

Montgomery County Lands Trust

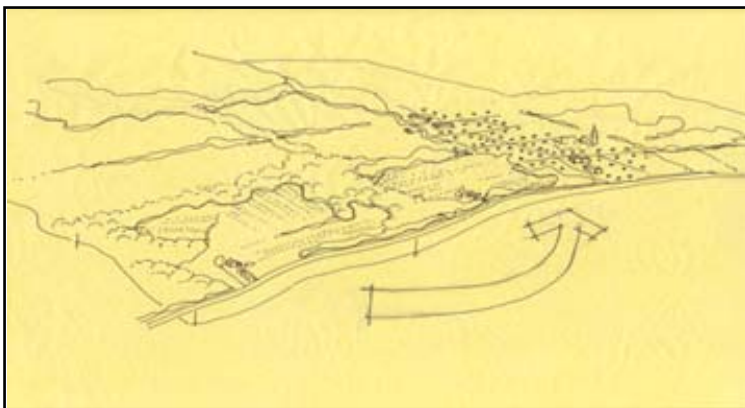
Transferable Development Rights Community Readiness Project *A Final Report, January 2009*

Transferable Development Rights (TDR) is a zoning tool that can be enacted by Montgomery County municipalities to help save natural areas, farmlands, and watersheds from unsuitable development. TDR is authorized by the Pennsylvania Municipalities Planning Code (MPC) and enables landowners to legally sever and sell development rights allocated through municipal zoning ordinances.



Establishment of transferable development rights (TDRs) offers a land use regulatory tool to promote conservation and contain sprawl. TDR also brings private funds into the financing of permanent conservation solutions.

TDRs are normally sold by a landowner to a developer for use in an area suitably planned to receive them – known as the receiving area – in order to save important natural areas – known as the sending area. Both the sending and receiving areas would ideally have zoning provisions in place to enable the successful exchange. Land from which TDRs are severed is permanently protected through use of a conservation easement or other permanent restriction.



Development rights allocated through zoning are transferred from areas designated for conservation to an area planned to accommodate new or additional development.

The Benefits of TDR. TDRs can benefit Montgomery County landowners by giving them an option to sell the development rights for their farmland or forest parcels. TDRs can benefit developers by providing them with the option to build at a higher than usual density—or intensity (i.e. height or impervious cover)—in the case of a commercial or industrial development. Montgomery County residents benefit by gaining preserved, natural areas and strategically located development in a planned growth or revitalization area.

Other benefits include:

- The receipt of TDRs for commercial and industrial development that can generate local tax revenue.
- The receipt of TDRs for new development can be guided so as not to exceed densities or intensities that are out of character with the surrounding community.
- A municipality can buy and sell TDRs on its own.
- TDRs can be purchased by a municipality using revenue generated through a municipal open space referendum.
- Public parkland can be obtained more economically through a landowner or developer donation of the land from which all TDRs were severed.
- A landowner need not sell all of his or her TDRs at once.



This scenic farm adjoining a National Register Historic Village was saved by “sending” its TDRs to a residential area where their use allowed development to occur on half-acre lots instead of one-acre lots.



Nothing Breeds Success Like Success. For TDR to be successful, a landowner must be willing to sell TDRs, a developer must be willing to buy TDRs, and a municipality must be willing to enable the TDR transaction through zoning. TDR is a market-driven tool, but it can also be a municipally driven tool if a municipality is willing to purchase and sell TDRs.

Municipalities in our region, including Chester, Bucks, and Lancaster Counties are successfully using TDRs to shape growth and permanently protect their farmland *and* to accommodate development and redevelopment within their planned growth areas. Even suburban communities are using TDR to protect their remaining neighborhood open space and to revitalize boroughs and villages. Landowners, neighborhood groups, farmers, realtors, and elected officials are all important stakeholders in the design and long-term success of TDR programs.



Seventy-five TDRs from the Greystone Manor Farms were purchased by Manheim and Warwick Townships, Lancaster County, preserving the farm and enabling both municipalities to sell TDRs as an open space revenue generation source. The funds from such sales were re-invested by these two municipalities to acquire more TDRs.

The Heart of Lancaster Hospital was developed through the sale of 141 of Warwick Township's "banked" TDRs, including the 75 TDRs from Greystone Manor Farms. The purchased TDRs were used by the developer to increase the applicable impervious coverage limit as established for the underlying industrial zoning district.



