

Transfer of Development Rights in Pennsylvania

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TDR is a flexible zoning tool that redirects development—away from sensitive resource lands (sending areas) to more appropriately planned areas (receiving areas).

Q. How are TDRs allocated within the sending area?

A. TDRs are typically allocated to each parcel or tract of land within a zoning district as “so many development rights per acre.” Some municipalities with TDR provisions allocate these rights based on the parcel’s gross acreage, while others “net-out” physically constrained lands or other built lands before allocating development rights.



Q. Are all allocated development rights sold at once?

A. No, unlike the sale of an agricultural easement, TDRs can be sold in varying amounts. Upon severing, however, development rights are permanently conveyed. A map or other legal document is filed with the municipality showing from where the development rights originated. This also prevents their reuse.

Q. Once purchased, do TDRs have to be immediately used?

A. The answer depends on who initiates the transaction. Private-market transactions usually occur because the TDR buyer intends to immediately put the TDRs to use in a receiving area development. Under a TDR scenario in which a municipality initiates the TDR buy, purchased TDRs are often “banked” for future sale by the municipality or retired altogether.

Q. Isn't it true that the TDR tool really hasn't worked in Pennsylvania?

A. There are both successes and failures, but the reasons why some TDR programs have failed are now better understood. For TDR to work, the community must want to conserve natural or cultural resources while at the same time be willing to accept land development in some part or parts of their community (or region, if planning at the regional level). TDR cannot be mandated in Pennsylvania, so it needs to be the most attractive option offered to a landowner or a developer within the zoning districts where sending and receiving areas are established. Municipalities should add TDR to their toolboxes along with other equally important tools such as conservation easements and open space financing.

Q. Is the buying and selling of TDRs limited to the private market?

A. No, municipalities or their municipal land trusts are buying TDRs from prioritized farms or other properties, often to avoid losing a property to a development proposal. In some cases, TDRs are resold by the municipality for use within a local receiving area. In another case, purchased TDRs are precluded from use within the municipality, but they may be offered for use on a more regional basis.

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Q. How is the value of TDRs determined?

A. For private transactions, the sale value of a TDR is based on the utility of using those rights for a receiving area development. Not all residential TDR uses within a receiving area development bear the same market price. For public purchases, the sale value of a TDR is based either at, or less than, the fair market value determined through a qualified appraisal. In municipalities that function as TDR brokers and banks, TDR value is sometimes intentionally set below fair market value to encourage purchase.

Q. Must TDRs be limited to use in residential receiving areas only?

A. No, TDRs may be used to increase square footage of commercial and industrial buildings in nonresidential receiving areas.

Q. May municipalities transfer development rights across their boundaries?

A. Yes, recent amendments to the Municipal Planning Code enable the inter-municipal transfer of development rights from "rural resource areas" to "growth areas" where participating municipalities have adopted a multi-municipal plan, have joint-zoning, or have formed an intergovernmental agreement.

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