

Community Character / Open Space Preservation Tools



St. George, April 6, 2023

Panelists

- Dr. Arthur C. Nelson, FAICP
- Wendy Fisher – Executive Director, Utah Open Lands
- John Janson (JJ) – Consulting Planner and moderator (skier)
- With previous assistance from:
 - Mayor Larry Jacobsen – Nibley City Mayor
 - Tim Watkins – Cache County Planning Manager
 - Levi Roberts – Nibley City Planner



Session Intent (questions? Virtual folks please use the chat button!)

- Learn about various tools that can be used to preserve your community character and open space



- Transfer of Development Rights
- Land Trusts and Conservation Easements
- Purchase of Development Rights
- Overlays
- Cluster Zoning
- Flexible Agricultural Zones

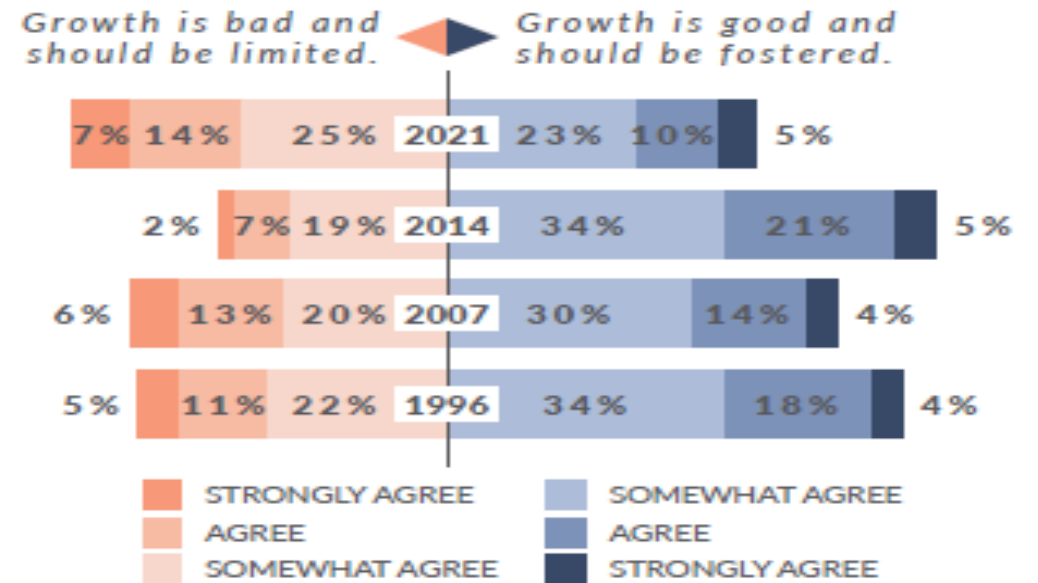
Small town perspective

Mayor Larry Jacobsen

- Are we tired of winning?

In Nibley, we hear:

- We need to conserve open space
- Preserve our rural heritage
- Build some attainable housing
- Change our half acre mindset
- Don't raise taxes (but do all kinds of stuff!)

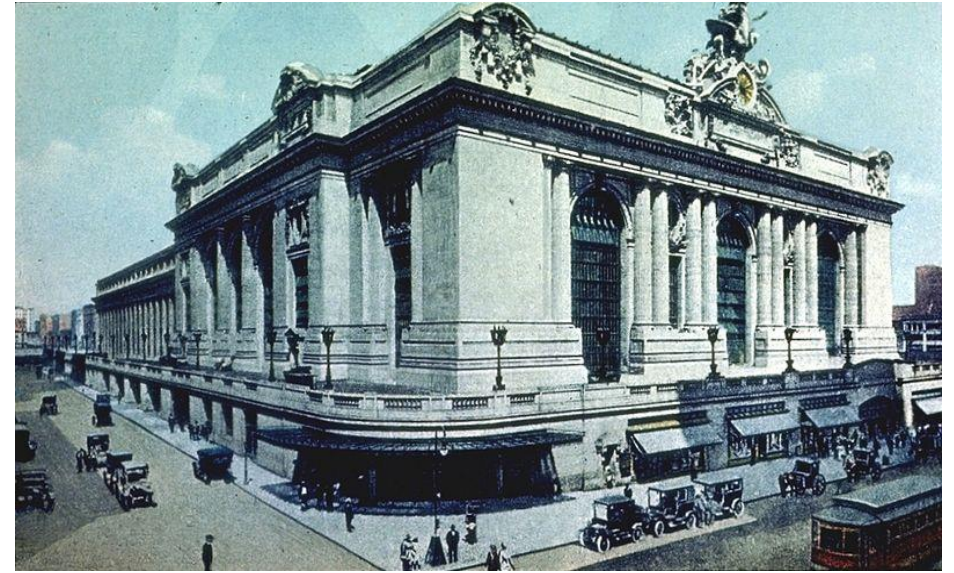


Main Concerns – Housing, Traffic,
Community/Family
Anything missing? *Water?*

Source: Envision Utah

TDR Background

- First used in NYC to sell the air rights above Grand Central Station
- Many programs across the country
- Local examples
- Success depends on the market and a well constructed program



