

Transfer of Development Rights Committee Report



April 2016

MARYLAND DEPARTMENT OF

PLANNING

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Acknowledgements

We wish to thank the TDR Committee members who participated in the September 2, 2015 and December 3, 2015 full committee meetings. This report is more complete and helpful because of your input, guidance and feedback at the meetings. By providing your expertise, knowledge and background on issues and programs specific to your local government, we were able to collectively develop recommendations and next steps that are informed by on-the-ground realities and challenges. We look forward to continuing our work together on this important issue.

September 2, 2015 meeting:

Stu Sirota, Assistant Secretary for Planning Services, Maryland Department of Planning, Chair of Committee

Steve Cohoon, Public Facilities Planner, Queen Anne's County Department of Public Works

Pamela Dunn, Division Chief of Functional Planning & Policy Division, Montgomery County Dept. of Planning

Katheleen Freeman, Director, Caroline County Department of Planning & Codes

Hon. Jan Gardner, County Executive, Frederick County

Keith Hall, Chief, Transportation and Long Range Planning, Wicomico County Dept. of Planning, Zoning and Community Development

Steven Horn, Director, Frederick County Planning and Permitting Division

Jenny King, Deputy Director, Harford County Department of Planning & Zoning

Hon. Allan Kittleman, County Executive, Howard County

Hon. Wilbur Levensgood, Jr., Vice-President, County Commissioners of Caroline County

Joy Levy, Administrator, Agricultural Land Preservation Program, Howard County Department of Planning & Zoning

Hon. Jim Moran, President, Queen Anne's County Board of County Commissioners

Stephen O'Connor, Preservation Program Administrator, Cecil County Department of Planning & Zoning

Sandra Olek, Natural Resources Planner, Maryland Department of Natural Resources

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Martin Sokolich, Senior Planner, Talbot County Department of Planning & Zoning

Chana Kikoen Turner, Administrator, Maryland Agricultural Land Preservation Foundation

Hon. Steven Weems, President, Calvert County Board of County Commissioners

December 3, 2015 meeting:

Stu Sirota, Assistant Secretary for Planning Services, Maryland Department of Planning, Chair of Committee

Steve Cohoon, Public Facilities Planner, Queen Anne's County Department of Public Works

Debbie Herr Cornwell, Long Range & Agricultural Planner, Caroline County Department of Planning & Codes

Steven Horn, Director, Frederick County Planning and Permitting Division

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Hon. Jim Moran, President, Queen Anne's County Board of County Commissioners

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Chana Kikoen Turner, Administrator, Maryland Agricultural Land Preservation Foundation

Hon. Steven Weems, President, Calvert County Board of County Commissioners

We also wish to thank the TDR Committee members and their staffs who participated in the four regional meetings of the TDR Committee (Southern Maryland on September 21, Central Maryland on October 7, the Upper Eastern Shore on October 19, and the Lower Eastern Shore on October 30). Please see Appendix 1 for the attendees of the regional meetings.

Executive Summary

Marylanders took 350 years to develop the first 650,000 acres in the state. The next 650,000 acres were developed in just the past 30 years. Between 1940 and 2012, according to the U.S. Census of Agriculture, Maryland lost almost 2.2 million acres of farmland; more farmland has been lost than now remains. Just over 2 million acres of farmland still exist in Maryland.

In response to these changes, Maryland has been a national leader in land preservation with programs like the Maryland Agricultural Land Preservation Foundation, Rural Legacy, and Program Open Space. Many counties also run their own land preservation programs.

All these programs, however, are funded with tax dollars, and public funding is limited. The Maryland Environmental Trust and local land trusts help by encouraging landowners to donate preservation easements in exchange for tax benefits.

Another land preservation tool, Transfer of Development Rights (TDR) programs, uses private rather than public funds to protect resource land from development. Developers, rather than the government, buy development rights from owners of rural land that lies in designated “sending areas,” which county governments designate for preservation. A perpetual conservation easement is then placed on the property. Developers can use the development rights to build more residences, increase commercial square footage or gain other marketable features in “receiving areas,” which are areas where development is planned and desired.

TDR programs can be a win for rural landowners, who realize much of the value of their land without developing it; for developers, who have more or improved product to sell in growth areas; and for taxpayers, who protect the land and its resources without spending public dollars. TDR programs, however, often face significant challenges to their success. Approximately half of Maryland’s counties have adopted TDR programs. Some have never been used, while Montgomery County’s program is among the most successful in the nation.

The TDR Study Process and Findings

In response to these challenges, Planning Secretary David R. Craig created a TDR Committee and invited county executives and presidents of county councils of TDR counties and their representatives to participate. From September through December 2015, Planning staff held two full Committee meetings along with four regional Committee meetings. The goal of the Committee was “to compare local TDR programs in Maryland, jointly develop a model TDR approach, and identify and seek to remove obstacles to implementing a successful TDR program.” Planning’s findings include the following:

- Four essential program components must exist for a TDR program to be successful:
 - Strong incentives for landowners in sending areas to sell development rights;
 - Demand for bonus density or its equivalent exists in receiving zones;

- TDRs are the predominant option for acquiring bonus density in receiving areas; and
- The TDR program moves development rights from rural to growth areas.
- Of the twelve county programs examined, only Montgomery County’s TDR program contained all four elements.
- Most counties said that their programs would work much better if development rights could be transferred from rural county land into municipalities, which have the infrastructure in place to accommodate development. Unfortunately, no interjurisdictional transfer agreements have been created between a county and its municipalities.
- If the counties and the state want municipalities to participate, they must provide incentives in the forms of infrastructure, community enhancements, or other means to incentivize municipalities to become receiving areas.

Study Recommendations

Increase Built-In Incentives to Sell Development Rights

- The most common and effective technique for increasing the incentive to sell development rights is to assign more transferable development rights than building rights in sending areas.
- Achieve incentives through unique provisions that allow landowners to benefit from the sale of TDRs in ways otherwise not possible.
- Develop an effective marketing campaign to landowners in sending areas that communicates the financial and other benefits available to them.

Stimulate the Market: Create Demand for Bonus Density (or the Equivalent) in Receiving Zones

- Reduce the density that can be built by-right and require TDRs for the additional units.
- Provide other reasons for developers to choose receiving areas. For example, prioritize receiving zones for community enhancements and other public investments, and reduce the size and development capacity of county growth areas that are not receiving zones. Implementing these approaches is at the discretion of the local government. Examples include:
 - Prioritize capital funding (for example, public school construction, water and sewer, streetscapes, local-side Program Open Space funds, or DNR Community Parks & Playgrounds Program funds) for TDR receiving areas (including municipalities and municipal or county growth areas).
 - To spur the creation of interjurisdictional (county-municipal) TDR programs, determine what municipal priorities can be addressed by the county in exchange for accepting TDRs. For

example, a county could prioritize capital funding for growth-related projects in a municipality.

- Similarly, counties and municipalities could agree to establish Maryland-designated “Sustainable Communities” as TDR receiving areas since a number of state incentives are available to these areas, and they can be paired with other incentives.
- Counties and municipalities could allow for fast-track review of development within TDR receiving areas.
- Counties with TDR programs should track a variety of data about individual TDR transactions to the degree that the information is accessible—buyers, sellers, purchase price, location of sending and receiving parcels, density being achieved in receiving areas, etc.

Reserve Bonus Density for TDRs Predominantly

- Clearly establish policy in the comprehensive plan that TDRs are the county’s means to increase density in newly established and existing growth areas, and will be used to accomplish this in all relevant implementation programs, such as development review and approval, rezoning processes, etc. Rigorously adhere to this policy.
- As an exception to this rule, structure the TDR program to benefit developers that include affordable housing in their projects. This might be accomplished by rewarding developers for building affordable units, for example, by 1) requiring fewer TDRs for affordable units or exempting them from TDR requirements entirely, and 2) reducing the number of TDRs required for each additional market rate (non-affordable) unit in proportion to the number of affordable units built.

Move Development Rights from Rural to Growth Areas

- Consider state actions, including:
 - Investigate whether the Massachusetts’ MassWorks Infrastructure Program could be adopted in Maryland to support municipalities to become TDR receiving areas. Through this program, local governments in Massachusetts can use a single grant application to access multiple sources of infrastructure funding. Simplifying the infrastructure funding process can facilitate development in growth areas.
- Consider local actions, including the following:
 - Transform rural-to-rural TDR programs into rural-to-growth area programs, or improve the effectiveness of rural-to-rural TDR programs.
 - To effectively move development rights from targeted preservation areas to non-targeted rural areas county governments could waive the five-year delay provision for municipal annexations.

- Amend ranking formulas for easement acquisition to prioritize Rural Legacy and MALPF easements in greenbelts around the towns.
- Reduce the cost for municipal implementation of Total Maximum Daily Load (TMDL) or Municipal Separate Storm Sewer System (MS4) requirements.

Next Steps

In keeping with Planning's mission, the agency will offer its technical assistance to counties that wish to create or amend their TDR program in an effort to achieve all four of the essential program components of Planning's TDR assessment approach.

Planning intends to reconvene the TDR Committee periodically so that members can share updates on program activity and changes to their local TDR programs.

