

# MARKET-BASED GROWTH AND PROTECTION STRATEGY

## THE PROCESS OF DEVELOPING A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM IN HIRAM, OHIO

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Center for Farmland Policy Innovation

Department of Agricultural, Environmental, & Development Economics

The Ohio State University

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### **I. Introduction**

Can a transfer of development rights (TDR) program be successfully created between governments in Ohio? This report details the process used to create a TDR program in Hiram Township and the Village of Hiram, located in Portage County in northeast Ohio (see map inset). In carrying out the project, the Village of Hiram, Hiram Township, and the Portage County Regional Planning Commission (PCRPC) partnered to apply for the Center for Farmland Innovation's Farmland Protection Partnership Program grant funding. Lynne Erickson, AICP, PCRPC Director, served as Project Leader. If adopted, this effort would represent the first TDR program in the state. In the process of developing a TDR program, the project obtained citizen input, hired a TDR expert to conduct a feasibility study with a citizens advisory committee and to assist with writing local legislation, and conducted education and outreach for the community at large.



*Above: Location of Portage County (outline) and Hiram Village and Township shown in black.*

It is important to note that the TDR process was not conducted in a planning vacuum; nor was it the first farmland preservation effort in the county. Portage County completed a farmland preservation plan in 2000 that identified the need to implement innovative farmland protection policies and programs. Further, in 2003, a cross-jurisdictional planning process between the Village of Hiram, Hiram Township, and Hiram College established a unified vision to facilitate cooperation throughout the TDR planning process. It also allowed for the cooperation



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among the three entities throughout the TDR planning process.

The Hiram TDR project was a success. A simple and feasible TDR program was conceived, and legislation to establish a TDR system is currently under consideration by both the village and the township. The planning process brought together citizens, outside TDR experts, and local leaders to discuss not only the narrow concern of a TDR program, but broader issues relating to development and farmland protection. Ultimately, the project's process and outputs can be employed in other communities interested in innovative methods to protect farmland while promoting planned development.

## II. A Brief Background on TDR

Since a number of excellent primers exist on transfer of development rights, this document only provides a brief outline of TDR concepts. TDR is a voluntary, market-based program to protect resources and direct future growth. The commodity is the development right with both a buyer and seller. Through a community-led process, the TDR program divides land into two

types of zones: sending and receiving (see figure 1).

Sending zones are areas where resources identified in the comprehensive plan are to be protected and development should be minimized, like farmland or an environmentally sensitive site. Receiving zones are where future growth and development should be encouraged. Property owners in sending zones can voluntarily sell their transferable development rights (after an agricultural or conservation easement is placed on their property) to those looking to develop in receiving zones. These development rights have a variety of applications that benefit developers: increased density (most popular use of development rights application); exemptions from impact fees; exemptions from certain development standards (ex. setback, open space and parking requirements); additional floor space; greater lot coverage; building permit priorities; and other incentives created through the program development process. For example, if a receiving zone has a density restriction of four units per acre, a developer could purchase TDRs from a sending zone property owner to build at six units per acre. The value of the development right is set on the open market by the seller and buyer.

TDR programs provide benefits for property owners in sending zones, developers, and the community at large. Sending zone property owners are paid in exchange for the right to develop their property. Developers can purchase TDRs voluntarily for a variety of benefits, including building at higher density and/or other benefits noted above. The community benefits by avoiding development of valued land and reducing infrastructure expenses through a low public-cost program.