FOREWORD BY DWIGHT H. MERRIAM

The
TDR HANDBOOK

Designing and Implementing
Transfer of Development Rights Programs



Arthur C. Nelson, Rick Pruetz, *and* Doug Woodruff
with
James C. Nicholas, Julian Conrad Juergensmeyer, and Jonathan Witten

**Transfer of
Development
Rights (TDR)
*FOUNDATIONS***

Chris Nelson
**Presidential Professor
Emeritus University of Utah**



Transfer of Development Rights

The background is a grayscale aerial photograph of a rural area. A multi-lane road runs diagonally from the top center towards the bottom right. To the left of the road are several large, rectangular fields with distinct horizontal lines, possibly from plowing or irrigation. To the right of the road is a more developed area with scattered houses, trees, and smaller fields. Overlaid on this image is a circular diagram consisting of two thick black curved arrows forming a circle. The top arrow points clockwise and contains the text 'Transfer of Development Rights'. The bottom arrow points counter-clockwise and contains the text 'Money (\$\$) From Sale of Rights'.

Money (\$\$) From Sale of Rights

Outline

Principles

Theory

Economics

Planning

Implementation

But first some examples ...



San Luis Obispo County uses TDR to encourage the retirement of undeveloped rural parcels as well as preserve farmland and environmental sensitive areas. *Photo: Rick Pruetz*



TDR has preserved over 60,000 acres of Montgomery County's Agricultural Reserve. *Photo: Rick Pruetz*



King County used TDR to preserve the nearly 100,000-acre Snoqualmie Forest, the largest preserved sending area in the nation. *Photo: Rick Pruetz*



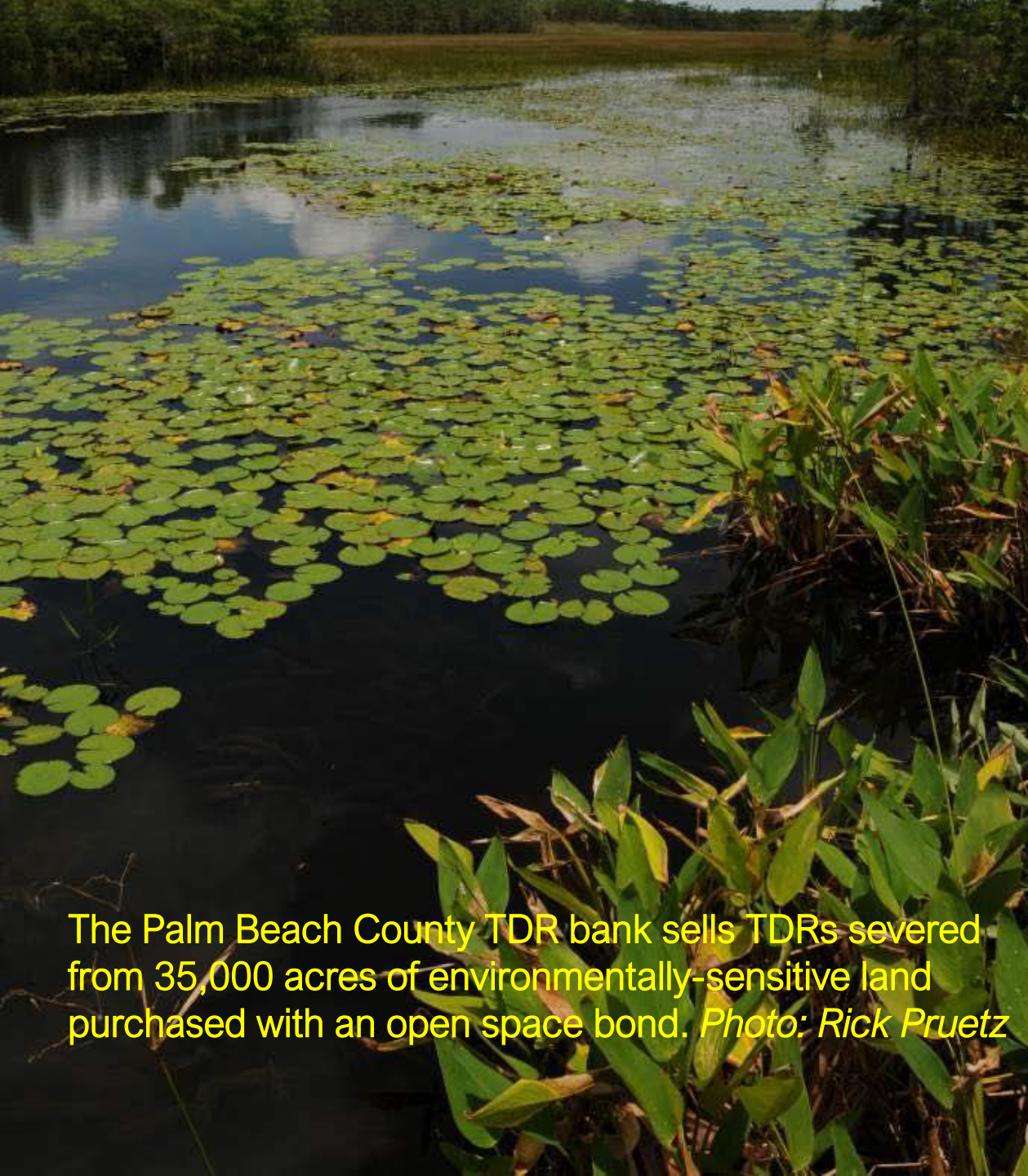
The New Jersey Pinelands protects one of the largest and least-polluted aquifers in the northeastern United States.
Photo: Rick Pruetz



