considering the number of dwelling units allowed in a cluster area.

(6) Residential lots, whether clustered or not, shall be located adjacent to existing utilities and roads to minimize the amount of construction and loss of agricultural land, unless such location conflicts with preservation goals set forth in the _____ General Plan.

(7) Where technically feasible, joint or common water and/or sanitation systems shall be used.

XX-107. Conservation Easement Required.

(A) A conservation easement shall be established on each sending site from which development rights are transferred.

(1) The easement shall cover the entire site where all development rights associated with a sending site are transferred.

(2) If only a portion of the development rights associated with a sending site are transferred, the area of the easement shall be the same as the total area of all the lots which could otherwise be established on the site but for the transfer of development rights.

(B) The conservation easement required by this Chapter shall be in a recordable form approved by the city attorney and shall meet the requirements of Section 57-18-1 et seq. of the Utah Code. The conservation easement shall also include the following terms.

(1) The holder of the easement shall be _____ City, another governmental entity, or a charitable organization which:

(a) Qualifies as for tax exempt status under Section 501(c)(3) of the Internal Revenue Code; and

(ii) Is organized in whole or in part for the purpose of accepting and managing conservation easements.

(2) The easement shall require that the easement area shall be maintained as it exists when the easement is created, including natural areas, wildlife preserves, trails, or other identified environmental or open land resources. Notwithstanding the foregoing, the City Council, after receiving a recommendation from the Planning Commission, may approve the construction of improvements upon finding such improvements will be in harmony with the purposes of the easement and intent of this Chapter.

(3) The easement shall include a reference to the extinguishment of the development

MODEL TRANSFER OF DEVELOPMENT RIGHTS ORDINANCE

rights transferred from the sending site. If additional rights are transferred after the recordation of a conservation easement, the easement shall be amended to reflect the extinguishment of such additional rights and shall be recorded thereafter.

(C) If the holder of a conservation easement proposes to transfer the easement to another entity, the recipient of any transferred interest shall meet the requirements of this section.

Appendix B

Model Interlocal Cooperation Agreement

Following is a model Interlocal Cooperation Agreement (ICA) to allow property owners to transfer development rights from land in one government jurisdiction to land in another. While this is a good model of what an ICA may entail, a community should not merely copy and adopt it without specific study regarding TDR feasibility and discussions with neighboring communities. The community general plan and development code must also be amended as may be necessary to ensure compatibility with the ICA.

ICAs are governed by the Interlocal Cooperation Act set forth in Title 11, Chapter 13 of the Utah Code. A number of approaches are possible under the Act. Local counsel and appropriate officials should be consulted to determine the scope and content of modifications which may be necessary to conform the model ICA to local conditions and ordinances, and state law.

This ICA makes certain assumptions about the nature of development rights transfers which it authorizes and the administrative program necessary to make the TDR transfer system work. For instance, although state law allows establishment of a joint board to administer an ICA, the model ICA provides that the TDR program will be administered by one of the parties to the agreement.

This ICA also assumes that all transfers of development rights will occur under the program referred to in

the agreement. Using a single ICA for all transfers has the advantage of being less complicated. The TDR program is easier to understand and administer because TDR provisions apply in the same fashion to all transactions. Alternatively, however, ICAs may be prepared on a case-by-case basis for limited areas only. This approach allows ICAs to be tailored to unique conditions. It also allows a TDR program to be started and continued on an incremental basis.

**MODEL INTERLOCAL COOPERATION AGREEMENT
FOR TRANSFERABLE DEVELOPMENT RIGHTS**

THIS INTERLOCAL COOPERATION AGREEMENT (hereinafter "Agreement") is entered into as of the ___ day of _____, 200_, by and between the City of _____, Utah (hereinafter "City"), a municipal corporation and political subdivision of the State of Utah, with its principal offices at _____, Utah, and _____ County (hereinafter "County"), with its principal offices at: _____.

RECITALS:

A. The Interlocal Cooperation Act, Title 11, Chapter 13, Utah Code, 1953, as amended, (the "Act") authorizes public agencies, including a city, town, county, school district, special district, or other political subdivisions of the State of Utah as defined therein, to enter into mutually advantageous agreements for joint or cooperative action as may be authorized by law.

B. The purpose of the Act is (1) to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and under forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and (2) to provide the benefit of economy of scale, economic development, and utilization of natural resources for the overall promotion of the general welfare of the state.

C. Any power, privilege, or authority exercised or capable of exercise by a Utah public agency may be exercised and enjoyed jointly with any other Utah public agency having the power, privilege, or authority.