TDR Community Readiness Project - Background

In October 2007, Montgomery County Lands Trust and Montgomery County Planning Commission forged a partnership and contracted with consultants from Brandywine Conservancy to study how TDR might be expanded in Montgomery County. The *TDR Community Readiness Project* was undertaken, intending to:

- Determine familiarity and receptivity to the utilization of TDR by municipalities in Montgomery County;
- Identify real and perceived challenges to the application of TDR;
- Educate municipal officials regarding the diverse approaches of TDR and its inherent flexibility;
- Identify potential opportunities to implement TDR;
- Identify needs for further outreach, education, and technical support to municipalities in Montgomery County.

The project was kicked-off with a series of presentations on TDR at each of the County's four multi-municipal planning commissions. These regional planning groups represented municipalities collectively covering most of north and northwestern Montgomery County, including a large percentage of land still available for development. Each presentation focused on increasing participants' familiarity with TDR and showcasing the tool's flexibility, with a glimpse of its diverse approaches and results in a variety of settings in Pennsylvania. Secondly, and more importantly, the

purpose of each presentation was to initiate dialogue with municipal officials and planners around the question, “Is your community ready for transferable development rights?” At these presentations, the multi-municipal planning commissions also provided feedback to the partnership regarding an upcoming survey of municipal officials that would elicit their views about TDR and its potential use in their community.

Montgomery County *Green Futures*
Transferable Development Rights:

*Protecting resources;
Achieving community
development objectives*

**Pottstown Metropolitan
Regional Planning
Committee**
January 23, 2008



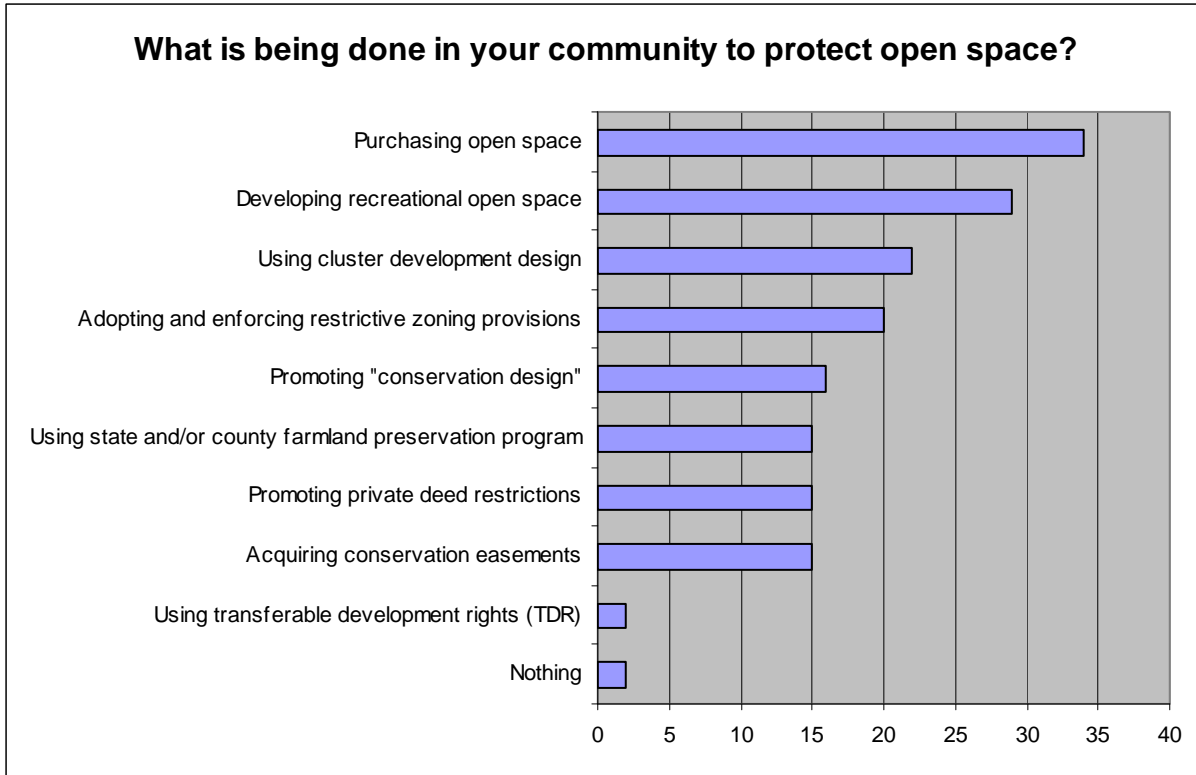
The slide titled "A Tool for You?" contains three images. The top image shows a rural farmstead with a barn and silos. The bottom-left image shows a large, white, two-story house with a porch. The bottom-right image shows a street scene with people walking and a building.