Section One: Introduction

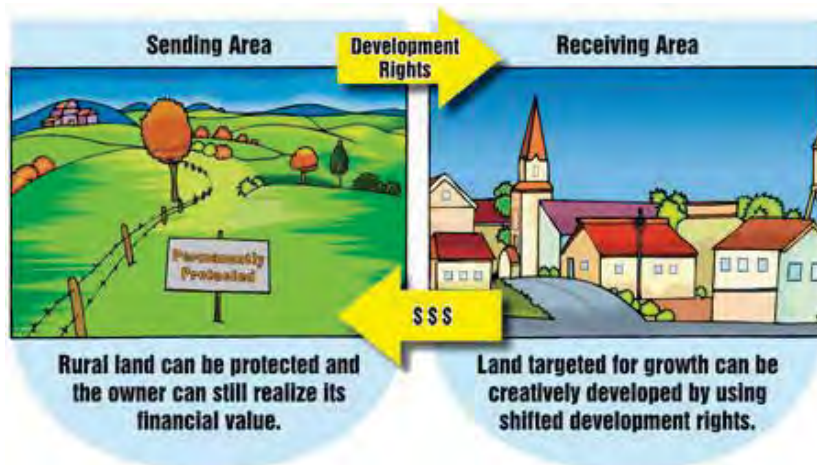
Forty-one states are larger in area than Maryland, but only eighteen are home to more people. Development pressure and competition for land is strong in virtually every corner of the state. As a result, Maryland has become a leader in preserving land for agriculture, forestry, parks and recreation, and a host of environmental benefits.

As of October 1, 2015, over 862,000 acres are preserved by easement through purchase of development rights (PDR) and transfer of development rights (TDR) programs. Another 726,000 acres have been protected by public ownership; much of this land allows passive public recreation such as hunting, hiking, and canoeing. Most of this acreage has been preserved with public funds provided by the counties or state. One land preservation tool, however, protects land using private funds: transfer of development rights (TDR).

TDR programs, generally speaking, work like this: Developers, rather than the government, buy the development rights from rural landowners in designated “sending areas,” which are designated for preservation by county governments. A perpetual conservation easement is then placed on the property. In return, developers are allowed to use the development rights to build more residences or commercial square footage in “receiving areas,” i.e., areas where development is planned for and desired (or “growth areas” for short).

SENDING AREA: Rural or environmentally sensitive land that is planned for preservation.

RECEIVING AREA: Land where development is desired and planned for.



The arrows represent the private transactions between rural land owners and developers. Landowners on the left sell their development rights for use in the receiving area on the right; the developers who use the development rights to add extra density or floor area in the receiving area send their payment to the rural landowners on the left to compensate them for extinguishing development rights on the land and thereby preserving it.

When TDR programs work, they are a win-win-win: for rural landowners, who realize much of the value of their land without having to sell or develop it; for developers, who have more product to sell in growth areas; and for taxpayers, who achieve land preservation without spending public dollars.

Department of Planning Secretary David Craig Creates the Ad Hoc TDR Committee

Local TDR programs had long been off the radar of state government. In May of 2015 Secretary of the Maryland Department of Planning (Planning), David Craig, invited county executives and presidents of the boards of county commissioners with TDR programs to participate in an Ad Hoc TDR Committee.¹ This action is part of Planning's expanded and updated mission to serve as a source for information and technical assistance to help local jurisdictions accomplish their planning goals. The Ad Hoc TDR Committee was formed to compare local TDR programs in Maryland, jointly develop a model TDR approach, and identify and seek to remove obstacles to implementing a successful TDR program.

The letter was sent to counties with TDR programs (Calvert, Caroline, Cecil, Charles, Frederick, Harford, Howard, Montgomery, Queen Anne's, St. Mary's Talbot, Wicomico and Worcester) and the Maryland Association of Counties. The Committee also included the Maryland Agricultural Land Preservation Foundation Board of Trustees, the Maryland Department of Agriculture, the Maryland Department of Natural Resources, and the Maryland Department of Planning.

(Somerset County has had a TDR program on the books for years, but it has not been used.)

The full TDR Committee met on September 2 and December 3, 2015. Regional meetings were held in Southern Maryland on September 21, Central Maryland on October 7, the Upper Eastern Shore on October 19, and the Lower Eastern Shore on October 30. The goal of the regional meetings was for local officials and planning staff to share their insights and for staff to the TDR Committee to leave with a good grasp of the problems facing local TDR programs in Maryland and a sense of potential solutions.

¹ The roster for the Committee appears in the appendix.

Section Two: Planning’s Research and Analysis Approach

Prior to meeting with the TDR Committee, Planning drew upon the expertise of its staff to affirm its current understanding of what makes a TDR program successful and then conducted additional research. Together this formed a strong, knowledge-based framework for Planning’s effort to compare existing local TDR programs, understand current obstacles, and propose workable solutions.

To begin, Planning reviewed planning research literature to identify the current state of knowledge regarding TDR programs. Among these, a study in the *Journal of the American Planning Association* analyzed the twenty most successful TDR programs nationwide to see which ones featured the ten attributes mentioned most often in twenty articles about what makes a successful TDR program.² The authors found three features that existed in all twenty programs; these are called “essential.” Two other program components, found in fifteen to eighteen of the twenty most successful TDR programs, the authors called “important.” Five more were “helpful.” See Table 1.

Table 1. Ten Features of Successful TDR Programs from the Journal of the APA
<i>Essential</i>
Demand for Bonus Density
Receiving Areas Customized to the Community
Strict Sending-Area Development Regulations
<i>Important</i>
Few or No Alternatives to TDR for Achieving Additional Development
Market Incentives: Transfer Ratios and Conversion Factors ³
<i>Helpful</i>
Ensuring that Developers Will Be Able to Use TDRs
Strong Public Support for Preservation
Simplicity
TDR Promotion and Facilitation
A TDR Bank

² Pruetz, Rick, and Noah Standridge. “What Makes Transfer of Development Rights Work? Success Factors from Research and Practice.” *Journal of the American Planning Association*, Vol. 75, No. 1, Winter 2009, pages 78-87.

³ A conversion factor is a benefit for using TDRs that involves something other than an increase in residential density: more commercial square footage, greater building height, increase in impervious surface, etc.

Building upon the foundation of the *Journal of the APA* study, Planning consolidated the ten features of a successful TDR program into four essential program components. **Together, these four components form what Planning believes is a model TDR program.**

The four components include:

1. Incentives for landowners in sending areas to sell development rights;
2. Demand for bonus density or its equivalent exists in receiving zones;
3. TDRs are the predominant option for acquiring bonus density; and
4. The TDR program moves development rights from rural to growth areas.

The following items must be addressed through the above four essential TDR programmatic elements:

- Demand for development in growth areas, necessary for a TDR program;
- A balance of supply and demand, so that the price of development rights is one that both buyers and sellers will accept;
- Local zoning and land use regulations that make TDRs the predominant way to achieve bonus density; and
- Public support and political will to make the program work and adapt over time to changing markets and conditions.

Planning's TDR assessment approach includes the following understanding of the four essential TDR program components:

Incentives to sell development rights

- If landowners can build the same number of rights on site as they can sell through the TDR program, it is often more profitable to simply build in the sending area rather than transfer the rights, i.e., there is essentially no compelling incentive to sell rights to developers in receiving areas.
- A common provision is that a property has some development rights that cannot be exercised onsite but can only be transferred.
- The standard way to provide an incentive for landowners in sending areas to sell development rights is to assign landowners more transferable development rights (e.g., one TDR per five acres of land) than buildable development rights on-site (e.g., one building right per 20 acres of land). This can be achieved through a downzoning by reducing the number of buildable rights and retaining the original number of rights as transferable.

- A local government needs to market the program to landowners in sending areas and communicate the benefits to landowners of including sale/transfer of TDRs in their plans for land and financial management.
- Bottom line: a TDR program and a local government's marketing of the program must create a compelling interest for landowners in sending areas to sell TDRs, and should communicate the benefits landowners can realize by including sale of TDRs in their land management choices.

Demand for Bonus Density (or its Equivalent) in Receiving Zones

- Developers are motivated to develop land in receiving areas at densities and/or intensities beyond what is allowed at base densities or intensities, and are willing to pay for those rights.
- TDR programs are driven by demand in receiving areas; without it, a TDR program will not work.
- To achieve demand capable of driving a TDR program, a county must first have a market for development in the receiving area. After that, the key is to provide the market with a desirable development commodity or attribute that can only be acquired by purchasing TDRs. This can take the form of additional density, mixed-use development in single-use residential districts, higher floor area ratios for commercial development, exemptions from normal building height restrictions, or exemptions from or waivers of other development requirements and restrictions.
- Bottom line: many factors affect demand for development and bonus density in receiving areas, including the nature and intensity of markets extrinsic to the TDR program itself. Within that context, a county can consider a number of actions to stimulate the market for TDRs; all of them require substantive support in the local comprehensive plan, strong public outreach to share the vision for TDRs and their role in the plan and in sending and receiving areas, and focused implementation strategies over time.

TDRs Are the Predominant Option for Acquiring Bonus Density

- Increased development densities or intensities in receiving areas can only be achieved by the purchase of TDRs; density is not "given away" through comprehensive or piecemeal rezoning, PUDs, clustering, etc.
- Exceptions to this principle must be eliminated or minimized, and provisions to accommodate affordable housing must be made.
- Bottom line: To ensure that other means to increase density or acquire other desirable development benefits are not "given away" to the detriment of the TDR program, it is essential that this objective and intention are clearly articulated in the comprehensive plan (including designation of new growth areas and transformation of existing areas through rezoning) and supported (rigorously adhered to) by implementation strategies governing

each of the mechanisms through which it is accomplished: development review and approval, rezoning processes, etc.