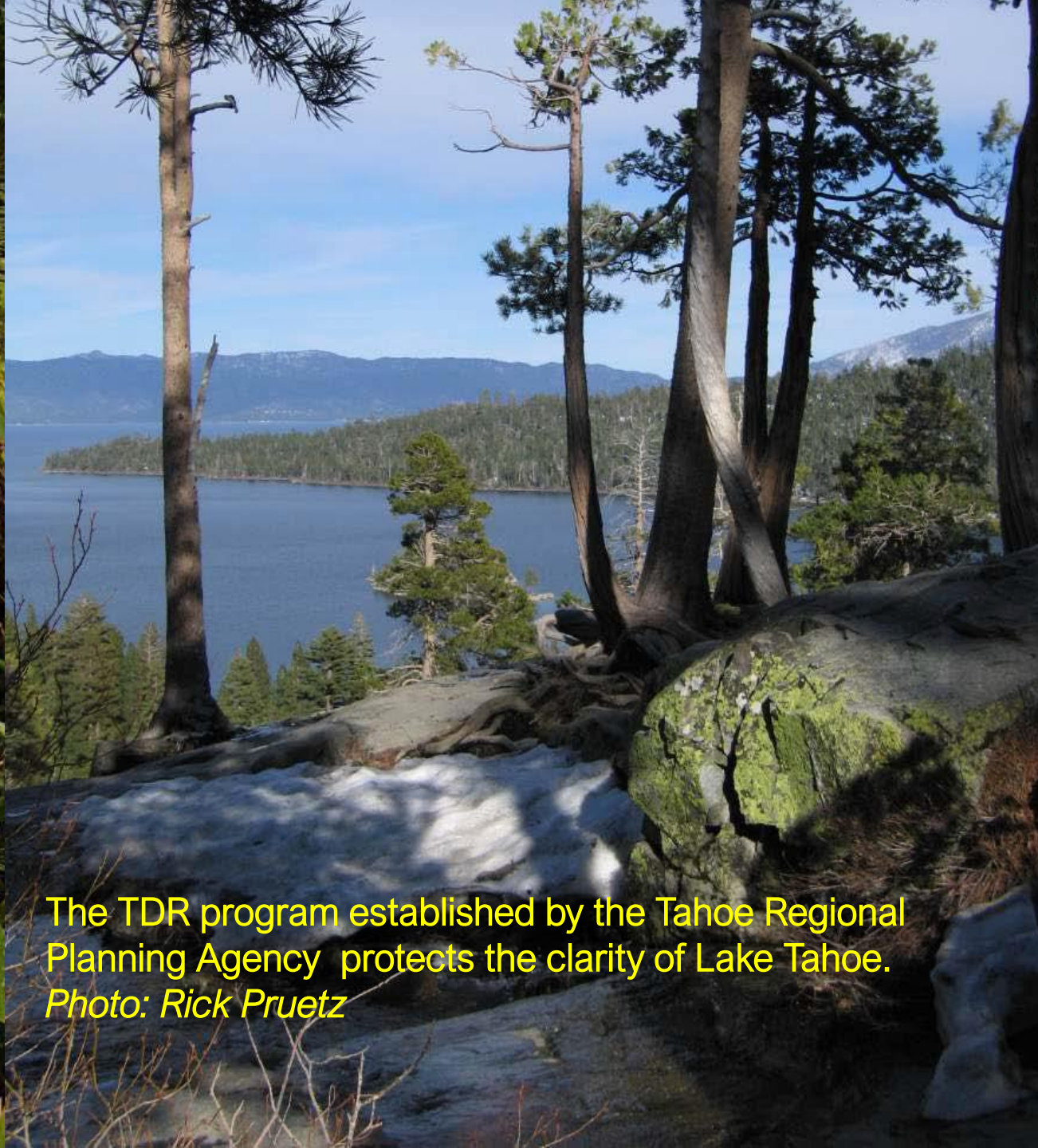
Larimer County preserved a portion of the Fossil Creek Regional Open Space using TDR.
Photo: Rick Pruetz



