



CHAPTER 8

TRANSFERABLE DEVELOPMENT RIGHTS (TDRs) AND PURCHASE OF DEVELOPMENT RIGHTS (PDRs) PROGRAMS

Overview

Transferable and purchasable development rights programs have been enacted by local governments across the U.S. in order to protect farmland and water resources. Under a transferable development rights (TDR) program, the development rights from a naturally or historically significant parcel of land are separated from the land and are sold for use on another tract where more development is desired. The landowner enters into a conservation easement permanently restricting development on the portion of the land from which the development rights have been removed (see Appendix A for fact sheet).

The private sector thus pays for land preservation under a transferable development rights program. Under a purchasable development rights (PDR) program, which may accompany a TDR program or stand on its own, development rights are purchased by a government or non-profit agency and are permanently retired rather than used on another tract.

The local government is responsible for designating TDR sending and receiving areas. Sending or preservation areas are usually rural and are often used for agricultural or timber purposes. Receiving areas have adequate infrastructure including roads, water, and sewer capacity, to handle increased densities.

Some TDR programs are mandatory, involving the restriction of future development on sending parcels, through large-lot zoning for example. Others are voluntary, providing landowners the opportunity to choose whether they want to restrict development on their parcels. In order to be successful, there must be a market for development rights and the owner of the sending parcel must be presented with an adequate return on their development rights. In those cases where designation and application of sending areas has been challenged as a taking of private property, the courts have ruled that the TDR provides just compensation for the restrictions on development.

TDRs and PDRs in the Alcovy

Given the rapid pace of development in their communities, planning staff and elected officials in two Alcovy counties, Gwinnett and Newton, have expressed an interest in learning more about TDR programs in order to determine whether they might be an appropriate tool for directing growth away from wetlands, other sensitive riparian lands, and groundwater recharge areas as well as other natural resources such as prime agricultural soils



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(farmland). PDR programs, which involve protecting natural resources such as riparian buffers through the acquisition of development right rather than a fee simple purchase, may be appropriate for use in all of the Alcovy counties to provide a mechanism for stretching limited governmental funds for long-term watershed protection. Unless public access is desired, ownership of the development rights to a property may ensure the same degree of water quality protection as fee simple ownership would, at a much lower cost.

How might a combined TDR and PDR program be used to protect the Alcovy water supply and other community assets in Newton County, for example? Agricultural operations, including cattle and horse farming, are a predominant land use in the eastern part of the Alcovy watershed. Many landowners here desire the opportunity to continue this way of life for themselves and for their children. Newton County's comprehensive plan calls for the protection of this agricultural area in order to preserve an important component of the community's economy and to protect the rural character that makes the county such an attractive and unique place. As long as agricultural activities are conducted in a manner that is consistent with recommended best management practices (Chapter 9), leaving this section of the county largely undeveloped and free of impervious surfaces will contribute to the protection of both the quality and supply of the Alcovy River as well.

Unfortunately, farmers in the county are beginning to feel financial pressures as property values increase as a result of the growing demand for residential development. In some cases conflicts between subdivision development and farming is occurring as new suburban residents complain about traditional agricultural practices such manure spreading or chicken houses on neighboring farms. Thus unsure about the long-term viability of agriculture in the county, some farmers are selling large holding for residential use, which will only increase the pressure on other farmers to sell. If, however, this section of the county was designated as a sending area under a transferable development rights program, farmers could sell the development rights to developers to use in the central western part of the of the county and in the municipalities where water and sewer infrastructure already exist and where expansion of these services is planned. This channels residential growth away form the agriculture areas and into the areas of the county where growth is centered and it is cheaper to provide infrastructure services. Because the development potential of the agricultural areas is limited by the terms of the permanent conservation easement, property taxes will decrease, thus making farming more viable. The county does not miss the loss in ad valorem revenue because it is not providing services such as sewer and water lines and an extensive road network in the preservation area.

The southern part of Newton County includes large forest holdings. To complement its TDR program, the county could use monies acquired under the Georgia Community Greenspace Program. This would leverage with other sources such as bond referendum or a special purpose local option sales tax (SPLOST) to acquire the development rights (PDRs) to some of these tracts most critical to the protection of water quality in the Alcovy.



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Traditional forestry activities would be allowed so long as they were subject to and conducted in conjunction with best management practices.

Program Costs

What would the cost be to the county to establish a TDR or a PDR program? The major costs of a PDR program are the administrative costs involved in establishing a system for evaluating and processing the purchase of development rights. Upfront costs of developing a TDR program would include staff time in developing consensus on the designation of sending and receiving areas. Calvert County Maryland, for example, employs a full-time secretary and designates about 1/10 of the time of a deputy director of planning to run its TDR program. A part-time employee has recently been hired to assist in landowner education.