D. To provide for the health, safety, and welfare, and promote the prosperity, improve the morals, peace and good order, comfort, convenience, and aesthetics for present and future inhabitants and businesses, to protect the tax base, secure economy in governmental expenditures, foster the state's agricultural and other industries, protect both urban and nonurban development, and to protect property values, the Municipal and County Land Use Development and Management Acts, respectively Title 10, Chapter 9 and Title 17, Chapter 27, Utah Code, 1953, as amended, authorize City and County to enact all ordinances, resolutions, and rules that they consider necessary for the use and development of land within the City or County, as the case may be, including ordinances, resolutions, and rules governing uses, density, open spaces, structures, buildings, energy-efficiency, light and air, air quality, transportation and public or alternative transportation, infrastructure, public facilities, vegetation, and trees and landscaping, unless those ordinances, resolutions, or rules are expressly prohibited by law.

E. An objective of County's General Plan, among others, is to preserve certain land areas for agricultural use and open space.

City ____ County ____

F. Transferring development rights from "sending areas" intended to be preserved to "receiving areas" suitable for development is a method of achieving this objective.

G. City's General Plan identifies receiving areas suitable for new or additional development due to their proximity to existing or planned development and infrastructure; and,

H. City and County have each adopted necessary ordinances and/or resolutions authorizing the transfer of development rights within their respective jurisdictions.

I. City and County, through their respective governing bodies, have voluntarily determined that the best interests and welfare of the public within their respective jurisdictions will be served by this Agreement which authorizes the transfer of development rights from County to City as provided herein.

J. The governing bodies of City and County have by resolution approved this Interlocal Cooperation Agreement to provide for the joint and cooperative action described herein.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing recitals, mutual covenants and agreements of the parties contained herein, and for other good and valuable consideration, City and the County agree as follows:

1. Purpose. This Interlocal Cooperation Agreement has been established and entered into between City and County for purpose of allowing the transfer of land development rights from a "sending" site in County to a "receiving" site City as provided in this Agreement and applicable ordinances of City and County.

2. Effective Date. This Agreement shall be effective when the Agreement has been (i) approved by as provided in Section 11-13-202.5, Utah Code Annotated, 1953, as amended; (ii) executed by a duly authorized official of each the parties; and (iii) filed with the City Recorder of City and with the Clerk of County.

3. Duration. Upon becoming effective this Agreement shall have an initial term of ten (10) years unless sooner terminated or extended as provided in this section.

A. *Termination.* This Agreement shall terminate and shall have no further force or effect upon the happening of any of the following:

(1) Either party gives the other party sixty (60) days written notice of its intent to terminate the Agreement, followed thereafter by written notice of termination to the other party.

(2) City or County, as the case may be, repeals its TDR ordinances or

City ____ County ____

regulations.

(3) City or County's TDR ordinances or regulations are held by a court of competent jurisdiction to be invalid in a final judgment no longer subject to appeal.

(4) Either party materially defaults in its performance of the party's obligations under this Agreement and, after thirty (30) days written notice thereof from the other party, does not remedy such default.

B. *Extension.* After the initial term of this Agreement, this Agreement shall automatically be extended for successive ten (10) year terms unless sooner terminated as provided in Subsection A of this paragraph. Provided, however, that this Agreement shall not extend for more a total term of more than fifty (50) years as provided in Section 11-13-17, Utah Code Annotated, 1953, as amended.

4. Administrative Entity. City and County do not contemplate nor intend to establish a separate legal entity under the terms of this Agreement.

5. Administrator. Pursuant to Section 11-13-207 of the Utah Code Annotated, 1953, as amended, the parties agree that City shall act as the administrator of this Agreement. This Agreement does not anticipate nor provide for any organizational changes in City or County.

6. Manner of Financing. This Agreement and the joint and cooperative action authorized by this Agreement shall not receive separate financing, nor shall a separate budget be required. Each party shall be responsible for its own obligations under this Agreement.

7. Disposition of Real and Personal Property. City and County do not contemplate nor intend to acquire or dispose of real or personal property under the terms of this Agreement. Each party shall be responsible for its own real and personal property and may acquire, hold, or dispose such property as provided by applicable law.

8. Applicable Ordinances. City and County have each adopted necessary ordinances and/or resolutions necessary to allow the transfer of development rights within their respective jurisdictions. City and County acknowledge such ordinances are consistent with the intent and purpose of this Agreement. City and County may amend their respective ordinances to modify the terms and conditions under which development rights may be transferred and applied with in their respective jurisdictions.

