

Supplemental Handout

Is Your Community TDR-Ready?

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This handout is designed to supplement a presentation made on April 27, 2009 at the American Planning Association National Conference, Minneapolis, Minnesota. It is not intended as a stand-alone document. For background on transfer of development rights, please see www.BeyondTakingsAndGivings.com. To view the presentation, please see www.planning.org.

We recently wrote an article for the *Journal of the American Planning Association* that ranks the factors most often found in the top 20 TDR programs in the US. From that study, we isolated four questions that planners can use to evaluate whether their communities are likely candidates for speedy adoption of a plan-consistent TDR program. By “plan-consistent TDR”, we mean a TDR ordinance that works within the development limits of the current general plan.

The receiving-area component of a simplified TDR ordinance can be established through four definitions and one requirement inserted into the zoning code as

follows. “TDR Receiving Sites” are defined as up-zoned land, meaning land where future changes in zoning allow additional development potential. “Baseline Density” is defined as the maximum density allowed by the zoning in effect for a receiving site prior to the up-zoning. “Maximum With-TDR Density” is the higher development potential only available to developers who choose to use the TDR option. “Bonus Dwelling Units” are those dwelling units in excess of baseline density that a developer gains by complying with the TDR requirement. Finally, the TDR requirement itself is the number of TDRs that developers are required to retire per bonus dwelling unit. With these receiving area provisions in the zoning code, a community may elect to wait for developers to apply for future up-zonings. These future up-zoning applications, if approved, essentially implement the TDR ordinance over time.

We are not claiming that plan-consistent TDR is the only approach or even necessarily the best TDR approach for any given community. However, plan-consistent TDR may be appropriate for communities that lack the time and resources needed to develop and adopt a TDR program involving increases in the development limits of their current general plans.

Four Questions

Some readers will have no trouble answering the following questions without referring to the extensive notes. However, if you are inclined to say “maybe” to any question, please see that question’s corresponding note for suggestions.

1) Does your community often receive applications for up-zonings (zoning code changes that increase allowable residential density and/or building size)?

Yes ___ No_____

NOTE: Some respondents may be able to answer Question 1 without much reflection because their communities experience either very few or very many applications for up-zonings. However, for those who fall in the middle of those two extremes, we offer the following suggestion. Estimate the number of dwelling units built in a typical year resulting from up-

zonings. Assume, for this exercise alone, that your program will grant one TDR for each dwelling unit precluded by easement in the sending area and that each TDR will permit one bonus dwelling unit in the receiving area. Then multiply your estimated annual number of bonus units by the amount of sending area land needed per dwelling unit. The resulting number is a crude approximation of the acreage that would be preserved by your TDR program annually. If this seems like a meaningful amount of preservation, you should answer “yes” to Question 1. For example, let's assume that the zoning in your likely sending area requires five acres per dwelling unit and that you estimate that your community issues building permits for 20 dwelling units each year that are made possible by up-zonings. Assuming one TDR is required for each of the 20 bonus units and assuming each TDR represents five acres of preserved land, your hypothetical TDR program would preserve 100 acres of land per year. If a preservation rate of 100 acres per year seems worth the effort of adopting a TDR program, you would answer “yes” to Question 1.

2) Does your community's current general plan indicate an adequate number of areas appropriate for future up-zonings?

Yes ___ No ___

NOTE: Some respondents may be able to answer Question 2 without extensive thought because their general plans either designate no areas or many areas as appropriate for future up-zonings. However, for communities in the middle of this continuum, we offer the following suggestion. Consider whether the areas designated in the general plan for future up-zonings are capable of sustaining the bonus dwelling units that you consider necessary to achieve a meaningful rate of preservation (as described in the note to Question 1. For example, let's continue the assumption that you want to preserve at least 100 acres per year and that this preservation rate will require the transfer of 20 TDRs per year which represent 20 dwelling units resulting from up-zonings. Assume that you estimate that your general plan designates 1,000 acres appropriate for an up-zoning from one unit per five acres to two units per acre. If developers wanted to maximize this potential, a total of 1,800 bonus units would result ($1,000 \times 2 = 2,000$ minus a baseline of 1,000 divided by five, or 200 yields a maximum potential increase of 1,800 bonus units.) However, assuming that developers only want to up-zone half of this area and that they only want to build at an average density of one unit per acre still yields a total of 400 bonus units ($500 \times 1 = 500$ minus a baseline of 500 divided by five, or 100 yields a maximum potential increase of 400 bonus units.) This 400 bonus unit capacity should theoretically generate the required 20 bonus units per year for 20 years, allowing you to answer “yes” to Question 2.