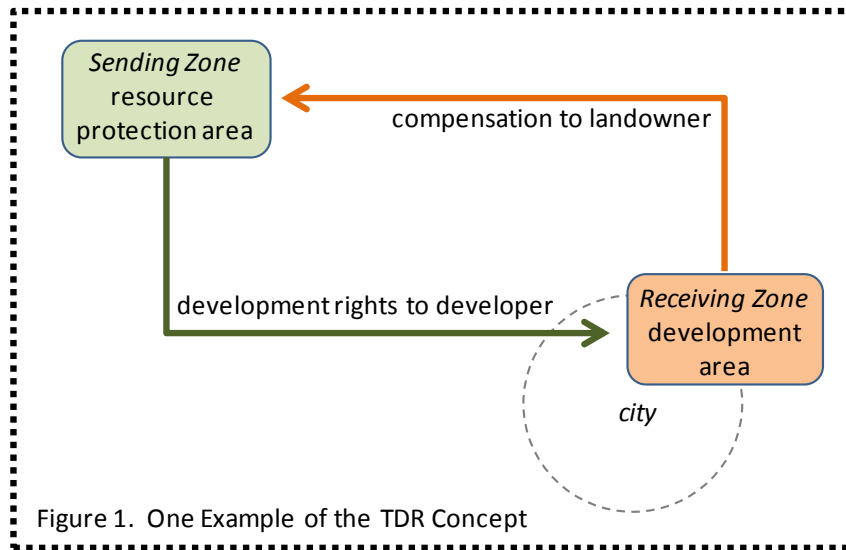


Figure 1. One Example of the TDR Concept

### III. Elements of a Successful TDR Program

Previous studies have revealed certain aspects of successful TDR programs. First, and probably the most important, is that the process for purchasing TDRs must be simple. Sellers and buyers do not want to subject themselves to a bureaucratic TDR process. Plus the market must be transparent. Second, receiving zones and the benefits of purchasing development rights must be easily identified and appropriately marketable - they should be attractive to builders. A TDR program cannot be successful if developers don't want to purchase the rights for application in receiving zones. Third, development rights must be accurately priced. Sending area landowners won't sell their development rights if the proceeds aren't satisfactory; likewise, receiving area developers won't purchase TDR development rights if they cost more than the benefits received. An important note, if buyers

and sellers do not participate in the TDR market, then development can occur according to the current zoning and building standards.

### IV. The Process

The Hiram project leader devised a dynamic and inclusive process to develop a TDR program to protect farmland resources and direct growth into the village. Important to organizing the project was getting leaders from the Village, Township, and College to the table. This was not difficult because the three organizations have a history of working together on planning issues. They organized and convened a TDR Citizens Advisory Committee that brought together elected officials from both the village and township, the college, farmers and other business leaders, nonprofit environmental groups, developers and interested citizens—totaling almost 20 members. The committee held eleven meetings over the project

#### ***Successful TDR Programs***

Pruetz and Pruetz (2007:3), are aware of 181 TDR programs across 33 states that have, in total, preserved over 300,000 acres of “farmland, natural areas, and open space.” While the particulars of each TDR program differ, two successful TDR initiatives are profiled below (adapted from Pruetz and Pruetz, 2007).

1. Montgomery County, Maryland. An affluent, suburban county immediately northeast of Washington, D.C., Montgomery County has seen considerable development over the past few decades, and growth pressures continue to the present. To protect their farmland resources, the county zoned 91,000 acres as agriculture in 1980, changing maximum density from one unit per five acres to one unit per twenty-five acres. To compensate landowners in these zones, the landowner can receive one TDR unit for every five acres on which they place a no-development (excluding agricultural development) easement on their property. Receiving areas are delineated by the county where existing infrastructure supports additional development in the form of increased density. Since its establishment in 1980, the Montgomery County TDR program has preserved over 43,000 acres of farmland and open space.

2. New Jersey Pinelands. The Pinelands is a massive, one-million acre site in southeastern New Jersey blessed with outstanding environmental and agricultural characteristics. Developed in 1980, the Pinelands Comprehensive Management Plan established an inter-jurisdictional TDR program across 60 governmental units. It designated 23 of these communities as receiving zones where development should be steered. A TDR bank markets and administers the program, and uses funds generated by the program for infrastructure in receiving zones to support their higher densities. The Pinelands TDR program has preserved over 47,000 acres of valuable agricultural land and open space.

<sup>1</sup>Pruetz, Rick and Erica Pruetz. 2007. Transfer of Development Rights Turns 40. Planning and Environmental Law 59 (6), p. 3.

year. In its early stages, the committee searched for a TDR expert to prepare a feasibility and market study. Later, they worked with the consultant to design all parameters of the TDR program and implementing legislation. The committee also later organized four educational forums, detailed below.

TDR expert Rick Pruetz, FAICP, was selected as the consultant to conduct a market analysis/feasibility study and advise the committee on TDR program design. The study revealed that Hiram is not projected to experience a high rate of residential growth, which some believed would impede an active TDR market place resulting from high development pressure. However, the study did show that a properly designed TDR program could be successful. In general, experts believe that TDR programs have the greatest chance of success in areas where development pressure is strong, since more development activity likely means that TDRs would be in greater demand. The results of the feasibility study and market analysis are summarized later in this document. Working with the Citizen's Advisory Committee, Mr. Pruetz and project leader Lynne Erickson drafted TDR program implementing legislation and administrative procedures, which were reviewed by both township and village officials.

Four public educational forums were held at Hiram College to provide background information on TDR, build support for the TDR planning process and farmland preservation, and disseminate the TDR program and draft legislation results to the general public and public officials. Educational materials were disseminated at these meetings, and members of the public were invited to comment on and discuss the topics presented. While some of the meetings were contentious – certainly expected, given the innovative nature of TDR – the project leader believes that they were crucial for achieving public buy-in.