The TDR Program Moves Development Rights from Rural to Growth Areas

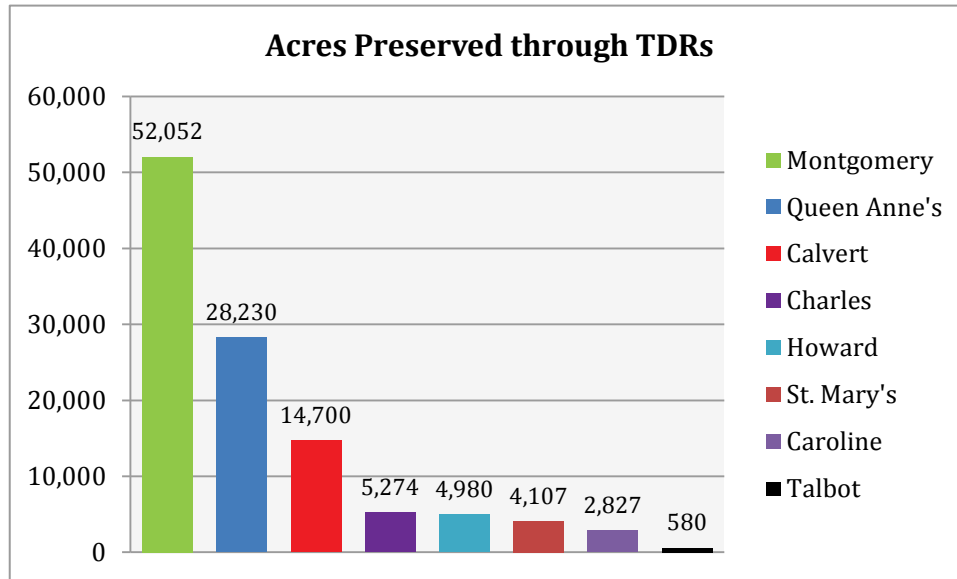
- Rights are not transferred within or to sending areas, which are designated for preservation, but must be transferred to receiving areas which are designated for growth.
- A goal of a TDR program is to preserve farmland and the businesses that depend on large contiguous areas of undeveloped resource land. The most effective TDR programs, therefore, move development rights out of agricultural areas into places where development is planned and which have public water and sewer.
- Rural-to-rural TDR programs sometimes do not remove development rights from a preservation area, which could reduce a county's ability to meet its goals for agriculture and other resource-based businesses.
- Bottom line: The most effective TDR programs will transfer development rights from designated preservation areas to seweried growth areas. Short of that, effective rural-to-rural programs will transfer development rights from designated preservation areas to rural zones not designated for preservation. Rural-to-growth area TDRs strengthen the demand from both developers and rural landowners for the program and demonstrate to the public the benefits of the TDR program.

At the regional meetings, Planning gathered information on the factors noted in the *Journal of APA* study, along with the four essential program components, for each of the county TDR programs studied. This information on program components and the roles they play in each local TDR program is included in the Appendix. Planning also gathered information from the TDR Committee on other factors (e.g., state laws and regulations, economic conditions).

The following section describes Planning's findings regarding program and other factors impacting TDR programs.

Section Three: Findings

County programs in Maryland vary greatly in how much acreage has been preserved through TDRs; some have not yet achieved success, while others are leaders nationwide.



The following table identifies the TDR components in the thirteen counties with TDR programs. These findings resulted from regional meetings with TDR counties in Central Maryland, Southern Maryland, the Upper Eastern Shore, and the Lower Eastern Shore. Among other things, the findings show how complex TDR programs can be and how much counties differ from one another. More detailed information for all ten features we considered for TDR programs in Maryland can be found in the Appendices. Of the thirteen county programs examined, only Montgomery County's TDR program contained all four essential elements.

Maryland Department of Planning's Four Essential Features of a TDR Program

County	Program Incentives to Sell Development Rights	Demand For Bonus Density Exists in Receiving Zone	TDR's are the Predominant Option for Bonus Density	Moves Rights from Rural to Growth Areas
Calvert	Yes	No Longer	Yes	Sometimes
Caroline	Yes	No	Yes	Yes
Cecil	Yes	No	No	Yes
Charles	Yes	Yes	No	Yes
Frederick	No	No	Yes	No
Harford	No	No	No	Sometimes
Howard	No	No Longer	Yes	No
Montgomery	Yes	Yes	Yes*	Yes
Queen Anne's	Yes	No Longer	No	No
St. Mary's	Yes	Yes	Yes	No
Talbot	No	No	-	No
Wicomico	Sometimes	No	Yes	Sometimes
Worcester	No	No	No	No

* With the exception of modest increases in density associated with affordable housing, which is still allowed with the use of TDRs.

Despite the presence of the essential features it is important to note that TDR programs are still affected by the economy and market demands. Most counties said that their programs would work much better if development rights could be transferred from rural county land into municipalities, which have the infrastructure in place to accommodate development; however, no interjurisdictional transfer agreements have been created between a county and its municipalities in Maryland. Also, municipalities do not want to require developers to buy TDRs unless the county or state provides counterbalancing benefits to its taxpayers. If the counties and the state want municipalities to participate in TDR programs, they must provide incentives in the forms of infrastructure, community enhancements, or other means to incentivize municipalities to become receiving areas.

Program factors

Incentives to Sell Development Rights:

Seven counties in Maryland offered strong incentives for transferring development rights rather than building them on site. Five did not, and one did in some situations but not in others.

In Calvert County, for example, on-site density is 1:20, but development rights can be sent at a rate of 1:1; this means that landowners can transfer twenty times more rights than they can build onsite. The incentive to sell development rights was strengthened by down zonings in 1999 and 2003, which reduced density from 1:5 to 1:20 in sending areas. Montgomery County down zoned from 1:5 to 1:25, while retaining 1:5 as the sending rate for development rights. On the other end of the spectrum, the building and transfer densities are the same in Harford County, and the same is true in Charles County. In Wicomico County, landowners transferring rights to a non-agricultural site can transfer at a higher density than someone sending development rights to a farm: on-site development density is 1:15 (1:3 with cluster, but only up to 7 units) while transfer density is 1:6 farm-to-farm or 1:3 farm-to-nonfarm use (which can exceed the number of on-site rights).

Demand for Bonus Density (or Alternative Developer Incentives) Exists in Receiving Zones:

Only Charles, Montgomery, and St. Mary's Counties reported demand in receiving areas. The other county programs either lacked demand to begin with or have seen a halt due to the economic downturn.

Sometimes soft demand occurs because what the market wants is not available through TDRs; sometimes it is due to the lack of infrastructure, especially a lack of sewer and/or water service, which precludes development at higher densities. Demand for TDRs may be lessened because TDR acquisition costs, in conjunction with other development-related costs and fees, discourage developers, for example, transfer and recordation taxes, impact fees, costs for sprinkler systems and best available technology for septic systems, and/or sewer/water fees. In Charles County, the cost of development is high even before use of TDRs: \$14,000 for a school impact fee and then \$15,550 for a developer rights and responsibility agreement, through which developers basically pay for new schools. Economist Margaret Walls reports that with the price of TDRs averaging \$6,000 in Calvert County, 2011-2012, and the need to purchase five TDRs for each bonus unit, the cost per unit using TDRs rose by \$30,000.⁴

The usual resolution to a sluggish real estate market is a rebound in the housing market (and the commercial market for TDR programs that allow bonus square footage). Today, however, a lackluster market for new homes in general and single-family houses in particular persists in the aftermath of the recession of 2008. This factor, over which counties have little control, continues to dampen markets for TDRs throughout the state. It may provide much of the reason why demand in receiving areas "no longer" exists in Calvert, Howard, and Queen Anne's Counties.

⁴ Walls, Margaret. *Markets for Development Rights: Lessons Learned from Three Decades of a TDR Program*. Washington, DC: Resources for the Future, December 2012.

Nevertheless, there are things that counties can do. In addition to reducing density in sending areas, the down zonings in Calvert County also reduced the density that can be built by-right in receiving areas and required TDRs in order to build to the previous density. To respond to changing demand over time, Calvert County adjusted its program in 2015 to reduce TDR purchase requirements for higher density development. Montgomery County minimized the impacts of demand fluctuations by monitoring the balance of supply and demand over time, modifying provisions in receiving zones accordingly, and continuously adding receiving zones as master plans were developed. As noted above, counties can allow the use of TDRs for more than just bonus density. The only counties in Maryland that have used any of the alternatives to additional density are Montgomery and St. Mary's Counties: Montgomery allows higher floor to area ratios for residential development in mixed-use zones; in St. Mary's, TDRs can be used to increase commercial square footage.

In some counties, the supply of development rights can outrun demand. This problem is most evident in Calvert County, where 12,500 TDRs have been certified for sending but await buyers. The balance between the supply of TDRs and demand for them is critical for programs to succeed.

TDRs Are the Predominant Option for Acquiring Bonus Density:

Most Maryland counties with TDR programs said that options other than TDRs for bonus density were limited. However, even limited exceptions to the rule can be costly in terms of impacts to TDR demand. For example, a PUD in Charles County some years ago received upzoning for 20,000 units without the use of TDRs (10,000 have been built so far). Such events represent considerable lost opportunities for TDR programs.

A growing concern relevant to the idea of an increased focus on TDRs is the availability of affordable housing for teachers, nurses, police and fire personnel, newly employed recent graduates, retail and service employees, etc. Adding to the cost of these units by requiring the purchase of TDRs is not desirable, as it can only make them less affordable.

The TDR Program Moves Development Rights from Rural to Growth Areas:

Of the thirteen local Maryland TDR programs we examined, only Montgomery, Charles and Cecil Counties' are exclusively rural to urban growth. (Cecil's program has seen no transfers yet.) Eight programs offer only rural-to-rural transfer options, while two counties—Calvert, and Wicomico—transfer development rights to both rural and urban growth areas. In Montgomery County, rights are transferred from the Rural Density Transfer zone to growth areas served by sewer. Howard County's Density Exchange Option was originally intended to move rights from the Rural Conservation (RC) to the Rural Residential (RR) zone, but RC-to-RC transfers were incorporated into the ordinance.