Each regional planning meeting featured a PowerPoint presentation highlighting the potential success of TDR programs.

Following the four regional meetings, the partnership collaborated on finalizing the survey that was distributed to more than 400 municipal officials throughout Montgomery County. Survey responses were received from 27 municipalities representing 60 percent of the land area of Montgomery County (See Appendix A for survey and survey results). Additional information was gathered by the partnership through discussions that occurred at each of the regional meetings, correspondence and contacts with municipal officials, and a follow-up forum held in September with municipalities that had indicated definite interest in using TDR in their community. At the forum, the Montgomery County Planning Commission presented hypothetical TDR programs for two municipalities – Limerick Township and Worcester Township (see Appendix B).

TDR Community Readiness Project – What We Learned

Results from the surveys and discussions at our meetings made it quite clear that throughout Montgomery County there is very strong support for open space conservation. Of the municipalities responding to the survey, most indicated that they were already involved in efforts to acquire open space (see sample survey responses below). Outright acquisition is clearly viewed as the most effective tool for the protection of open space resources. Overall, it appears that existing and on-going efforts to protect open space are generally viewed as adequate. Yet many respondents felt that TDR may be a desirable conservation and growth management tool in the future, recognizing that public funds for acquisition of open space lands or conservation easements are and will be limited.



Flexibility of TDR Not Well Understood. Discussions at several presentations, along with survey responses, infer that those involved in municipal land use planning efforts are generally familiar with the TDR tool. Yet it became equally clear that in many cases familiarity was equated to TDR “textbook” approaches, limited to residential development at relatively high densities on the receiving end of the TDR equation. There seemed to be far less familiarity with the flexibility of TDR to meet community planning objectives beyond the obvious benefit of bringing private funds to assist with conservation efforts.

A majority of survey respondents were not aware that development at TDR receiving areas does not have to be denser than what presently is permitted. Few municipal representatives had been aware that reduction in base zoning potential – without use of TDR – could be paired with enactment of receiving zone development opportunities which might result in the same degree of development, or even less, than currently available with out receipt of TDRs at all.

Survey responses also noted a lack of familiarity with the potential diversity of TDR receiving areas as well as the varied approaches toward equating the value of sending and receiving rights. Most assumed that receiving development would be higher-density residential development and had not been aware of the potential to focus receiving areas on non-residential uses or special uses such as age-restricted or continuing care retirement development. With “textbook” TDR approaches in mind, many assumed that one TDR sent equates to one dwelling unit received.

During the presentations made by the partnership, participants were interested in learning the details of how sent TDRs could be converted into increased *intensity* of development rather than *density*,

typically measured in terms of increased impervious coverage or increased building height or both. Unfortunately, many municipal zoning ordinances already provide for the maximum development intensity suitable to the local real estate market without use of TDR. The question was frequently posed, “Why give it away for free?”

Most participants at the presentations were not aware that the use of TDR did not require a significant administrative role by the municipality nor that the county and local land trusts might play roles as TDR “bankers” or information clearinghouses. Successful TDR programs around Pennsylvania exhibit very diverse degrees of formal municipal involvement, both in terms of administration and in terms of direct involvement in the purchase and sale of TDRs. Examples range from simple municipal certification of severed TDRs, with no other involvement, to whole scale municipal purchase, banking, and re-sale of TDRs. Yet even the most active program in the Commonwealth is conducted by a two-person, full-time professional staff, with concurrent involvement in every other aspect of municipal affairs.