## V Program Design Elements

In designing a TDR program for the township and the village, a number of issues had to be tackled by the Citizens Advisory Committee, with consultation from Mr. Pruetz. The committee had to define what resources should be targeted for protection, or in other words, what areas qualified as sending sites. What would be the minimum parcel size for landowners to participate in the TDR program? What could development rights be used for in the receiving zones? How many TDRs would be allocated to landowners to sell per acre preserved? What land would qualify as a receiving site and how many TDRs would a developer be required to purchase to develop at a higher density?

The proposed TDR resolution/ordinance and administrative procedures answer these questions and several others in creating a coherent and simple TDR program for Hiram. The CAC agreed that the resource they are interested in protecting is farmland. The CAC agreed that the incentive for developers to purchase development rights would be increased density in receiving areas. Sending sites are defined as those (i) zoned Rural Residential (RR), (ii) in agricultural use (through inclusion in the Current Agricultural Use Value program), (iii) located within the township, and (iv) not already permanently preserved or under a deed restriction. Sites must be at least 25 acres, or at least 20 acres if adjacent to a permanently preserved parcel of at least 30 acres.

Once development rights are sold, a permanent easement is placed on the entire sending site. They allow for no future land division, and provide for only one residential unit on each preserved parcel (this does not preclude

development related to agriculture).

Agricultural easements limit further use of the property to agricultural uses – including dairying, animal husbandry, and forest products, in addition to crop-raising. Easements can only apply to the portion of the property zoned Rural Residential.

Once the easement is recorded, the sending site landowner is allocated TDRs to sell at the following rates: 1 TDR per 2.5 acres of all land in the parcel, plus 1 TDR per 10 acres in excess of 25 acres, plus 1 TDR per 400 feet of lineal public road frontage. The additional TDR bonuses were to motivate landowners to preserve larger parcels and road frontage land.

The proposed TDR program adopts an expansive definition of receiving zones. It can include any property in Hiram Village where the developer wants to build at a density higher than the zoning currently allows (the “baseline density”) or any site within the Township’s Planned Development (PD) overlay zone in the rural residential district.

Every unit built above the baseline density requires (i) one TDR per one additional single-family residential unit, (ii) one TDR per one-and-one-half additional units in a two-family residential building, or (iii) one TDR per two additional units in multi-family residential buildings.

The proposed TDR program also provides a payment in lieu option, where developers can pay Hiram Township or Village a certain fee instead of acquiring TDRs. The fee is currently \$10,000 per TDR. These fees will adjust yearly based on the median value of dwelling units in the county, and proceeds will be used to acquire agricultural easements from land meeting sending site eligibility.

## VI Feasibility Study/Market Analysis

In devising the TDR program, one concern of all parties was the market for TDRs and therefore the amount of farmland/open space that could be preserved (supply). These worries are particularly acute given that Hiram is not projected to experience headlong growth in the near future (demand). As part of the market analysis/feasibility study, the consultant estimated potential TDR usage over a fifty-year period (Note – most TDR studies use a 50-year time frame). First, in consultation with the PCRPC and local development community, he projected the number of residential units that would be constructed over the 50-year period. Second, he estimated the number of constructed units that would be built above baseline density and require TDRs. Third, Mr. Pruetz proposed an example sending site size to estimate the number of TDRs per acre that could be generated. Finally, by multiplying the expected demand for TDRs by the TDR allocation rate per acre, he arrived at an estimate of acres preserved. His projections estimated the construction of 1,000 additional residential over this time frame, half of which would be built over the baseline density, and thus 500 TDR units would be needed over the next fifty years.

To determine the amount of farmland protected through the use of TDR, the study assumed that the average preserved parcel will encompass 40 acres of land with 600 feet of lineal frontage. Under the proposed TDR allocation rules, this property would receive 19 TDR units for its preservation, and 2.1 acres preserved per TDR created. Under this ratio (2.1 acres : 1 TDR ), the projected demand for 500 TDRs would result in the preservation of 1,050 acres of farmland – over 7% of the township’s total area. Note: It is important to consider TDR as part of a package of policies and programs that are already offered in this area (includes

agricultural security areas and purchase of agricultural easements) that are already protecting farmland.

The feasibility study determined that a TDR market can be created in Hiram (<http://cffpi.osu.edu/Hiram.htm>). The study also addressed how to create the most favorable conditions possible for a successful TDR program. Developers should be able and willing to buy TDRs to achieve bonus density if TDR is the only way bonus density can be achieved. Furthermore, the amount that developers are anticipated to pay for TDRs would be sufficient to adequately compensate landowners who volunteer to place easements on their properties.