Five of Gallatin County, MT's zoning districts use TDR to preserve natural areas, farmland and scenic vistas. *Photo: Rick Pruetz*



The Palm Beach County TDR bank sells TDRs severed from 35,000 acres of environmentally-sensitive land purchased with an open space bond. *Photo: Rick Pruetz*



The TDR program established by the Tahoe Regional Planning Agency protects the clarity of Lake Tahoe. *Photo: Rick Pruetz*



Kreielsheimer Place in Seattle, a landmark building with theaters and affordable housing, was preserved and restored with help from TDR. *Photo: Rick Pruetz*

TDR Applications

- Preserve open space
- Protect wildlife habitat
- Maintain rural character
- Maintain Agriculture/Forest areas
- Environmentally sensitive lands
- Enhance infrastructure capacity
- Historic preservation
- Low-income housing
- Recreation
- Renewable energy

What is a “Development Right”?

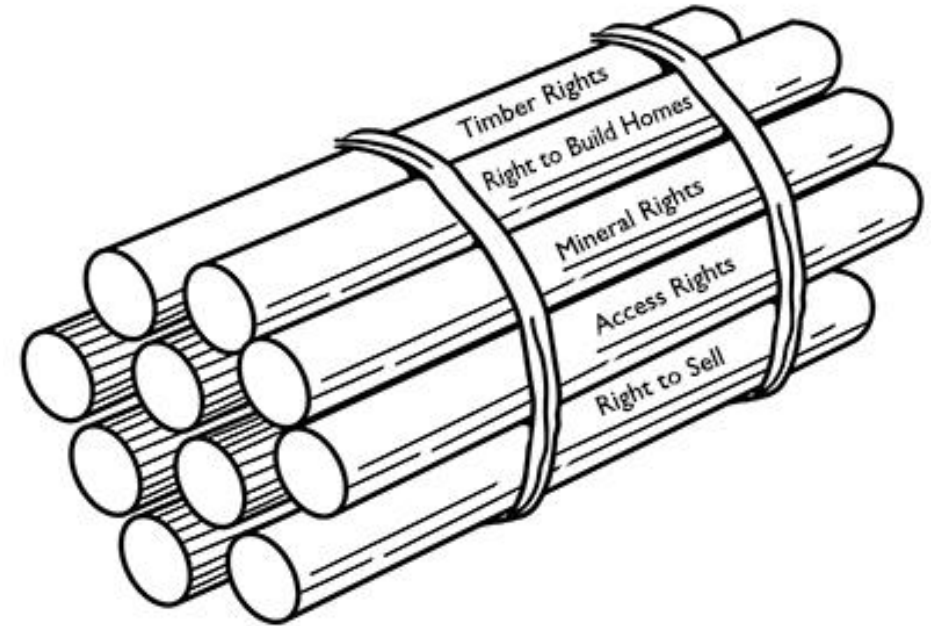
Property Rights –

“Bundle of Sticks” →

Random House (2010) –

“Development Rights –noun

... rights to use real property, such as farmland, in ways that differ from the current use.”