Upfront tasks to developing a successful TDR/PDR program include a market analysis for determining how many development rights should be initially awarded to landowners in the sending areas and how much added density should be allowed in receiving areas. It also includes educating the community and particularly all the participants in the TDR process (landowners, developers, realtors, tax officials, and local government attorneys, for example) in various aspects of the programs. Once these are established, however, the administrative costs are fairly low.

Howard County, Maryland has developed a successful program that relies on a tax-deferred bond program and incremental payments over time. It is conceivable that under PDR system that incorporates the protection of water quality as a goal, some point sources of pollution such as local governments or industries may provide funding to purchase development rights to assure the control of nonpoint source pollution. An industrial source of phosphorous, for example, may contribute funds to allow the county to purchase development rights in a riparian buffer adjacent to a field where chicken litter is routinely applied.

Other TDR/PDR Programs

Calvert County, Maryland. Other components of the Calvert County program may be of interest to the Alcovy counties. Calvert County established its TDR program in 1978 in order to preserve the majority of remaining farm and forested land in the county through the development of Agricultural Preservation Districts (ADPs). A person who owns land within an ADP may sell their development rights to a landowner or developer within another APD or within a transfer Zone District. The transferred development rights can only be applied to the construction of family or tenant housing with no allowance for commercial or industrial use. Valuation of all development rights are determined by free market forces.



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The county's major role in these transactions is to qualify lands for participation (for both sending and receiving areas), to officiate the actual transfer of development rights, and to approve the language of the conservation easement placed on the sending site. The designation of receiving areas was accomplished via the creation of a Transfer Zone Districts Overlay for the county zoning plan and map. Using county monies matched by a contribution from the site agricultural transfer tax, the county ultimately created a Purchase and Retirement Fund (PAR) whereby it purchases and retires a certain number of development rights each year.

The TDR program has resulted in the preservation of one-third of the county, 18,000 acres, for agricultural and forestry production. The program is supported by developers who appreciate the ease with which it allows for the densification of a property. The developer does not have to submit a time-consuming upzoning application with its attendant Planning and County Commission meetings. In fact, though upzoning is still possible in Calvert County, there have been no applications for upzoning since the TDR program was enacted. The zoning ordinance for Calvert County is presented in Appendix F.

Pinelands, New Jersey. Another TDR program that might provide a useful example for the Alcovy counties is that of the Pinelands of southeastern New Jersey. This TDR program, called the Pinelands Development Credit program, involves seven counties and fifty-three municipalities and was developed to protect the forests, wetlands, creeks and rivers of the area which were threatened by the expansion of Atlantic City and the gambling industry, retirement housing, and other residential development.

Development credits are awarded to property owners in regions designated as preservation areas. They can sell these rights for use in designated regional growth areas. The number of development credits awarded varies depending on the type of land involved. Woodlands, for example, are given one development credit per 39 acres. Farmland, because it is more valuable, is given two development credits per 39 acres. Because wetlands have the least development potential, they have been assigned 0.2 credits per 39 acres. Each development credit allows the purchaser to develop for extra residential units in the designated growth areas.

The program included a Pinelands Development Credit Bank which helps bring interested parties together and acquire credits in order to preserve key regions. The bank was created with \$1.5 million in bonds with the goal of stimulating the private market and acting as a buyer of last resort.

Over 85,000 acres of ecologically sensitive land has been preserved under the Pinelands Development Credit program. One of the reasons of the program's success is that purchasing development credits is the only way a developer may increase density. Another is that the counties and municipalities with the region worked together to modify their



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individual comprehensive plans and zoning ordinances to fit into a larger Pinelands Comprehensive Plan that protects the ecologically sensitive resources of the area.

Legal Authority for TDRs/PDRs

In 1998 the Georgia General Assembly passed legislation authorizing the use of transferable development rights by local governments. Unfortunately a provision of the law that requires a deliberation by the governing body prior to the transfer of each individual development right makes the process so cumbersome that no local government in the state has yet adopted a TDR program. Athens-Clarke, Macon-Bibb, Cherokee, Jackson, Habersham, and other counties are investigating the potential for TDRs and are supporting legislation which would expressly allow for the establishment of regional transferable development rights programs and eliminate the provision requiring a deliberation prior to each individual transfer. Athens-Clarke County has reserved a section in its new zoning code for TDRs, optimistic that a change in state law will make the program workable.

The Community Greenspace Report developed in 1999 by a blue ribbon committee at the behest of Governor Roy Barnes describes TDRs as a viable tool for protecting greenspace and water quality in Georgia and recommends the amendment of the state TDR law as well. While the degree of cooperation involved in undertaking a regional Alcovy Development Credit program along the lines of the Pinelands model described earlier would be enormous, the Alcovy counties have already shown that they are capable of working together for the public good.