St. Mary's rural-to-rural program reduces total buildout in the rural zone by giving landowners in its agricultural zone limited on-site building rights without purchase of TDRs, and requires multiple TDRs to build at increased densities, for example, two or three TDRs for each additional on-site right. Because these multiple TDRs must come from sending parcels, their purchase reduces the total number of lots that can be built within the rural zoning districts. Unfortunately, the increased density occurs within the designated preservation area, compromising the desired outcome of that area – large, contiguous extents of land free from intrusive development impacts.

In an attempt to create interjurisdictional transfers, Caroline County proposed to amend ranking formulas for easement acquisition to prioritize Rural Legacy and MALPF easements in greenbelts around its towns. Discussions did not produce a workable mechanism. Some of the recommendations provided in Section Four of this report pertain to interjurisdictional transfers.

Other Factors Affecting Local TDR Programs

While the essential features of a TDR program are important, other factors which affect local TDR programs also should be considered.

Housing Market

A weak market for new homes persists today as a result of the recession of 2008. This factor, over which counties have little control, continues to dampen markets for TDRs throughout the state. On the other hand, there appears to be a growing interest among young adults for more dense development, which can help support TDR programs.

Consumer Preferences

The change in consumer preferences will become an intrinsic problem for local TDR programs if they do not adjust to them. Furthermore, the need for affordable housing may engender opposition to TDR programs because the need to purchase TDRs adds to the price of dwelling units in receiving areas.

A number of counties noted a stronger multi-family market, which is an opportunity that can be used to create incentives for the use of TDRs.

State Laws and Regulations

At the regional meetings, some TDR Committee members noted that state laws and regulations (such as for sprinkler systems and septic systems that use best available technology), along with local impact fees, were causing problems with housing affordability. They said these costs made it more difficult to find buyers for TDRs in receiving areas.

Also, TDR Committee members had mixed responses regarding the Septics Law (SB236, 2012 Maryland General Assembly). Some said the Septics Law could present an obstacle to rural-to-rural TDR programs since that law limits the potential size of subdivisions in rural receiving areas. Others said the Septics Law might strengthen landowner incentives to sell TDRs and direct them to receiving areas since the law limits development potential in sending areas.

Section Four: Recommendations for County and State Enhancement of TDR Programs

Planning used its TDR assessment approach (the four essential TDR program components) to organize and analyze the findings from the TDR Committee meetings, and then developed recommendations for county and state governments to advance local TDR programs.

The following recommendations represent a work-in-progress.

Increase Built-in Incentives to Sell Development Rights

- **Achieve incentives through unique provisions that allow landowners to benefit from the sale of TDRs in ways otherwise not possible.** For example, a county can purchase and retire some of the transferable rights from a farmer—say 10% of the total TDRs on the property—in return for a reduced number of on-site building rights. This would occur with the understanding that the county would then give this landowner access to a number of additional options which, collectively, equal or exceed the unrestricted fair market value of the property: transfer the remaining TDRs to developers; and sell or donate an easement to a state or county program or land trust on the remaining on-site buildable rights. The landowner would then retain the residual value of the farm, which is typically 60 to 80% or even more of the unrestricted fair market value of similar land, and continue to own, live on, and profit from resource-based uses of the property. In this example, a TDR program would have to be structured so that building rights are considered separate from TDRs. Land preservation goals can still be achieved through this approach if the density of the remaining building rights is low. To avoid the potential for rezoning of such properties and consequent addition of development rights, an easement placed on the property after the sale of TDRs also could prevent a future change in zoning.

Stimulate the Market: Creating Demand for Bonus Density (or the Equivalent) in Receiving Zones

- **Reduce the density that can be built by-right and require TDRs for the other lot rights.** This recommendation can be used to support local growth area goals for both residential and non-residential properties.
- **Provide other reasons for developers and their markets to choose receiving areas. For example, prioritize receiving zones for community enhancements and other public investments, and reduce the size and development capacity of county growth areas that are not receiving zones.** Implementation of these approaches would be at the discretion of local governments. For example, county governments could prioritize capital funding (e.g., public school construction, water and sewer, streetscaping, local-side Program Open Space funds, or DNR Community Parks & Playgrounds Program funds) for TDR receiving areas (including municipalities or municipal or county growth areas). To spur the creation of interjurisdictional (county-municipal) TDR programs, a county could establish an agreement with a town where capital funding preference is given to the town in exchange for accepting county TDRs. Other approaches to make receiving areas attractive to developers do not

involve capital funds. For example, municipalities and counties could establish Maryland-designated “Sustainable Communities” as TDR receiving areas, since a number of state incentives are available to these areas, and they can be paired with other incentives. Also, counties and municipalities could allow for fast-track review of development within TDR receiving areas.

- **Counties with TDR programs should track a variety of data about individual TDR transactions to the degree that the information is accessible—buyers, sellers, purchase price, location of sending and receiving parcels, density being achieved in receiving areas, etc.—in order to inform changes to the program.**

Reserve Bonus Density Predominantly for TDRs

- **As an exception to this rule, structure the TDR program to benefit developers that include affordable housing in their projects.** This might be accomplished by rewarding developers for building affordable units, for example, by 1) requiring fewer TDRs for affordable units or exempting them from TDR requirements entirely, and 2) reducing the number of TDRs required for each additional market rate (non-affordable) unit in proportion to the number of affordable units built.

Move Development Rights from Rural to Growth Areas

- **Consider transforming rural-to-rural TDR programs into rural-to-growth area programs.** The process, which could accompany an update to the comprehensive plan and zoning ordinance, would include an evaluation of projected growth, the market in growth areas, and what changes to zoning and other land use tools would be needed to prevent base zoning from absorbing all the demand.
- **Improve the effectiveness of rural-to-rural TDR programs in cases where a rural-to-growth area program isn’t feasible.** Some rural-to-rural TDR programs might not be as effective as desired. For example, a program might not adequately reduce development in sending areas, but only moves development rights around within it. A rural-to-rural TDR program can be made more effective if it meets two criteria: (a) it prohibits the transfer of development rights into sending areas, thereby reducing the extent of residential intrusion into agricultural areas; and (b) it greatly reduces total buildout in rural zones. This can be achieved by reducing on-site density allowed without TDRs in the rural area, and requiring purchase of TDRs from other properties to reach the former density. This is essentially a down zoning with an option to regain density through TDRs. Another option for making rural-to-rural TDR programs more effective is to designate rural villages as TDR receiving areas.

- **The state could investigate whether the Massachusetts' MassWorks Infrastructure Program could be adapted in Maryland to support the creation of municipal TDR receiving areas.** The description below comes from Maryland Sustainable Growth Commission's September 2014 report entitled *Reinvest Maryland: Accelerating Infill, Redevelopment, and Community Revitalization*: Municipalities and other public entities in Massachusetts can access multiple sources of infrastructure funding to support housing and economic development through a single grant application, the MassWorks Infrastructure Program. Applicants can seek money for construction-ready projects including but not limited to sewers, utilities, roads, pedestrian and bicycle paths, site preparation and improvements on public land. Simplifying the infrastructure funding process can facilitate development in growth areas.
- **County governments could waive the five-year delay provision for municipal annexations.** To encourage interjurisdictional TDR exchanges, a county could waive the five-year delay provision if the municipality has reached an interjurisdictional transfer agreement with the county through which the annexed land becomes a municipal TDR receiving zone for development rights transferred from county land.
- **Counties could amend ranking formulas for easement acquisition to prioritize Rural Legacy and MALPF easements in greenbelts around towns.**
- **County governments could reduce the cost for municipal government implementation of Total Maximum Daily Load (TMDL) or Municipal Separate Storm Sewer System (MS4) requirements.** TMDL requirements for nutrients and stormwater runoff in Maryland may present an opportunity for interjurisdictional TDRs through the use of nutrient trading. The cost of reducing nutrients and runoff, especially from urban stormwater, is high. A county could fund Best Management Practices (BMPs) on farmland and septic systems, and give the credits to a municipality with MS4 permit requirements, as part of its TDR incentives package. The municipality could then use these credits to satisfy what would be more costly stormwater management reductions.

Section Five: Next Steps

In keeping with Planning's mission, the department will offer its technical assistance to counties that wish to amend their TDR program or create them anew so that they achieve all four of the essential program components that are identified by the committee. Assistance can range from a simple review of a TDR statute or development of communication materials to extensive use of Planning's expertise with data, maps, and policy. This can also include assistance with implementing a variation on the traditional TDR program, as described in the table of TDR programs nationwide (Appendix Three).

Planning also intends to reconvene the TDR Committee periodically in order to share updates on program activity and changes to their local TDR programs.