SENDING SITE

Development Rights



\$ \$ \$



RECEIVING SITE



Units at Base Zoning

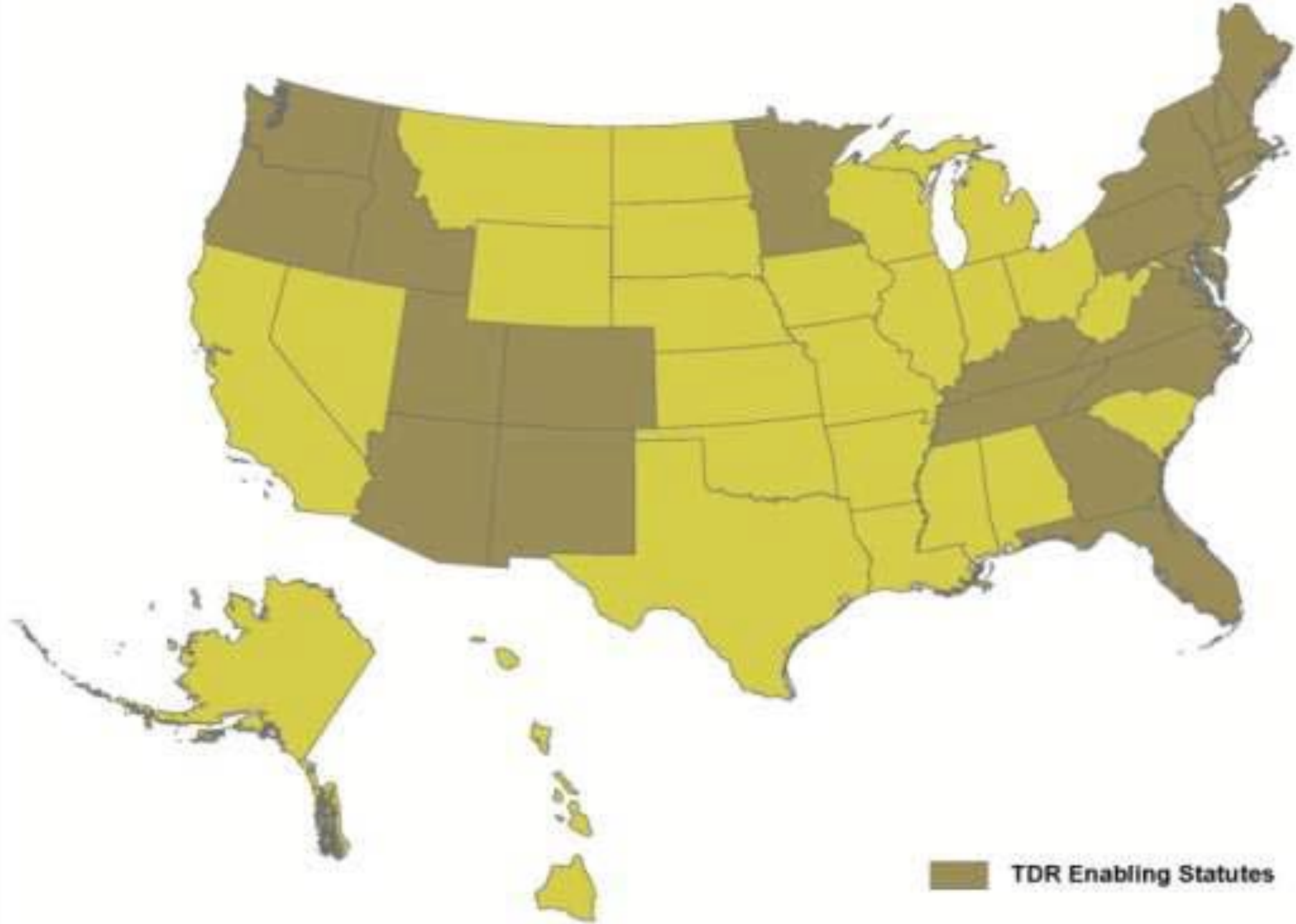


Transferred Dwelling Units



**Receiving
area**

**Sending
area**



TDR Theory → *Mitigating Externalities*

- Open space is undervalued in the market for the benefits it generates to society →
 - Pollution control
 - Production of food and fiber
 - Habitat/bio-diversity preservation
 - Unknown intergenerational benefits
- Fragmented open spaces (leap-frog development) imposes negative spillovers on open space uses reducing their benefits to society.
- Low-density development imposes higher infrastructure costs on those living in higher density areas.
- Low-density development reduces economic exchange leading to less economic development.

TDR Theory → *Leveraging Value is Key*

- TDRs are based on the market value of development rights which depends on ever-changing market conditions.
- TDR sellers are often those outside the path of development but it's the owners in the path of development that often matter most.
- TDR sellers are often reluctant to give up the "option" of future planning changes that make their property more valuable in the future.
- TDRs are sold based on market value and not on total value to society which reduces their effectiveness.
- We may need to consider a value increment concession to induce more TDR sales especially in the most sensitive locations.