9. City Responsibilities. City shall adopt administrative measures to implement the TDR program envisioned by this Agreement. Such measures shall include at least the following:

A. *TDR Forms.* After receiving comments from County, as provided in Section 10 of this Agreement, prepare standard forms for each of the following: TDR certificate, deed transferring development rights to purchaser, complete or partial mortgage release, conservation easement for sending site, option agreement to purchase TDRs, and promissory

City ____ County ____

note for deferred purchase money acquisition of TDRs.

B. *TDR Interest Database.* Create and maintain a database listing property owners, developers, and others who have expressed an interest in selling or purchasing TDRs within the area encompassed by City and County.

C. *TDR Certificates.* Accept and process applications for TDR certificates pursuant to City ordinances, including the issuance of TDR certificates for sending and/or receiving areas within City jurisdiction.

D. *TDR Registry.* Create and maintain a registry to document TDR certificates issued, transferred, and redeemed.

E. *Conservation Easements.* Record conservation easements for property from which TDRs are generated.

F. *County Notice.* Notify County when TDR certificates for land within County's jurisdiction are redeemed in conjunction with approval for a development project located on a receiving site.

G. *Annual Report.* Issue an annual report, after consulting with County, which shows the number of TDRs conveyed, transferred, and redeemed to date.

10. County Responsibilities. County shall adopt administrative procedures to implement the TDR program envisioned by this Agreement. Such procedures shall, at a minimum, include the following:

A. *TDR Certificates.* Accept and process applications for TDR certificates pursuant to County ordinances, including the issuance of TDR certificates for sending and/or receiving areas within County jurisdiction.

B. *City Notice.* Notify City of TDR certificates issued by County.

C. *TDR Forms.* Within ___ days after the execution of this Agreement, review and comment to City regarding the TDR forms described in Paragraph 9, Subsection A, of this Agreement.

11. Indemnification. Each party to this Agreement shall indemnify and save harmless the other party for damages, claims, suits, and actions arising out of a party's own actions or omissions or the acts or omissions of its officers, agents, or employees in connection with this Agreement. It is expressly agreed that the obligation to indemnify is limited to the dollar amounts set forth in the Governmental Immunity Act, Section 63-30-34 of the Utah Code Annotated, 1953, as amended.

12. Costs of Enforcement. If either party files legal action to enforce any Agreement contained herein or for breach of any covenant or condition, the party in default shall pay the other

City ___ County ___

reasonable attorney's fees, and all costs associated with the proper enforcement of the Agreement, including those associated with an appeal to a higher court.

13. Notice. Any written notice which must or may be given relating to this Agreement shall be sufficient if mailed postage prepaid, registered or certified mail, in the United States mail addressed to a party at the addresses given below or at such other address as a party may specify in a notice which complies with this paragraph.

City: _____

County: _____

14. General Provisions.

A. *Entire Agreement.* This Agreement contains the entire agreement between the parties. No promise, representation, warranty, or covenant not included in this Agreement has been or is relied upon by the parties to it.

B. *Amendment of Agreement.* This Agreement may be modified only by a writing signed by the parties.

C. *Construction of Agreement.* This Agreement shall be construed so as to effectuate its public purpose of allowing transfers of development rights as set forth herein to promote the health, safety, and welfare of the citizens of City and County.

D. *Governing Law.* All questions with respect to the construction of this Agreement and all rights and liabilities of the parties shall be governed by the laws of the State of Utah.

E. *Severability.* If any term or provision of this Agreement or the application thereof shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to circumstances other than those with respect to which it is invalid or unenforceable, shall not be affected thereby, and shall be enforced to the extent permitted by law. To the extent permitted by applicable law, the parties hereby waive any provision of law which would render any of the terms of this Agreement unenforceable.

F. *Headings for Convenience.* All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Agreement.

G. *Time of Performance.* Time shall be of the essence with respect to the duties imposed on the parties under this Agreement. Unless a time limit is specified for the performance of such duties each party shall commence and perform its duties in a diligent

City ____ County ____

manner in order to complete the same as soon as reasonably practicable.

H. *No Third-party Beneficiaries.* This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right of action or interest in this Agreement based upon any provision set forth herein.

I. *No Waiver.* Failure of a party hereto to exercise any right under this Agreement shall not be deemed a waiver of such right and shall not be construed to be a modification of this agreement.

[signature page follows]

City ____ County ____

IN WITNESS WHEREOF, this Agreement has been executed by City and County as of the date first written above.