Appendices

Appendix 1: TDR Committee Membership List

Cphoon, Steve	scohoon@qac.org	Public Facilities Planner, Queen Anne's County Dept. of Public Works
Cook, Mary Beth	cookmb@co.cal.md.us	Calvert County Dept. of Community Planning and Building, Deputy Director, Zoning Officer
Conn, Christine	cconn@dnr.state.md.us	Alternate for Sandi Olek
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Culver, Bob	bculver@wicomicocounty.org	Wicomico County Executive
Dailey, Aimee	daileya@charlescountymd.gov	Planner III, Charles County Dept. of Planning & Growth Mgmt
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Gardner, Jan H.	JGardner@FrederickCountyMD.gov	County Executive, Frederick County
Hall, Keith	khall@wicomicocounty.org	Wicomico County Dept. of Planning & Zoning, Transportation & Long Range Planning
Horn, Steven	SHorn@FrederickCountyMD.gov	Director, Frederick County Community Development Division
King, Jenny B.	jbking@harfordcountymd.gov	Deputy Director, Harford County Dept of Planning & Zoning
Kittleman, Allan H.		Co. Exec of Howard County
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Meek, Carol	cmeek@howardcountymd.gov	Keeper of schedule for Co. Executive Kittleman
Moran, Jim	jmoran@qac.org	President, Bd. of County Commissioners, Queen Anne's County
Munson, Katherine G.	kmunson@co.worcester.md.us	Worcester County , Planner, Land Preservation & Environmental Planning Division
O'Connor, Stephen	soconnor@ccgov.org	Cecil County Pres. Program Administrator
Olek, Sandi	sandra.olek@maryland.gov	Maryland DNR
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Pack, Corey W.	cpack@talbotcountymd.gov	President, Talbot County Council
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Shire, Phil	phil.shire@stmarysmd.com	Director, St. Mary's County Department of Land Use & Growth Management
Sokolich, Martin	msokolich@talbgov.org	Talbot County Planner, Land Pres. Program Administrator
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Tolomei, Lisa	tolomeea@co.cal.md.us	Keeps Calvert County Commissioner Weems's Calendar
Turner, Chana	Chana.turner@maryland.gov	MALPF program administrator
Weems, Steven R.	weemssr@co.cal.md.us	Calvert County Commissioner

Regional Meetings of the TDR Committee

Southern Maryland: Monday, September 21, 2015 10:00 AM – 12:00 College of Southern Maryland, Prince Frederick Campus	Central Maryland: Wednesday, October 7, 2015 3:00 – 4:00 PM Maryland Department of Planning, Baltimore
Mary Beth Cook	Chuck Boyd (Planning Staff)
Aimee Dailey	Peter Conrad (Planning Staff)
Jason Dubow (Planning staff)	Pam Dunn
Tina James (Planning staff)	Steve Horn
Mike Paone (Planning staff)	Tina James (Planning Staff)
Charles Rice	Jenny King
Daniel Rosen (Planning staff)	Joy Levy
Phil Shire	Sandi Olek
Stu Sirota (Assistant Secretary)	Mike Paone (Planning Staff)
Chana Turner	Daniel Rosen (Planning Staff)
Steve Weems	Joe Tassone (Planning Staff)
	Chana Turner
Upper Eastern Shore: Monday, October 19, 2015 10:00 – 12:00 Health & Public Services Building 403 South 7th Street, Suite 210, Denton	Lower Eastern Shore: Friday, October 30, 2015 1:00 – 3:00 W. Paul Martin District Court & Multi-Service Ctr. 201 Baptist St, Salisbury, MD 21801
Chuck Boyd (Planning Staff)	Tracey Gordy (Planning Staff)
Steve Cohoon	Keith Hall
Debbie Herr Cornwell	Keith Lackie (Planning Staff)
David Dahlstrom (Planning Staff)	Daniel Rosen (Planning Staff)
Katheleen Freeman	Martin Sokolich
Hon. Wilbur Levensgood	Joe Tassone (Planning Staff)
Hon. Jim Moran	
Steve O'Connor	
Daniel Rosen (Planning Staff)	
Joe Tassone (Planning Staff)	

Appendix 2: Checklists of County TDR Programs for the Components of Successful TDR Programs

	Essential Attributes for Successful TDR Programs				Important Attributes of Successful TDR Programs					
Central Maryland	Built-in Incentive to Sell Development Rights	Demand for Bonus Density Exists in Receiving Zones; Developers Are Willing to Buy TDRs	Program Transfers Rights from Rural Areas to Growth Areas	TDRs Are the Predominant Option for Bonus Density	Comprehensive Plan & Zoning Strongly Support TDR Program	Program Has Strong Broad Support	Program Is Predictable & Easy to Understand, Administer & Promote	Extra Development Enhances Receiving Zones & Residents there Accept It	County Runs A TDR Bank	Developers Can Use Acquired TDRs By Right without Extra Hurdles
Frederick	New program—no transactions yet. Rural to rural. Same number of lots can be sent as can be built on site. Some land-owners have already subdivided enough lots to be on the verge of the maximum for a minor subdivision.	No. County lost Tier IV exemption when it created TDR program; major subdivisions not allowed until co. can demonstrate that density in Tier IV is still less than 1:20. The challenge is identifying receiving areas. PPAs and RLAs are not receiving areas; municipalities would be ideal, though they may not be adequately prepared or even want the extra density.	No	Yes.	No. The plan and zoning did not change to accommodate the TDR program. On the other hand, they are not inconsistent with the TDR program.	The public appears to be indifferent. The program was created during the last days of the previous Board of County Commissioners.	Yes. Maybe too simplistic.	No.	No.	Yes.
Harford	No. Same number of lots can be sent as can be built on site. Rights can be transferred only within a half mile. Harford's program does not require preservation of or easements on sending parcel; the # of lots permitted on sending parcel is reduced by the # of rights transferred.	No.	Sometimes	Yes. Cluster provisions exist but are rarely used.	So-so. They could be improved.	Somewhat. The program got less robust as the process went on.	Yes.	The program hasn't been used enough to tell.	No.	Yes.
Howard	No. Same number of lots can be sent as can be built on site.	Yes at first but not much since economic downturn. The more densely populated eastern county doesn't want extra development rights. The market for bonus density in the RC/RR receiving area saw some demand, but the market was hot then.	No	Yes. However, higher building densities are available in the east county.	Yes.	Yes.	Yes.	Yes.	No.	Yes.
Montgomery	Yes. Can build at density of 1:25 or sell rights at 1:5. Can also sell the residual buildable lot rights.	Yes. In most receiving areas, conversion of a TDR for additional density is 1 TDR=1 single family house (town-house or detached) or 1 TDR =2 multi-family units. In Metro Station Policy Areas, 1 TDR=3 multi-family units. The utilization rate for TDRs in receiving areas reached just 60%.	Yes	Affordable housing bonus densities are available, but they do not provide as much bonus density as the TDR program does.	Yes.	Yes.	Yes.	So-so. Plans and zoning are always done with "is there a place for TDRs?" Receiving areas are part of local plans and zoning. For the Buildable Lot Transfer (BLT) program, developers must provide amenities to achieve maximum density.	Only for BLTs.	Yes.

Essential Attributes for Successful TDR Programs					Important Attributes of Successful TDR Programs					
Southern Maryland	Built-in Incentive to Sell Development Rights	Demand for Bonus Density Exists in Receiving Zones; Developers Are Willing to Buy TDRs	Program Transfers Rights from Rural Areas to Growth Areas	TDRs Are the Predominant Option for Bonus Density	Comprehensive Plan & Zoning Strongly Support TDR Program	Program Has Strong Broad Support	Program Is Predictable & Easy to Understand, Administer & Promote	Extra Development Enhances Receiving Zones & Residents there Accept It	County Runs A TDR Bank	Developers Can Use Acquired TDRs By Right without Extra Hurdles
Calvert	Yes. Can send more rights than can be built on site. Landowners willing to sell...unless the price collapses.	Not at present. Many TDRs were purchased when price was high, owners waiting for market in receiving areas to improve. 12,500 TDRs certified in sending areas are awaiting purchase. Text amendment going to public hearing allows some bonus development to use 1, 2, or 3 TDRs may increase use of TDRs in receiving areas.	Sometimes	Yes. PUD option exists but it's not active. 50-60 subdivisions in pipeline, 35 of them minor. A 252-lot subdivision south of Prince Frederick might not be built. 12,500 TDRs in pipeline have not been certified yet. Price is just \$3,500 per TDR.	Yes. In receiving areas that are 1-mile around town centers, TDRs were bought for \$15,000 each before the crash. Zoning update will eliminate the allocation of 2.5 TDRs per undeveloped lot in order not to add to the glut in TDR supply.	Yes, but not for use of TDRs for bonus commercial sq ft. The text amendment is supported by landowners and developers alike.	Yes. The program has been modified over the years. Wetlands were taken out of sending calculations to keep the intent of the program on prime farmland.	Yes. There are not many high density communities. The development of town centers has not engendered opposition.	Technically not, but the county runs a Purchase and Retire (PAR) program to buy TDRs and also supports a website to link TDR buyers with sellers.	Yes.
Charles	Not now, due to the economy. Sending & on-site densities the same. Most of the rural area is Tier 4; though the underlying density is 1:3, actual yield is more like 1:10. New County PDR program should create more demand.	No, due to the economy. However, cost of development is high even before use to TDRs: \$14,000 for school impact fee, \$15,550 developer rights and responsibility agreement, through which developers basically pay for new schools. Many projects grandfathered to use 1 TDR for each new unit. Development pressure will eventually create demand for farm to farm transfers to 15-unit rural receiving areas. Lower base densities needed in receiving areas; little chance that the lower densities will absorb all the demand.	Yes	No. A PUD in St. Charles years ago received upzoning for 20,000 units without the use of TDRs (10,000 built so far). This was a huge lost opportunity to use TDRs. A way might be found to require TDRs for the remaining 10,000 units. Upzonings should require TDRs. Bonus density allowed for affordable housing, but it doesn't compete with TDRs.	Yes. There is no rural-to-rural TDR option. The plan describes development districts: the low density 1:1 receiving areas can rise to 3:1 with the use of TDRs. A revision of the comp plan and zoning ordinance are forthcoming.	Yes. The public supported the \$500,000 budgeted for the Purchase and Retire program.	Yes.	Yes. People expect higher density because they live in high-density zones.	Technically not, but county runs a PAR program to buy TDRs and also supports a website to link TDR buyers and sellers. It does not track transactions or prices, though the information is available from other public records.	Yes.
St. Mary's	Yes. On-site density is 1 unit by right, sending density is 1:5.	Yes. Rural to rural TDRs sliding scale: 1 bonus residence with 1 TDR up to density of 1:5 on receiving parcel, up to 3 TDRs (or 15 acs of rural land) for additional houses to raise density to 1:3. County expects future TDR activity to be mainly rural-to-urban. Tiers law is moving growth to growth areas. Rezoning following adoption of Lexington Park plan may be opportunity to use TDRs. TDRs could be used in secondary growth areas, but they lack sewer. Most TDRs land in rural areas, but next plan will improve receiving in growth areas. 1:1 density in growth area can go to 5:1. Demand for TDRs higher in lower-density receiving areas; in more urban zones, hard to build more than 3.5:1 unless conditions are ideal.	Not usually. Most rights transferred so far are rural to rural. Projected to change in the future.	Yes. Previously, bonus density allowed for design standards, LEED and green space, but not now. PUD option exists but it's not active. Bonus density allowed for affordable housing, but option does not compete with TDRs.	Yes. See cells to the left.	Yes.	Calculating TDR requirements is complicated, but OK once one gets used to it. The 25 th lot in a receiving area requires community water. The county's "TDR Game" educates landowners. Program should be simplified to make zoning 1:10.	Residents oppose apartments. In secondary growth areas like Hollywood, the NIMBYs come out against extra density. Generally, most communities don't like extra density but county officials live with it and the TDR program continues.	No. County lists the original TDR transactions but it's hard to track resales to someone else. TDRs can be resold.	Yes.