Is your community aware of the following potential options for a TDR program?					
	Aware	Not aware	Our community would consider using this option	Rating Average	Response Count
1) TDRs may be received for non-residential development such as office parks.	52.8% (19)	27.8% (10)	19.4% (7)	1.67	36
2) TDRs may be received for special purpose uses such as assisted living.	50.0% (18)	38.9% (14)	11.1% (4)	1.61	36
3) TDR receipt for residential development may be "density neutral," e.g., no more density than presently provided.	41.7% (15)	52.8% (19)	5.6% (2)	1.64	36
4) TDR programs do not require municipal funding.	54.3% (19)	42.9% (15)	2.9% (1)	1.49	35
5) TDR programs can function with minimal administration on the part of the municipality.	44.4% (16)	50.0% (18)	5.6% (2)	1.61	36
6) The County and land trusts could take on roles as TDR bankers and information clearing houses.	38.9% (14)	52.8% (19)	8.3% (3)	1.69	36

Understanding a Multi-Municipal TRD Program. A majority of survey respondents, as well as participants at the regional meetings and follow-up forum, seemed to be unfamiliar with the variety of approaches with which a multi-municipal TDR program might be developed. Multi-municipal transfer of TDRs does not require a joint zoning ordinance or even a multi-municipal comprehensive plan, so long as written agreement(s) are adopted to define the extent of TDR coordination among the participating municipalities (two or more). The multi-municipal transfer does not infer any land use planning or development approval oversight on the part of one municipality over another. However, where a multi-municipal TDR program is consistent with a

multi-municipal comprehensive plan, fair share obligations on the part of any single municipality may be avoided, enhancing ability to define both sending and receiving areas from a regional perspective.

Participants at our meetings and forums asked questions regarding tax-base and public service ramifications of a multi-municipal TDR program, where land values are “transported” across municipal boundary lines along with the TDRs. Typically, there is little impact on the sending municipality, since most lands that are likely to be eligible to send TDRs are also likely to be subject to preferential tax assessment reductions for open space. The TDRs that are removed also remove future development potential and the service needs it would infer. On the receiving end, the municipality getting the development from transferred rights is also getting the increased tax assessment on that development. One challenge to this scenario is where the sending and receiving municipalities are in separate school districts. If the receiving development is residential and not age-restricted, school district costs may outstrip generated tax revenue without any cost-savings from the elimination of future school costs arising from the sending tract in another school district.

Again, the flexibility of TDR can address issues such as these. For example, one municipality may favor receipt of TDRs generated in sending areas within its own boundaries, or in specified areas of an adjacent municipality, over other sending areas within a multi-municipal TDR program. Similarly, favorable conversion ratios for receiving development can reflect the type, character, design, form, or intensity of development most consistent with community development objectives in the receiving municipality. TDRs sent across school district boundaries can be limited to development that infers increased tax “ratables” without generating additional school population. Variable rates of sending TDR generation and/or receiving opportunities can also reflect differing land values or development pressures across single municipalities or multi-municipal planning areas.

Challenges to TDR. Through both survey responses and discussions at the presentations and forums, a number of challenges were identified that need to be addressed in order to garner political and market support for TDR. **The biggest hurdle to overcome is the lack of familiarity with the diversity and flexibility inherent in TDR, as previously discussed.** Survey respondents placed the burden of overcoming that hurdle on the stakeholders, notably both municipal officials and the real estate market. A second key impediment to TDR is the impression that in much of Montgomery County, there is both little land left to save and few appropriate locations to receive development. To a certain extent, this impression is very real as development has already spread across much of Montgomery County. On the other hand, this impression could be perceived as a failure to recognize the flexibility of TDR and recognition that appropriate parcels for TDR remain in many municipalities.

Another big challenge cited is the “NIMBY” (Not In My Back Yard) reaction to almost any new development and particularly development perceived to be more intense or dense than otherwise could have been permitted. While most survey respondents could imagine appropriate receiving areas in their own municipalities, broad public support is necessary to garner the political will of the governing body in designating such areas for development. This factor underlines how important it is for TDR receiving areas to be consistent with a comprehensive plan that enjoys broad public support, has high design standards, and holds the respect of existing neighbors.

Equally important to community acceptability is marketability. If it won't sell, it won't be built, and TDRs will not be used. It is critical that development that is dependent upon TDRs generate sufficient marginal profit in order to afford the purchase of TDRs. This factor underlines the need for flexible approaches to TDR and a variety of options for development using TDRs, including land use options, development form, and intensity. It was suggested at our meetings that input from developers - from the standpoint of marketability - could be critical to setting zoning standards for TDR receiving areas.