Economics 101 → There Must be a Market

<u>Lots</u>	<u>Lot Price</u>	<u>Total Value</u>	<u>Incremental Revenue</u>
1	\$100,000	\$100,000	
2	\$90,000	\$180,000	\$80,000
3	\$80,000	\$240,000	\$60,000
4	\$70,000	\$280,000	\$40,000
5	\$60,000	\$300,000	\$20,000
6	\$50,000	\$300,000	\$0
7	\$40,000	\$280,000	(\$20,000)
8	\$30,000	\$240,000	(\$40,000)
9	\$20,000	\$180,000	(\$60,000)

4 Key Planning Elements

Designate a preservation zone (Sending Area)

Identify areas for protection (farmland, natural resources).

Designate a growth zone (Receiving Area)

Identify where development is desirable (near businesses, existing urban services, transit-oriented developments (TODs)).

Determine if not create a market for development rights

Ensure market demand. Incentives needed to induce landowners to sell development rights.

Mandatory versus Voluntary options.

Define TDR Procedures and Transfer Rights

Determine the number of development credits (acres protected, dollar value) and how many development units per credit.

Promises & Pitfalls

https://www3.uwsp.edu/cnr-ap/clue/Documents/PlanImplementation/Transfer_of_Development_Rights.pdf

Report Card: Transfer of Development Rights

Cost	Money or staff resources required to implement tool.
C	A TDR program will likely require dedicated staff to set up and manage the program. Start-up money will be needed if a TDR Bank is created. Money to purchase development rights comes from developers rather than tax dollars.
Public Acceptance	The public's positive or negative perception of the tool.
B	The public likes the fact that money to purchase development rights comes from the private sector, not taxpayers. Property owners in the receiving area however, may have a problem with the increased density if existing utilities can not support it and building design isn't accepted.
Political Acceptance	Politician's willingness to implement tool.
C	Local officials approve of the market financing the program. Intergovernmental agreements that transfer development from one municipality to another must contend with tax-base transfer issues. Determining appropriate standards and prices for development credits may be difficult.

Equity	Fairness to stakeholders regarding who incurs costs and consequences.
A	Rural landowners voluntarily sell their development rights and are compensated for them. Developers get density bonuses for purchasing development rights, so costs are not handed down to homebuyers.
Administration	Level of complexity to manage, maintain, enforce, and monitor the tool.
D	TDR is one of the most difficult land management techniques to establish. Administration of TDR programs is complex and costly and maintaining a market may be difficult.
Scale	The geographic scale at which tool is best implemented.
Local to Regional	The program can be run on any scale but works best over an area that includes both rural and urban areas. The scale will also be dependent on the ability of the managing agency or organization to create a successful program with enough credits to buy and corresponding need for development.

GRADING EXPLANATION

A - Excellent

B - Above Average

C - Average

D - Below Average

F - Failing

Comments and grades were derived from a Delphi process conducted with practicing planners and educators in 2005

Implementing Successful TDR Programs

Authority

Clarity of Purpose

Administrative Resources

Evasion Proof → By-Right

Economic Feasibility

Simplicity → Reduce Transaction Costs

Create the Market and Make it Work

IF INEFFECTIVE →

Add more sending/receiving areas

Improve bonuses

Add a fee-in-lieu feature

Abandon the program

Innovations in TDRs

As a fiscal improvement tool → reduce impact fees by transferring growth from high-cost to low-cost areas.

Offset NIMBYism by steering development to TODs, other targets.

Fees in-lieu of TDR transfers allowing local government to buy TDRs on their own → TDR Bank.

Using TDR banks with PDR “deposits” to resell TDRs to help finance bonds or leverage investments.

TDRs not just for residential → Nonresidential bonuses as well.

Concessions to increase TDR value equal to societal value.

What Makes this Work?

- Farmer's development rights are purchased for what he/she thinks the land is worth (lots of caveats)
- Farmer gets to stay in the farming business! Or find someone to takeover
- A conservation easement is recorded, allowing for **permanent** preservation/continuing agricultural use and is held by a land trust/non-profit or the City/County (potential cost for maintenance/management)
- Developer is willing to purchase the rights, if **guaranteed** the ability to build the credits/units purchased – which may be in addition to some base density
- **100% Voluntary**

Typical TDR Hurdles

- Communication - getting the **voluntary** nature of TDR across to owners and developers
- Receiving Area
 - Heights
 - Densities
 - Design
- Sending area – communication!!!!
- Additional hurdle – long term maintenance

Rezone “Discipline” Is Needed

- No demand = no transfers
- If a landowner/developer can get more density without TDR, he/she/they/them won't be interested in buying credits from the sending area
- Jurisdictions that participate need to have *zoning discipline*, clearly outlining when up-zoning will or won't occur
- This may cost some developers more to develop than previously thought, *BUT* “If *zoning certainty* can be obtained *through* credits, it can counter-balance additional cost with less time, less risk.” (Arthur C. Nelson, Rick Pruetz, *The TDR Handbook*)