	Essential Attributes for Successful TDR Programs				Important Attributes of Successful TDR Programs					
Upper Eastern Shore	Built-in Incentive to Sell Development Rights	Demand for Bonus Density Exists in Receiving Zones; Developers Are Willing to Buy TDRs	Program Transfers Rights from Rural Areas to Growth Areas	TDRs Are the Predominant Option for Bonus Density	Comprehensive Plan & Zoning Strongly Support TDR Program	Program Has Strong Broad Support	Program Is Predictable & Easy to Understand, Administer & Promote	Extra Development Enhances Receiving Zones & Residents Accept It	County Runs A TDR Bank	Developers Can Use Acquired TDRs By Right without Extra Hurdles
Caroline	Yes. Can build four lots on site, send at density of 1:15 plus the minor subdivision. Reduction in sending acreage for wetlands, wet soils, etc.	No. Towns are the best receiving areas, but there's no incentive for them to accept density & no transfer mechanism. County and towns discussed protecting greenbelt on county land around towns in exchange for transfer of rights into towns, but talks were unfruitful. County receiving area in Tier III was active before recession but not now. Lots in pipeline add to lack of market for TDRs.	Yes. Caroline County's receiving area is a designated growth area in the Comprehensive Plan and in the Tiers map.	Yes. Rural zoning is 1:20, approximately (4 lots), but TDRs can be used at the rate of 1:1, up to 50 lots.	Yes.	People don't know about it.	Yes at present, but interjurisdictional transfer mechanism has not been created.	Most residents do not know about the program; transfers have taken place, but not recently.	No. The county tracks the program but does not buy or sell TDRs	Yes
Cecil	Yes. NAR: 1:10 build, 1:5 send SAR: 1:20 build, 1:3 send Can build minor sub, then send remainder of rights. Can send rights from some acreage, keep the rest open. Sending parcels require same standards as MALPF.	No. No TDR transactions yet. Bonus densities do exist. Lack of infrastructure in PFAs, esp. sewer. It might help to make all growth areas, not just selected zones, receiving areas. Incentive \$\$\$ from state would help.	Yes. Need to downzone growth area, though the concept is not popular. Alternatively, the county can provide infrastructure and require TDRs in order to build to base density.	No, but the other method is dependent on remaining minor subdivision rights and the absolute maximum using that method is 5 lots. Bonus density yield with TDR is only limited by number of acres preserved.	Plan: Yes Zoning: not always. Approved final plats have no expiration date. (If these plats are not built by 2017, new stormwater regs will require their redesign, which could reduce the number of lots.)	The public is aware, but rural landowners do not see the value of the program.	No.	Yes, for the most part.	Yes, but hasn't received seed \$\$\$ the county proposed from casino video terminals.	Yes, but program is not easy to use.
Queen Anne's	Yes. On-site density is 1:20, or 1:8 with clustering on 15% of site. No sending differential, but transfer based on acreage, so acreage that can't perc is not subtracted from sending acreage.	No longer, due to market change. Non-contiguous transfer had been successful by allowing density from all sending parcels to land on 1 parcel at higher than base density. Municipalities would be the best receiving areas because only a little infrastructure exists on county land around the towns. Residents in Kent Island growth area oppose more density. It's hard to build even to the base density.	Urban and Rural	No. Affordable apartments over stores in growth areas are not part of the density calculation and can double the density.	Yes. The comp plan calls for new receiving areas. TDRs cannot transfer to Kent Island, though they should. A huge backlog of lots exists. There is demand in Kent Island but residents tie up proposals in court.	Yes for the non-contiguous transfer.	Yes	No. Kent Island was left out of the TDR program, but now the Septics Law aims development there, and residents greatly resist it.		Yes. Transfers approved administratively. However, delineating shoreline for transfers from Critical Area is difficult.

	Essential Attributes for Successful TDR Programs				Important Attributes of Successful TDR Programs					
Lower Eastern Shore	Built-in Incentive to Sell Development Rights	Demand for Bonus Density Exists in Receiving Zones; Developers Are Willing to Buy TDRs	Program Transfers Rights from Rural Areas to Growth Areas	TDRs Are the Predominant Option for Bonus Density	Comprehensive Plan & Zoning Strongly Support TDR Program	Program Has Strong Broad Support	Program Is Predictable & Easy to Understand, Administer & Promote	Extra Development Enhances Receiving Zones & Residents Accept It	County Runs A TDR Bank	Developers Can Use Acquired TDRs By Right without Extra Hurdles
Talbot	Talbot's TDR program has been repealed. The following information describes a program that no longer exists. No. Farm commodity prices are good so there is no urgency to capitalize operations by selling TDRs. After Talbot's 1998 downzoning, landowners found they retained equity and did not sell TDRs. They sold easements to the ESLC or MALPF. A TDR program coupled with nutrient trading could be effective. The best practices installed on local farms would remain in perpetuity, so selling nutrient credits would be popular. They can be applied in PPAs and credits from the land can be transferred to designated receiving areas.	No. TDRs could be transferred only within the same election district. The towns have the infrastructure and no motivation to accept TDRs. The municipalities have no planning and zoning authority. If Easton annexes the Port of Easton for major development, it would present a good opportunity for interjurisdictional TDRs. The villages are a logical place to transfer density, if sewerred. The soils in western Talbot are generally not good for septic systems; existing small lots have failing septic systems. Limited growth potential exists.	The program ruled out transfers to growth areas. One could buy property and rezone it to receive TDRs.						No. An alternative idea for county facilitation: the county pays for nutrient credits from BMPs on local farms and may trade with a town, if the town agrees to accept greater development densities in exchange for nutrient credits.	No.
Wicomico	Yes, but incentive has not appealed to landowners. Farm prices are good, so the price of land for farming is comparable to sales of farmland for development. On-site development density is 1:15, 1:3 with cluster, up to 7 units. Transfer density is 1:6 ag to ag or 1:3 ag to non-ag. Only the latter can exceed the number of on-site rights. Sending & receiving areas not delineated.	No. The market is dead. The TDR program was created after the 2004 zoning update. So far, no one has participated in the TDR program. Only municipalities are sewerred. The county has no sewer authority. When demand returns, the county should work with towns so that municipal growth plans require the use of TDRs on annexed land. The county can target a moratorium on school impact fees to the receiving areas. Downzoning the growth area is a good idea but not politically feasible. More people are moving into sewerred areas; they don't want to mow the grass. They are aging and want services nearby.	Yes, under the ag-to non-ag option.	Yes. Upzonings are coupled with community series. One must use TDRs for the added density. But the market presently does not exist.	Somewhat. It is consistent with municipal growth areas.	Residents seem to have little knowledge of the program. An opportunity exists to educate them about it.	It seems straightforward in the code but has not been used yet.	There was opposition to one subdivision that wanted to use TDRs in a growth area.	No. TDRs may not be the best way to preserve agriculture on the Shore. It would work better if paired with nutrient trading, but the state needs to make changes to the program. (See above.)	Yes.
Worcester	County doesn't have a full TDR program. Transfer option hasn't been used. Sending rate same as on-site density. Cannot "sell," just transfer. Can put all density on 1 parcel. Sending & receiving parcels must be under same ownership. A-2 (Agriculture) zone: 5 lots from what was an entire parcel in 1967; 6 lots w/clustering if lots are off a public road. (Since adoption in 2009, no rural cluster subdivisions have been approved.) E-1 (Estate zone): 1:2	No. Up to 20 units possible, theoretically, provided no subdivisions occurred on any parcel & they were under same ownership at time code adopted (Nov. 3, 2009). Only a handful of parcels in county met the ownership requirement in A-2 & E-1 districts at time of adoption.	No. The A-2 and E-1 sending areas are receiving areas, too.				Not known because no transfers have yet been made.	Program has not been used yet.		

Appendix 3: Summary of TDR Programs across the U.S.