Where receiving areas are relatively intense, yet another challenge that can arise is the need for infrastructure, particularly public or community sewer and water systems. Unfortunately, extension of sewer and water systems to serve an intended TDR receiving area may be perceived as potentially serving and facilitating other unintended development. The most successful TDR programs in Pennsylvania have occurred where the municipality had already committed to such infrastructure extension. This issue underlines a clear benefit of a multi-municipal TDR program, where development rights can be transferred from rural areas into receiving areas with adequate, existing infrastructure such as in most boroughs or villages. Where new infrastructure development is necessary to facilitate TDR receipt, participants suggested possible provision of TDR "credits" for appropriate infrastructure development.

Political hurdles to TDR arise not only due to a lack of consensus regarding use of TDR, but also due to the inevitable need to amend existing zoning provisions, particularly in regard to permitted density or intensity of development. It is notable that survey responses showed strong support for local zoning changes to make TDR possible in their community.

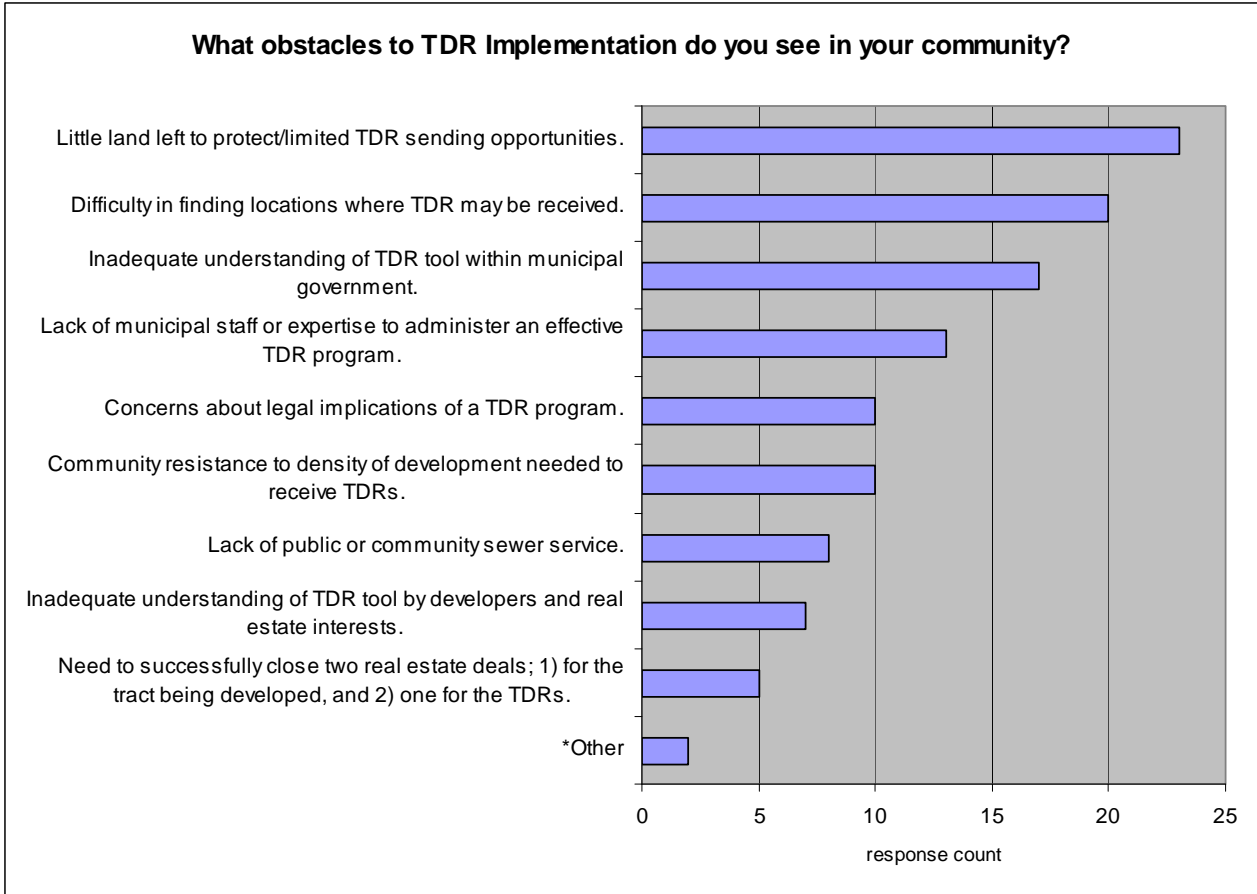
It would be unusual to not experience resistance to proposals for "up-zoning," intended to increase development potential where TDRs are received. However, it is more likely that "down-zoning" will be necessary in order to create an attractive climate for the use of TDRs. There are no incentives to buy TDRs for receiving development if existing zoning already permits the maximum intensity of development that the local real estate market will bear. In many cases, in order to create a clear differential between development permitted with TDRs and development permitted without, permitted intensity of development without TDRs will need to be reduced -- sometimes substantially -- below which is permitted currently. For this purpose, intensity of development may be dealt with from one or more perspectives, whether measured in terms of building coverage, impervious coverage, building height, or numbers of permitted dwelling units. Such down-zoning cannot be limited to narrowly defined receiving areas. If so, designated receiving areas will simply be avoided by developers in favor of other potential development sites where TDR receipt is not required, whether in the same or a neighboring municipality. This factor underlines the potential benefits of a multi-municipal TDR program tailored to the implementation objectives of a multi-municipal comprehensive plan, with adoption of consistent zoning in all participating municipalities.