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

Yes ___ No ___

NOTE: Question 3 is designed to test whether the zoning that currently applies to your sending areas is well suited to a workable TDR program. In our *JAPA* study, we found that 18 out of the 20 leading TDR programs in the nation have sending-site zoning that limits on-site development to no more than one dwelling unit per five acres. Consequently, we would suggest that you respond “yes” if your sending site zoning is one dwelling unit per five acres or more. If your sending area zoning allows higher density, consider repeating the evaluation method suggested in the note to Question 1: Estimate the number of dwelling units built in a typical year that are made possible by up-zonings. Assume, for this exercise alone, that your program will grant one TDR for each dwelling unit precluded by easement in the sending area and each TDR will permit one bonus dwelling unit in the receiving area. Then multiply your estimated annual number of bonus units by the amount of sending area land needed per dwelling unit. The resulting number is a crude approximation of the acreage that would be preserved by your TDR program annually. If this seems like a meaningful amount of preservation, you should answer “yes” to Question 3. For demonstration purposes, we now change the numbers in our hypothetical example. Assume the zoning in your likely sending area requires only one acre per dwelling unit and you estimate that your community issues building permits for 100 dwelling units each year that are made possible by up-zonings. Assuming one TDR for each of the 100 bonus units and assuming each TDR represents one acre of preserved land, your hypothetical TDR program would preserve 100 acres of land per year. If a preservation rate of 100 acres per year seems worth the effort of adopting a TDR program, you would answer “yes” to Question 3.

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

Yes ___ No ___

NOTE: Question 4 is designed to test whether your community will require TDRs for all or most bonus dwelling units or whether other mechanisms are in place (and are likely to remain in place) that allow developers to achieve bonus density without buying TDRs. To offer just a few examples, some communities offer bonus density when developers include certain amenities in their projects or provide community benefits. Many communities grant density bonuses when developers cluster houses or

use a planned unit development approval process. Needless to say, developers will not pay for TDRs if they can get bonus density free (or more cheaply) using an alternative to TDR. To offer some guidance in answering this question, we would suggest that you answer “no” if your community already has one of these alternative density bonus techniques and if you strongly believe that your community will not change these techniques so that developers cannot easily circumvent a TDR requirement. For example, your community may have a PUD (planned unit development) code provision that permits developments to exceed the maximum density limit of the underlying zoning district. You should answer “no” to Question 4 if you believe that your community would not change your PUD ordinance and require TDRs for all dwelling units permitted in a PUD that exceed the maximum density of the underlying zone. Again, a “no” to this question does not mean that TDR is not right for your community. Rather, it suggests that your community is not TDR-ready since it may not recognize that, in successful TDR programs, TDR must be the primary means of granting bonus density.

As with the other three questions, whether to respond “yes” or “no” to Question 4 may require you to make a judgment call. For example, your community may have a clustering provision that allows a modest density bonus but you may know that developers want higher density than they can obtain from this clustering option. Perhaps you know this because developers frequently seek up-zonings before using the clustering option. In this scenario, the TDR provision might be able to coexist with the clustering density bonus, with some density bonus obtained from clustering and some from TDR. If you conclude that the preservation rate expected from the TDR component alone is meaningful, you might decide that the continuation of the clustering density bonus would not be a fatal flaw and you could answer “yes” to Question 4.

Scoring the Quiz

If you responded “no” to one or more questions, it does not mean that your community is not suitable for TDR. Rather, “no” responses indicate that it will probably take more work to adopt a successful TDR program. For example, if a community rarely receives applications for up-zonings, demand for additional development can still be created, but it will likely require a comprehensive plan revision with substantial public involvement. A major planning effort of this scale is not extraordinary but, in our opinion, suggests that a community is not TDR-ready.

A “yes” response to all four questions suggests that your community is “TDR-ready”, meaning that a plan-consistent TDR program could occur relatively quickly, meaning within a year or less. Early in the process of developing a plan-consistent TDR program, your elected officials should ideally articulate whether or not they are willing to consider treating all units arising from up-zonings as bonus units and therefore subject to a TDR requirement. If so, a citizens’ advisory committee can formulate recommendations for the most appropriate components of a plan-consistent TDR program in your community: what areas should qualify as sending sites, what should constitute preservation, how many TDRs should be granted to preserved land, how many bonus units should be awarded per TDR and should developers be given a choice of compliance though cash-in-lieu payments as well as TDRs. These are not snap decisions by any means. But they are considerably easier than those needed when a community embarks on a TDR program requiring density-increasing changes in its general plan.

As mentioned above, some communities are capable of developing and adopting TDR programs in which one or more receiving areas are designated for higher density through a general plan update. These TDR programs may be superior to the plan-consistent TDR programs discussed in this handout *if they can actually be adopted*. However, development and adoption of a plan-consistent TDR program is likely to involve less time, money and controversy. Therefore TDR-ready communities should consider the plan-consistent TDR approach, which would allow them to adopt a mechanism capable of implementing the preservation as well as the development goals of their general plans in relatively little time.