Location and Acres Preserved	Sending area	Sending Incentive	Receiving Area	Receiving Incentives	Notes
Traditional TDR Programs					
Kent County, Delaware 180 acres preserved (August 2009)	Land outside Growth Zone Overlay is "placed in 1 of 3 TDR sending area priority categories based on 5 factors: 1) a "very high" Land Evaluation and Site Assessment (LESA) score; 2) proximity to existing preserved lands; 3) historic resources; 4) designation as a State Resource Protection Area; 4) designation as an Excellent Water Recharge Area; and 5) lands adjoining the east side of State Route 1." ⁵	TDR sending rates in the priority sending areas Primary: 1.5 Dwelling Unit Credits per acre (most lies east of state route 1) Secondary: 1.0 Dwelling Unit Credits per acre Tertiary: 0.5 Dwelling Unit Credits per acre	2/3 of Growth Zone Overlay. "Receiving areas fall into 1 of 2 categories based on location in Growth Zone Overlay, availability of sewer & water, proximity to transportation & services, & adjacency to municipalities." ⁶ (Inter-jurisdictional transfers into co's incorporated cities OK if they wish to participate.)	Baseline density in 3:1. Maximum density allowed is 7:1 in the Primary Receiving Areas & 5:1 in the Secondary Receiving Areas.	
Manheim Township, Lancaster County, Pennsylvania 650 acres preserved (2010)	The Agricultural District.	Base density for building on site is 1:20, sending rate is 0.73 units per acre.	R-1 and R-2 Residential Districts	Parts of receiving zones allow bonus density on top of bonus from using TDRs. In one zone, base density of 1.6:1 rises to 2.2:1 with TDR & 2.9:1 with overlay bonus density. In the other receiving zone, base density of 2:1 can increase to 2.9:1 with TDR & 4.3:1 in bonus density overlay areas. To receive bonus density, development must be clustered to preserve at least 30% of receiving site in open space.	"The Township itself can purchase development rights and accept rights as gifts; these development rights may be retired or sold by the Township." ⁷ The Township has auctioned off TDRs. "[T]he Brandywine Conservancy notes that Manheim Township astutely minimized the potential for NIMBYism in its TDR program by designating Kissell Hill as a receiving area, which is bordered by various non-residential uses including an electrical sub-station." ⁸
Chesterfield Township in Burlington County, NJ⁹ 2,742 acres preserved through TDR, 4,670 PDR (2009)	Chesterfield: 10,000 acres, primarily rural and agricultural, outside of receiving & developed areas (15.6 of 21.6 sq. mi. township)	3.3 ac per lot on avg in sending area. Sending rates higher based on what could actually be built: best soils, 1 TDR per 2 acs, "moderate" septic potential, 1 TDR per 10 acs, "severe" septic limitations 1 TDR per 50 acs. Plus 10% bonus when rights actually transferred.	560-acre Old York Village	Base zoning is one house to 3 acres. With TDR, buildout will be 2 to 2.4 units per acre. Purchase of 1 TDR per house. A partial TDR can be used to build smaller houses, town houses, and apartment units.	After selling the TDRs, landowner can build up to 1:50. The entire parcel is deed restricted with the enrollment of the first credit. Old York Village is neo-traditional. Nearly 90% of land in receiving area is under contract to or owned by residential developers. Receiving area has sewer & water service. All development in Old York Village complies with architectural design standards. NJ TDR Bank paid \$10,000 or ½ cost of local planning for TDRs when Chesterfield Township created its program (and was reimbursed \$10,000 by the state). The TDR Bank was allocated \$20 million under the Open Space Preservation Bond Act of 1989
Lumberton Township in Burlington County, New Jersey¹⁰ 837 acres preserved (March 2011)	1,513 acs in western township, 1,355 acs in eastern township (4.5 of 13 sq. mi. in township) Parcels must be at least 6 acs, assessed as farmland in 1994, & not deed restricted from further subdivision or development	0.5 credits per ac with soils having slight septic limitations down to one credit per 50 acres where soils have severe septic limitations. One credit subtracted for each single-family unit existing on the parcel at time ordinance was adopted.	More rights to transfer than could be built on site.	5 Rural Agr/TDR Receiving Area zones. Density can increase from 0.7:1 to 4:1. Under TDR provision adopted in 2000, receiving area is 185 acs for an age restricted community with mixed uses. Each age-restricted unit requires 0.7 TDR credits; to achieve max residential density of 3 units/ac, developer must acquire 287 credits from sending area.	Lumberton has municipal TDR credit bank. Bank may sell credits only after demand for credits has been demonstrated. This requirement is designed to eliminate the bank as a competitor of landowners in bidding process and sale of credits. The bank may provide guarantees on loans utilizing the TDR credits as collateral. Development using TDRs adheres to design guidelines to ensure that receiving area development is compatible with environment & architecture of traditional communities in the Township.

⁵ <http://smartpreservation.net/kent-county-delaware/>

⁶ Ibid

⁷ <http://smartpreservation.net/manheim-township-lancaster-county-pennsylvania/>

⁸ Ibid

⁹ <http://www.state.nj.us/agriculture/sadc/tdr/casestudy/tdrexamplesnj.pdf>

¹⁰ Ibid

Location and Acres Preserved	Sending area	Sending Incentive	Receiving Area	Receiving Incentives	Notes
Traditional TDR Programs--Continued					
Issaquah, Washington Issaquah also has an interlocal TDR agreement with King County (see below)	"Sending sites...must meet at least one of the following criteria: At least 30% consists of critical areas or critical area buffers. ...contiguous to public open space. Preservation of site implements a Comprehensive Plan goal. ...adjacent to creek side restoration site. ...requires variance to be developed. ...limited access..." ¹¹	For residential sites, number of TDRs for transfer equals the number of units that can be developed on site. For commercially zoned sites, 1 TDR is granted for each 2,000 sf of floor area that can be developed on site.	Four residential zones and a commercial zone	When TDR is used, the max density differs by receiving zone: 18 dwelling units per ac in two residential zones, 36 units per ac in another residential zone, a 25% increase in units in the remaining residential zones and a 25% increase sf in commercial zones. Building height and impervious surface increases are also allowed. The ordinance also allows the use of TDRs to reduce PM peak hour trips in the City's transportation concurrency review requirements.	
Interjurisdictional TDRs					
King County, Washington Almost 95,000 acres preserved (July 2013, see notes)	Cedar, Tolt, Green and Snoqualmie River Basins		Denny Triangle Neighborhood of Seattle	"Under the agreement, new buildings can build an additional 2,000 sq.ft. of residential space for each TDR transferred, and can add 30% to their maximize height." ¹²	Program was created from interlocal agreement approved in 1999 and 2000 between King County and City of Seattle. Under the agreement, "\$100,000 in county funds for amenities and a pledge of \$400,000 more for capital improvements when TDRs are transferred.... The county funds will be matched by developer contributions based on the additional square footage from TDRs." ¹³ County TDR bank buys & sells development rights, purchases easements, accepts donations of development rights from sending sites, and fund amenities in municipal receiving areas. It can acquire rights from properties obtained for park, trail, or other acquisition program if property was a TDR sending site. King Co. TDR Bank has bought 1,146 development rights to protect almost 95,000 acres. It sold 49 TDRs to add 60 units (36,000 sf) to 37-story apt building and 55 units (62,000 sf) to condo/ hotel. Since TDR Bank buys most of the TDRs & sells relatively few, this program may be seen as more of a PDR program. Seattle & other city residents accept extra density. Incentives in interlocal agreements—county funds to pay for amenities & infrastructure in receiving areas—help offset concerns about the impacts of higher densities. ¹⁴ When all receiving areas are considered, the King County program has preserved removed 2,467 from rural areas and preserved 141,392 acres (Feb. 2012).
Boulder County, Colorado 5,900 acres preserved (2008)	Non-incorporated portions of the County	Base density is 1:35. Sending density: 35-52.49 acs, 2 development rights; 52.5-69.9 acs, 3 rights; 70-87.49 acs, 4 rights; 87.5-104.9 acs, 5 rights; 105-122.49 acs, 6 rights; 122.5-139.9 acs, 7 rights; > 140 acs, 2 rights per 35 ac	City of Boulder & six other cities in the county.	Development rights are used on projects called TDR/PUD, for which a property owner must apply for and receive approval. 75% of the total number of development rights needed to complete the project must be acquired from designated sending sites	

¹¹ <http://smartpreservation.net/issaquah-washington/>

¹² Ibid.

¹³ Ibid.

¹⁴ (Report: *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*. Submitted to the MD Center for Agro-Ecology, Inc., January 2007, by H. Grant Dehart, Land Preservation Consultant; and Rob Etgen, Executive Director, E. Shore Land Conservancy. Page 139.)

Location and Acres Preserved	Sending area	Sending Incentive	Receiving Area	Receiving Incentives	Notes
Interjurisdictional TDR Programs--Continued					
New Jersey Pinelands (927,123 acres, all or parts of 7 counties and 53 municipalities. All land is under municipal control.) 51,780 acres preserved (June 30, 2014)	The Pinelands Area is divided into 9 management areas; sending areas are the Preservation Area District, Special Ag Production Area & Ag Production Area. These sending areas are found in 33 of the 53 municipalities	Each Pineland Development Credit transfers the right to build 4 houses & can be bought & sold in 1/4 (1 right) increments. Easement is placed on the sending property when PDCs are transferred. Allocations to sending properties range from 0.2 PDCs for each 39 acs of undevelopable wetlands to 2 PDCs for each 39 acs of upland farmland or active berry farming No PDC allocated to parcel 10 acs or less.	Regional Growth Areas in 22 municipalities.	Receiving areas allow roughly 50% more houses to be built using PDCs. Since the program is voluntary & not all developers will use PDCs, there are about twice as many opportunities to use PDCs as there are PDCs available for use. PDCs can be bought & sold privately or through the publicly chartered Pinelands Development Credit Bank. While most PDCs are sold to developers, the state can buy & retire PDCs.	Municipalities may not "give away" density through variances.
TDR for Carbon Offsets					
King County, Washington The 2008 King Co Comp Plan says that purchase of TDRs can be used for mitigating greenhouse gas emissions of new development.			Development sites.	Meet greenhouse gas emission mitigation requirements for development in King County.	