There is also likely to be little incentive for most landowners to sell TDRs if existing zoning infers greater land values for development of would-be sending areas. In order to create meaningful incentives for the sale of TDRs, the base zoning density may need to be reduced, such that the number of TDRs generated is clearly greater than the number of homes that might be permitted to be developed on the same tract of land.

Meeting participants and survey respondents clearly indicated a common perception that necessary municipal administrative roles would create an obstacle to the use of TDR, due both to lack of understanding of the tool and inadequate expertise. As noted, most expressed a lack of awareness that a number of successful TDR programs relied on only minor municipal administrative roles. Beyond implementation of necessary zoning amendments and standard development approval roles, the only formal role required by the Municipalities Planning Code is municipal certification of the severance of TDRs from the fee interest in the sending property.

Additionally, support for municipal funding of TDR purchases and subsequent “banking” of TDRs was viewed as a hurdle. Again, while some of the more successful municipal TDR programs have taken on such roles, they are not required for the establishment of a TDR program.

While multi-municipal use of TDR could enhance the effectiveness of the tool for both the sending and receiving areas, multi-municipal implementation can, itself, be a major challenge to overcome. While an intergovernmental agreement is required to permit transfer of development rights across municipal boundaries, no local zoning authority need be relinquished; the need to gain approval from multiple governing bodies would seem to magnify the height of every hurdle otherwise identified. The biggest hurdle to broad public support for a multi-municipal TDR program is the specific identification of receiving areas and potential intensities of development at receiving sites. Again, this underlines the benefits of clearly tying the implementation of a TDR program to a multi-municipal comprehensive plan, especially one enjoying broad support across municipal lines, both for resource protection and appropriate areas of focus for development. Interestingly, a large majority of survey respondents did not oppose the concept of receiving development rights from a neighboring municipality in order to preserve important open space in that municipality. This speaks to the depth of support for shared resource protection objectives across Montgomery County.



Identification of these challenges indicates a need for continuing education on TDR and the importance of municipal assistance that may be offered by Montgomery County Planning Commission, Montgomery County Lands Trust, or other organizations.

Overcoming the Challenges. In many places, development of a viable TDR program will depend upon further exploration and resolution of the several challenges raised by program participants and discussed above. Overcoming some challenges may take further education, additional community planning, and even some capital expenditures. Further, it will require sufficient local political will to implement or fund necessary efforts, both to develop the attributes discussed above or to augment them to accomplish the following:

- down-zoning in sending areas for “by-right” development to reduce likelihood of development and increase incentive to sever and sell TDRs;
- down-zoning to establish clear differential between development permitted with and without use of received TDRs;
- focus of receiving development in areas with existing infrastructure, sometimes in spite of existing neighborhood resistance;
- development of additional infrastructure to facilitate receiving development opportunities, whether or not undertaken at the cost of the receiving developer;
- amendment to local zoning to reduce or eliminate competitive development opportunities in locations where use of TDR is not required.