Successful Utah Stories

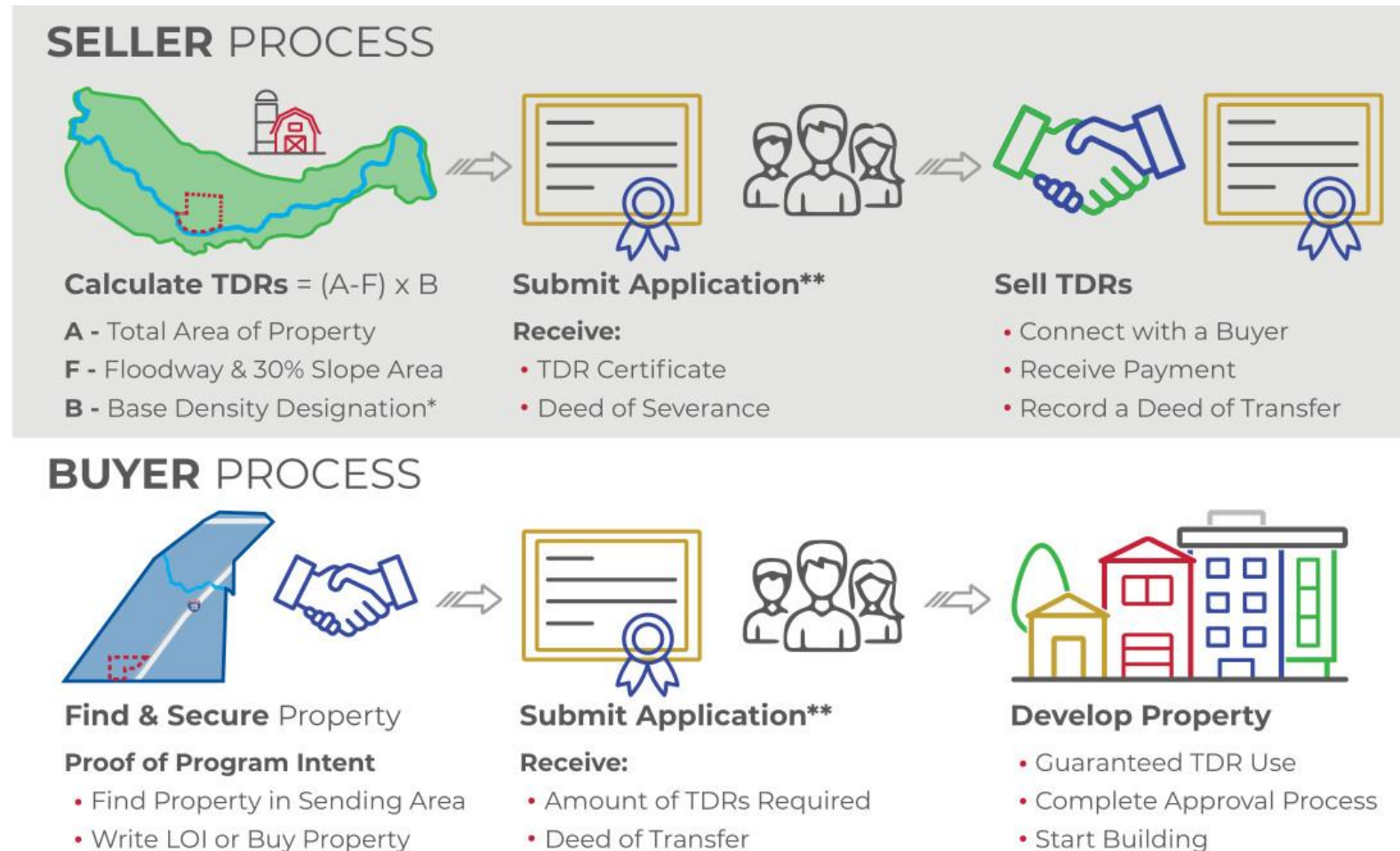
- Mapleton Utah – TDR ordinance adopted in 1998. Approximately 750 acres have been preserved to date
- Ogden Valley (Weber County) ordinance and general plan in place to transfer density to village centers (which can be ski resorts).
- Spanish Fork – working on preserving their river bottoms
- Nibley – TDR system recently approved