The "TDR-less" TDR Program

Location and Acres Preserved	Sending area and Incentives	Requirements For Bonus Density/Square Footage in Receiving Areas
San Luis Obispo County, California 5,464 acres preserved on three sites (January 2005)	Because of diverse values across a large sending area, county does not allocate a uniform number of rights per acre. An appraisal of easement value is conducted for each participating sending site. One TDR is issued for each \$20,000 of appraised value. (The TDR selling price is not necessarily \$20,000, but is negotiated with the buyer.)	Developer negotiates TDR value with seller. Values differ widely in the receiving area, meaning that some developers can pay more for rights than others can, and those who must pay less can be at a disadvantage in the market.
Berthoud, Colorado 524 acres preserved as of 2010	Significant resource land, as identified in the comprehensive plan.	For each extra unit allowed in an area upzoned for development compared to previous zoning, developer can either preserve 1 ac of significant resource land or pay a density-transfer fee of \$3,000 per bonus single-family residence or \$1,500 per bonus multiple-family dwelling unit. The funds are used for land preservation. (The fees were suspended in 2009 due to the economic downturn.)
Warwick Township, Orange County, New York Town comprises 3 villages & 5 hamlets within 105 square miles (As of 2008, no TDR transactions)	Town of Warwick. The Agricultural Preservation-Overlay (AP-O) District pre-serves large parcels of productive ag land. It covers 4 underlying zoning districts: SL (Suburban Residential Low Density), RU (Rural), MT (Mountain), and CO (Conservation). Minimum lot size in the RU zone 2 acs, so a 20-ac-net parcel could transfer up to 10 TDRs. However, the Town's 2001 zoning law established larger min lot sizes for on-site development. Min lot size is now 4 acres for land with underlying RU zoning, so owners of RU land can transfer 2x as many rights as could be built on site. Warwick sending site owners can transfer some or all available rights. ¹⁵	Receiving area is the Village of Warwick, which has an interjurisdictional agreement with the Town of Warwick. The Village has the infrastructure to support more development than the Town does. When Village annexes land from the Town, for units above base zoning density "developers must provide a 'compensating amenity or benefit to the community' or make a cash-in-lieu payment of \$50,000 for each unit above baseline density. This amount is reviewed and adjusted annually." ¹⁶ Receiving sites must be developed under the provisions of the TN-O zoning district (Traditional Neighborhood-Overlay.) In the TN-O, baseline density is the maximum allowed in the underlying zoning districts. Maximum density in the TN-O overlay is 8 units per ac. Consequently, land in a TN-O with an underlying SL zoning designation would be able to exceed the baseline density of 1:2 and possibly achieve a max density of 8:1 by acquiring one TDR for each bonus dwelling unit.

¹⁵ <http://smartpreservation.net/warwick-new-york/>

¹⁶ Ibid.

The “TDR-less” TDR Program – continued

Location and Acres Preserved	Sending area and Incentives	Requirements For Bonus Density/Square Footage in Receiving Areas
Clifton Park, New York	“Sending sites are called amenities and include nature preserves, watersheds, wetlands, stream corridors, ecological resources, environmentally sensitive areas, active farms, trails, scenic roads, historic/cultural resources, recreational sites and other open space.” ¹⁷ See incentive payments in next column.	In receiving areas—“incentive sites”—increases in residential density & commercial uses can be approved within three West Clifton zoning districts when the Town Board accepts open space amenities offered by developers in any or all of the following forms: 1) permanent easement on Town-identified open space parcels; 2) permanent protection in fee simple for Town-identified open space parcels; and 3) cash payment to the Town’s open space fund, which is used exclusively for open space protection. 1 protected ac buys 1,000 extra sf of office, 1.5 protected acs buys 1,000 extra sf of retail; 2 preserved acs add 1 bonus unit for 2-family, semi-detached, and multifamily apartments over commercial or retail ground floor area, up to twice the baseline density. \$20,000 payment allows 1 bonus multiple-family residential dwelling unit or 1,000 extra sq ft office space. \$30,000 allows 1 bonus single-family residence or 1,000 sq ft extra retail space. \$20,000 payment also allows one unit of 2-family, semidetached, & multifamily apt over commercial or retail ground floor.
Charlotte County, Florida 572 acres preserved as of 2005	Program uses Transfers of Density Units (TDU) instead of TDRs. In Sending Zone (SZ), a property must meet one of the following criteria: Contain ecological, historic or archeological resources. Located within the Tropical or Category 1 Storm Surge Zones. Platted with substandard lots. Located outside Urban Service Area and contain a bona-fide agricultural use. Located in Suburban area of the Urban Service Area, platted & not currently served by or proposed for water & sewer within the next five years. Vacant with approved residential development plan creating surplus density.	To qualify as a Receiving Zone (RZ), a property must meet all of the following criteria. Is located in the Urban Service Area or a New Community/Rural Community (both Communities are for development outside Urban Service Area). The Future Land Use Map must designate or propose to designate the property as Low Density Residential, Medium Density Residential, High Density Residential, Mixed Use, Rural Estate Residential, New Community or Rural Community. Does not contain habitat for species of special concern, threatened/endangered species, or historic/archeological resources. Not located in the Tropical and Category 1 Hurricane Storm Surge Zones (unless density is transferred from an equivalent surge zone and flood zone is of an equivalent or greater hazard intensity). The in-lieu payment is based on what it would cost to preserve enough land to extinguish one TDR, based “on recent sales of property that would qualify as a sending site for the subject receiving site.” ¹⁸
Hatfield Township, Massachusetts (As of July 2010, no TDR transactions)	The sending areas consist of all land in the Agricultural, Outlying Residential, and Rural Residential zones.	The receiving areas consist of all land served by Town water and sewer within the Business, Industrial and Light Industrial zones. Developers can’t actually buy TDRs; they provide payment-in-lieu to Town’s land preservation fund to buy easements in the sending area. Average per ac value of a development right is the difference between average per ac assessed value of residentially improved land & average assessed value of unimproved land. The in-lieu payment for each required TDR is 1½ times the average per-ac cost of a development right as determined by the formula. In business zone, payment for a development right allows 2,000 sf more plus extra 5% lot coverage, up to 75% lot coverage. In industrial & light industrial zones, it allows 2% more building coverage for sites smaller than 30,000 sf. For sites 30,000 sf or larger, each development right allows 5,000 sf more floor area but max lot coverage can’t exceed 50% even with TDR.
Pierce County, Washington 210 acres preserved as of 2015	“Sending areas must be located within resource areas or rural farms as designated in the Comprehensive Plan or areas identified in an interlocal agreement between the County and a city. To qualify for TDRs, preservation must result in a protection of farmland, forest land, public trails or the habitat of endangered species.” ¹⁹	Incorporated cities (subject to inter-jurisdictional agreement), sites where amendments to the comp plan have been requested, and sites where PUDs have been requested. In the latter two cases, “the number of TDRs required is based on a determination of the environmental/infrastructure impact generated by the proposed project minus the mitigation to be provided by the developer through other means.” ²⁰ The cash-in-lieu option is ½ the increase in receiving-site land value caused by increased development potential as determined by an appraiser. The County has a TDR bank, and can use its own PDR program to buy rights that it later resells on the TDR market.
Gunnison County, Colorado (3,239 sq miles) Residential Density Transfer (RDT) funds used for PDRs. 18,000 acs preserved, but most not from RDT funds. County has 1% sales tax used for land preservation. ²¹	Size of county & large variations in land values could raise concerns about the fairness of uniform TDR sending and receiving areas in a traditional TDR program. County does not designate sending zones or “predetermine how many TDRs a sending area owner will get for participating; these tasks take place...through negotiation with individual landowners based on an appraisal of the specific parcel or easement.” ²²	County does not have designated receiving zones; receiving sites are any residential subdivision of more than 5 units. The Residential Density Transfer costs paid by developer are 10% of increase in land value resulting from subdivision approval as determined by the county assessor. The developer gains a reduction in open space from 30% to 15% of total project area. “[R]eceiving area developers all pay the same portion of the estimated land value increase resulting from subdivision approval; this creates a level playing field regardless of the nature of the receiving site project being proposed.” ²³

¹⁷ <http://smartpreservation.net/clifton-park-new-york/>

¹⁸ For information on the TDR process in Charlotte County when the in-lieu payment option is not used, see <http://www.beyondtakingsandgivings.com/charlotte.htm>

¹⁹ <http://smartpreservation.net/pierce-county-washington/>

²⁰ Ibid.

²¹ <http://www.steamboattoday.com/news/2014/mar/09/finding-balance-gunnison-county-has-experience-lan/>

²² <http://smartpreservation.net/gunnison-county-colorado/>

²³ Ibid.

Appendix 4: Other Sources

<http://smartpreservation.net/warwick-new-york/>

<http://www.nj.gov/agriculture/sadc/tdr/casestudy/tdrexamplesnj.pdf>

<http://www.co.burlington.nj.us/DocumentCenter/View/166>

<http://www.nj.gov/agriculture/sadc/tdr/resources/hillsboroughpresentation.pdf>

<http://smartpreservation.net/caroline-county-maryland/>

<http://www.commerce.wa.gov/Documents/FINALRPT-Regional-Transfer-of-Development-Rights-6-30-13.pdf>



State of Maryland

Larry Hogan, Governor

Boyd Rutherford, Lt. Governor



Maryland Department of Planning

David R. Craig, Secretary

Wendi W. Peters, Deputy Secretary