The Future of TDR in Montgomery County

As *The TDR Community Readiness Project* concludes, its value has been verified not only by survey responses as described above, but also by invitations extended by individual municipalities for presentations and clear steps taken by several municipalities to implement a TDR program in their community. As the TDR tool is repeatedly presented, it is increasingly clear that the challenges of its unfamiliarity can be overcome by consistent outreach by a trusted advisor. Many municipal officials are particularly intrigued by the Lancaster County TDR success stories, the flexibility afforded through TDR to focus on a variety of community planning and development objectives, how TDR can address variable market issues and incentives, and how it can provide for diverse receiving development opportunities. There is increasing recognition that TDR can enhance growth management efforts as well as minimize negative developmental and fiscal consequences of “sprawl.”

Opportunities for Success. Meeting participants and survey respondents indicated general agreement that TDR could be a positive addition to their planning toolbox. There is clear support for the possibility to identify receiving areas, particularly other than conventional residential density increases. Variations on the “TDR textbook theme” were particularly well received at our meetings, notably non-residential or special use development on the receiving end of the TDR equation. Even on the sending end, interest was expressed in the potential use of TDR generation or credits as means to promote implementation of specific community planning objectives, such as dedication of recreational lands or development of needed public improvements.

Most survey respondents were generally supportive of the idea of inter-municipal receiving areas in order to protect regional open space, underlining the success of on-going efforts to build consensus for resource protection across municipal boundary lines. Participants also noted the potential positive use of TDR receiving areas as a reinvestment tool in appropriate areas, including those from a number of boroughs and villages.

In consideration of the potential for multi-municipal transfer of development rights, indicate your level of agreement with the following statement.							
	Strongly agree	Somewhat agree	Neutral	Somewhat disagree	Strongly disagree	Rating Average	Response Count
I can envision situations where my community would be willing to receive TDRs to protect open space, farms, and parks in a neighboring municipality.	18.9% (7)	27.07% (10)	27.0% (10)	8.1% (3)	18.9% (7)	2.81	37

Meeting participants indicated strong support for further meetings and education of TDR prior to determining how and where the tool might specifically be used. There was clear recognition that municipal staff and governing bodies should receive further contact in this regard. There was also hope expressed for continued facilitation by Montgomery County agencies and the Montgomery County Lands Trust.

Anticipated TDR Implementation. The key to moving beyond education to policy change would be the implementation of a TDR program in a municipality (or multi-municipality). As previously stated, one of the lessons learned through this process is that municipalities need to be guided through complex issues through a variety of meetings and contacts. All three partnering organizations are excited by the effectiveness of the informational and educational attributes of the project. Only limited interest had been expressed in use of the TDR tool in Montgomery County in the past. Now, with fresh and varied approaches and concrete examples related to the planning and political context of several municipalities, a number of municipalities are actively considering how a TDR program may enhance their resource protection and growth management objectives. Actual implementation through zoning amendment is anticipated, although initial efforts are likely to test the waters carefully, with limited designation of receiving development opportunities, focused on alternatives to conventional suburban residential development. The hypothetical models developed by the Planning Commission illustrated how even limited programs could lead to significant land conservation results.

As an added incentive to our project, Montgomery County Planning Commission has graciously agreed to develop a TDR program specifically for any municipality interested in adding this tool to their land-use planning toolbox. MCLT and MCPC are working with several municipalities to develop TDR programs tailored to these communities. Below is a short description of our success working with three communities – Lower Merion Township, Douglass Township, and Limerick Township.

Limerick Township:

In August 2008, MCLT contacted Limerick's planner, Simone Collins, and asked if they thought that TDR would be inserted into the township's draft comprehensive plan. After several phone and email conversations and building on relationships established through our Green Futures Advisory Committee, a representative from Simone Collins and the chair of the board of supervisors attended our September TDR workshop. The September 2008 draft of the township's comprehensive plan states as a recommendation to "develop a TDR program..." (see Appendix D for pages from Limerick Township's 2008 Draft Comprehensive Plan).