Attest:

CITY OF _____, a political subdivision of the State of Utah

City Recorder

By: _____
Mayor

Approved as to form and compatibility with the laws of the State of Utah

By: _____
City Attorney

Attest:

COUNTY OF _____, a political subdivision of the State of Utah

County Clerk

By: _____

Approved as to form and compatibility with the laws of the State of Utah

By: _____
County Attorney

City ____ County ____

Appendix C

LESA Overview

The LESA (Land Evaluation Site Assessment) system is a numeric rating system for applying a score to individual parcels (or groups of parcels) to help in developing land use policy on farmlands. The system scores parcels based on two factors.



LESA Workshop: Members of the Cache County Agricultural Advisory Board and other local stakeholders.

The first is soil quality. The second is “other” factors. These factors are determined by the local community and could include items such as rural character and wildlife habitat. These “other” factors must be determined by those appointed to develop the LESA. Although designed primarily for farmland classification, the LESA is a prime example of how communities can plan for the future through careful study of preservation goals.

Although there have been efforts for many years to classify farmlands, the LESA developed in the early 1980’s, is the best model to have been adopted nationally by the Soil Conservation Service (now the NRCS). This

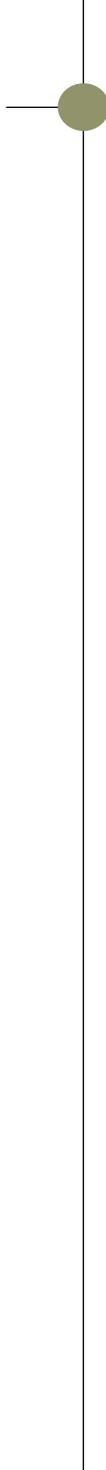
program, adopted in 1984, is a generic LESA used by the Federal Government for evaluating projects that may cause the conversion of farmland to other uses. As this has been a success, local agencies have begun adopting LESA programs to help with land use decisions for their communities. Once local programs are certified by the NRCS, both local and federal projects are reviewed by the local LESA, which is typically better suited for the locality.

LESA is not a farmland protection tool, rather it is a tool for analyzing farmland. The role of a LESA system is to provide a framework for rating farmland in order to help communities make better land use decisions. The following questions are commonly

addressed by LESA:

- Which lands should communities designate for long-term agricultural use (potential sending zones).
- Which farm parcels should be given priority for using specific land use tools, such as TDR.
- If development is to take place, which potential site is least damaging to farmlands identified for preservation by the community.

Developing a LESA system is much like developing a TDR system. A LESA system, if it is to support a TDR system by delineating areas of preservation, should be developed by those who will be participating in the system. As with a TDR program, this is to ensure that the completed system



fits the needs of the community. As when developing a TDR program, those wishing to develop a LESA system should consult the professional services of those who can ensure that the proper process is undertaken in developing a successful system.

Source:

Pease, James R., And Coughlin, Robert E. *Land Evaluation and Site Assessment: A Guidebook for Rating Agricultural Lands, Second Edition*. Soil and Water Conservation Society, Ankey, Iowa.

Other Sources:

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Appendix D

Contact Information

Listed below are a number of existing programs that have been referenced in this document. Information about these programs, as well as contact information is correct as of June 2003.

Boulder County, Colorado

Example of a community that has utilized cluster developments.

*Graham Billingsley, Director
Land Use Division
(303) 441-3930
gbillingsley@co.boulder.co.us*



North Logan Area

Photo by Envision Utah

www.boulder.co.us

Cache County, Utah

Example of a community that is considering a TDR program for the purpose of farmland protection. Cache County is using a unique approach to determine which lands should be preserved. It is called a LESA (Land Evaluation and Site Assessment).

*Mark Teuscher, Countywide Planner
160 North Main, Suite 203
Logan, Utah 84321
(435) 716-7154*

Calvert County, Maryland

Example of a community that has utilized a less restrictive TDR program.

*Gregory A. Bowen, Director
Department of Planning
(410) 535-1600
pz@Co.Cal.MD.US
www.co.cal.md.us*

Collier County, Florida

Example of a community that has utilized cluster developments.

*Stan Litsinger, Current
Planning Manager
Collier County Planning
Services Department
(239) 403-2310
stanlitsinger@colliergov.net
www.colliergov.net*

Cupertino, California

Example of a community that has utilized a TDR program for the purpose of enhancing urban design and using infrastructure efficiently.

*Ciddy Wordell, City Planner
(408) 777-3308
planning@cupertino.org
www.cupertino.org*

Dade County, Florida

Example of a community that has utilized a more restrictive TDR Program.

*Diane O'Quinn Williams, Director
(305) 375-2800
Department of Planning and Zoning
Dpnz@miamidade.gov
www.miamidade.gov*

Davis, California

Example of a community that has utilized development regulations.