Rick Pruetz encouraged village and township policymakers to evaluate the additional factors that make TDR programs successful and adapt policies that would encourage TDR usage. In particular, making sending sites more appropriate for preservation, as opposed to on site development, so that growth is directed to receiving areas. Policies toward this end include mandating extremely low densities on sending sites; possibly as low as one residential unit per 40 acres or less. Also, Hiram leaders should eliminate other bonus density incentives for developers, such as those that accrue when a development preserves on-site open space or provides other amenities.

## VII Proposed Legislation

To implement the TDR program across the jurisdictions, both the township and village need to adjust their zoning resolutions and ordinances to allow for the TDR program proposed by the Citizens Advisory Committee. For a copy of the model legislation, visit (<http://cffpi.osu.edu/Hiram.htm>).

## VIII Conclusions and Future Work

The Hiram TDR planning process was a resounding success on numerous fronts. While Hiram Township, the Village of Hiram, and Portage County have already demonstrated successful farmland preservation through purchase of development rights and other programs, TDR offers an innovative program that incorporates market mechanisms into farmland preservation. The debate over TDR demonstrated an excellent and widely-applicable planning process that combined input from local stakeholders with expert advice from a nationally-known TDR expert. The Citizens Advisory Committee encompassed a wide range of stakeholders in an inclusive planning process, with active input from elected officials, planners, farmers, builders, advocates, and everyday citizens. Rick Pruetz's market analysis and feasibility study demonstrated the wide applicability of TDR programs, even in communities without strong development pressure.

Beyond planning for a TDR program, the process had other beneficial effects on the community. Importantly, it encouraged thinking about how the township and village are one interdependent community. Thinking regionally not only benefitted the TDR planning process – it made adoption of the program seem logical – but it will likely reap cross-jurisdictional benefits in the future.

As of July 2009, both the Village of Hiram and Hiram Township are considering adoption of the TDR program. The Citizens Advisory Committee recommended that the draft ordinances and administrative procedures be forwarded to each governmental entity, after which the documents entered the zoning adoption process. Since this project has been underway, a nearby community, the Village of

Garrettsville, has indicated interest in working with Hiram Township as well to develop a program.

#### **IX For More Information**

“Fact Sheet: Transfer of Development Rights,” published by the American Farmland Trust. Available online at [www.farmlandinfo.org/documents/27746/FS\\_TDR\\_1-01.pdf](http://www.farmlandinfo.org/documents/27746/FS_TDR_1-01.pdf)

“Transfer of Development Rights Turns 40,” by Rick and Erica Pruetz. Available online at [http://www.beyondtakingsandgivings.com/images/TDR\\_Commentary.pdf](http://www.beyondtakingsandgivings.com/images/TDR_Commentary.pdf)

*Beyond Takings and Givings: Saving Natural Areas, Farmland, and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges*, by Rick Pruetz, AICP. Published by Arje Press, 2003.

#### **About the Center**

The Center for Farmland Policy Innovation, established in 2006, resides at Ohio State University, and is associated with the OSU Extension Services. Our mission is to enable communities to achieve farmland protection policy priorities by partnering on innovative projects and providing needed programming. We work to spread local seeds of invention. Further, we work at the state and federal levels to further viable local agricultural environments.

#### **Peer Advice**

TDR is an innovative and flexible way to preserve farmland while promoting development; however, its complex administrative apparatus can make adoption contentious. The Hiram TDR process provides a model for increasing stakeholder buy-in through a highly inclusive and communicative planning process.

It is important to have decision-makers on board from the very beginning. TDR programs are unique for every community, and require a number of planning and policy decisions; it is imperative that community leaders participate in the large policy goal discussions. Further, community leaders – both within and outside of government – must be engaged and active participants in the TDR planning process.

When individuals or groups object to a TDR program, planners must find out who is objecting and, more importantly, why they are opposed to TDR. Is it a question of program – do they feel that TDR is not the best way to achieve resource protection – or do they have larger, more structural objections to farmland protection in general? If individuals object to the complexity of TDR, it is crucial to demonstrate not only that TDR works in general, but that TDR can work in their community.

A feasibility study conducted by a widely-respected expert is one way of overcoming dissent. A feasibility study and market analysis answers many questions regarding the likelihood of developing an active, successful market. Also, groups can bring in administrators of successful TDR programs to tell their story.

Inclusiveness and education are both critical to the TDR planning process. Project leaders should engage stakeholders through a citizens’ advisory committee that works through the policy and implementation questions surrounding TDR. Public education forums are critical, and more innovative ways of disseminating information are highly effective. For example, Hiram project leaders spoke at various community events (including a League of Women Voters speaker series) and published notices of public meetings in church bulletins.