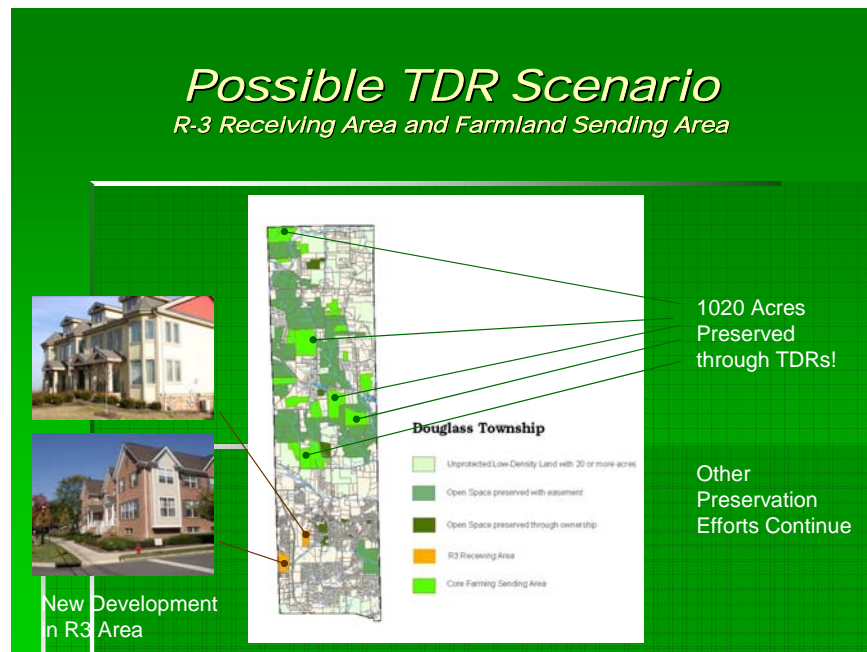
Lower Merion Township:

After attending our facilitated discussion on TDR, Lower Merion Township will be taking advantage of Montgomery County Planning Commission's offer to develop a TDR program for the township. The township's idea is to develop a program with larger institutional landowners (hospital, colleges, and preparatory schools) who are planning on constructing new buildings on their current properties. The program would allow these landowners to develop more intensely on certain parts of their property, while allowing open space preservation on other parts that would then be used for recreational purposes for the township.

Douglass Township

Representatives from Douglass Township attended two of our multi-municipal presentations as well as our September 2008 facilitated discussion. MCLT, MCPC, and Brandywine Conservancy were

invited to the December 1, 2008 Board of Supervisors meeting in Douglass Township. A shortened version of our TDR presentation was conducted. After the meeting, the chair of the board of supervisors was considering asking the board to approve moving ahead with a TDR program and ordinance.



MCPC presented a number of examples of how variable approaches to use of TDR could meet conservation and growth management objectives in Douglass Township

Multi-Municipal TDR Opportunities. Many program participants readily recognized the logic of transferring development rights into municipalities, or portions of them, where economic development is desired and adequate public infrastructure already exists, notably in the several boroughs. Yet it is not anticipated that multi-municipal TDR programs will be implemented in the near time frame, due to a perception of greater complexity, a lack of local political will to promote planning objectives beyond municipal boundary lines, and other obstacles discussed above. Perhaps the most critical impediment to multi-municipal TDRs will be the need to amend local zoning regulations to reduce or eliminate competitive development opportunities outside of designated receiving areas. Yet, in most cases, the first step toward establishment of multi-municipal TDR programs will be the implementation of single-municipal programs. Once individual municipalities experience TDR success, the ability and interest to cooperate with their neighbors should blossom.

Continued Assistance and Outreach to Municipalities. After repeated presentations and positive reactions to the hypothetical TDR programs illustrated by the Montgomery County Planning Commission, the value of assistance provided to the municipalities by the three partnering organizations is very clear. Interest in use of TDR has increased markedly across Montgomery County over the course of this program. Sustaining and reaping the benefits of such interest necessitates on-going assistance to interested municipalities, potentially including the following:

- continuing educational presentations, including development of hypothetical TDR program approaches;
- assistance with TDR planning, sending and receiving zone designations; continued use of Montgomery County’s generous planning assistance roles;

- assistance with ordinance preparation and development of standard operating procedures for calculating, certifying, severing, recording and tracking TDRs;
- assistance with related zoning and subdivision ordinance revisions, comprehensive plan revisions for consistency, and multi-municipal planning efforts;
- establishment of clearinghouse role(s) to track severed, available and sold TDRs;
- exploration of potential TDR banking roles, including individual municipal banking of severed TDRs, as well as potential banking by Montgomery County Lands Trust, other land trusts and the County; and coordination with the County agricultural preservation program;
- assistance with local funding initiatives pursuant to Act 153, potential provision for County grant funds, administered similarly to general open space funding grants.