*Bill Emlen, Director
Department of Planning & Building
(530) 757-5610
BEmlen@ci.davis.ca.us
www.city.davis.ca.us*

Davis County, Utah

Example of a community that is considering a interlocal TDR program for environmental protection.

*Wilf Sommerkorn
Economic Development Director
Davis County
(801) 451-3278
wilf@co.davis.ut.us*

Envision Utah

North Logan General Plan Visioning Process

*Jarret Whicker
254 South 600 East, Suite 201
Salt Lake City, Utah 84102
(801) 303-1456
jwhicker@cuf-envision.org*

King County, Washington

Example of a community that has utilized a TDR program to create/preserve recreational activities.

*Mark Sollitto, TDR Program Manager
(206) 296-1941
Mark.Sollitto@metrokc.gov
www.metrokc.gov*

Livermore, California

Example of a community that has utilized development regulations.

*Ben Murray, Associate Planner
Community Development Department
(925) 373-5200
BJMurray@ci.livermore.ca.us
www.ci.livermore.ca.us*

Malibu, California

Example of a community that has utilized TDR for environmental protection purposes.

*Drew Purvis, Planning Director
(310) 456-2489 x243
dpurvis@ci.malibu.ca.us
www.ci.malibu.ca.us*

Mapleton, Utah

Adopted in 2001 to achieve hillside protection.

*Matt Evans, Planning and Zoning
Administrator, Mapleton City.
(801)-489-6138
mevans@mapleton.org
www.mapleton.org*

Montgomery County, Maryland

Example of a community that has utilized TDR for the protection of farmland.

*Judy Daniel, Team Leader, Rural Area
Team
(301) 495-4559
judy.daniel@mncppc-mc.org
Www.mc-mncppc.org*

New Jersey Pinelands, New Jersey
Example of a community that has utilized TDR for farmland protection.

*John Stokes, Executive Director
New Jersey Pinelands Commission
(609) 894-7300
info@njpines.state.nj.us
www.state.nj.us/pinelands*

New York, New York
Example of a community that has utilized TDR to preserve historic landmarks.

*Richard Barth, Executive Director
Department of City Planning
(212) 720-3480
www.ci.nycny.us/planning*

North Logan City
Example of a community considering a TDR program for hillside protection.

*Cordell Batt, City Planner/Economic Development Director
2076 North 1200 East
North Logan, Utah
(435) 752-1310*

Palm Beach County, Florida
Example of a community that has utilized TDR for environmental protection purposes.

*Susan Miller, AICP, Senior Planner
(561) 233-5328
samiller@co.palm-beach.fl.us
www.co.palm-beach.fl.us*

Redmond, Washington
Example of a community that has utilized a TDR program to create/preserve recreational activities.

*Terry Shirk, Senior Planner
(425) 556-2480
tshirk@ci.redmond.wa.us
www.ci.redmond.wa.us*

San Francisco, California
Example of a community that has utilized TDR to preserve historic landmarks.

*Dan DiBartolo, TDR Program Administrator
(415) 558-6291
Dan.Dibartolo@sfgov.org
www.sfgov.org*

San Luis Obispo County, California
Example of a community that has utilized a less restrictive TDR program.

*Department of Planning & Building
Kami Griffin, Supervising Planner
(805) 781-5600
kgriffin@co.slo.ca.us
www.co.slo.ca.us*

Sonoma County, California
Example of a community that has utilized acquisition programs.

*Andrea Mackenzie, General Manager
Department of Agricultural Preservation
(707) 565-7360
www.sonoma-county.org*



Suffolk County, New York

Example of a community that has utilized acquisition programs.

*Thomas A. Isles, Director
Planning Department
(631) 853-5191
Planning@co.suffolk.ny.us
www.co.suffolk.n.us*

Summit County, Utah.

Example of a community that has utilized TDR for the preservation of open space.

*Summit County Planning
(435) 336-3124
60 N. Main Coalville, Utah*

**Tahoe Regional Planning Agency,
California/Nevada**

Example of a community that has utilized a more restrictive TDR Program.

*Kathy White
(775) 588-4547
kwhite@trpa.org
www.trpa.org*

Washington DC

Example of a community that has utilized a TDR program for the purpose of enhancing urban design and using infrastructure efficiently.

*Andrew Altman, Director, Office of
Planning
(202) 442-7600
www.dc.gov*

West Valley City, Utah

Adopted in 2000 to achieve Wetland Protection

*John Janson, Assistant Director of
Community and Economic
Development, West Valley City.
Suite 240
3600 South Constitution Blvd.
West Valley City, Utah 84119
(801) 963-3277
Www.ci.west-valley.ut.us*