Utah TDRs - Mapleton

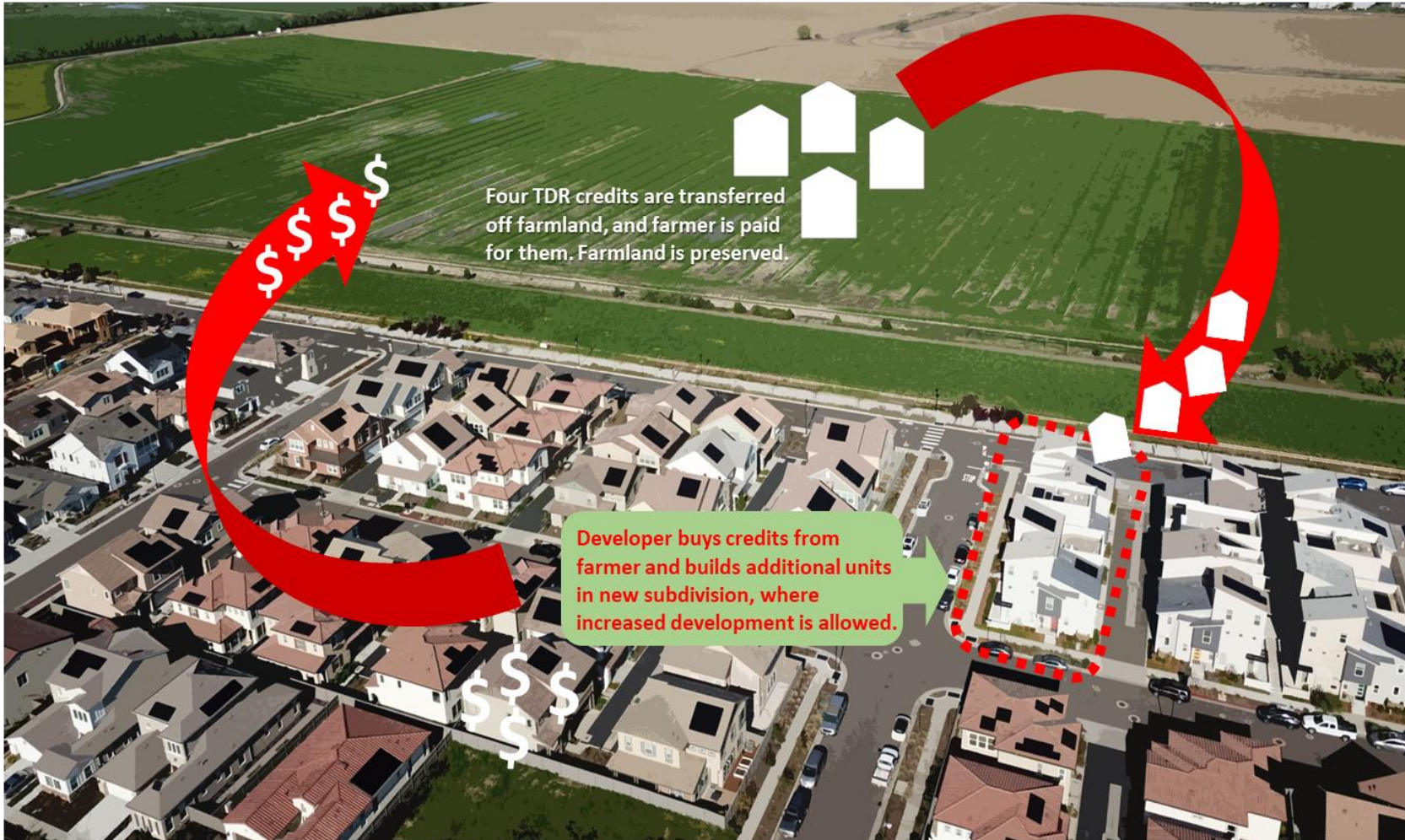
- First established in 1998 – **open space goal with trails**
- City has both approved sending and receiving areas per overlay zoning districts
- Density increase options
 - Less density if the property has conservation easements
 - More density if the property is a transfer of fee title to the City
- City issues certificates for TDRs to the developer after conservation easements are recorded
- As of 2019 - approximately 750 acres protected
- Protected bench (habitat, recreation(trails), farming & scenic)

Utah TDRs – Spanish Fork (in progress)

In process of reviewing TDR ordinance and adopting



Conservation Easements – the permanent preservation tool





*Wendy Fisher, Executive Director
Utah Open Lands*

What is a Land Trust?

- NATIONAL, STATEWIDE OR COMMUNITY BASED
- 501(C) 3 NON PROFIT PUBLIC CHARITY
- QUALIFIES UNDER THE FEDERAL 170(H) AS AN ENTITY ELIGIBLE TO HOLD CONSERVATION EASEMENTS
- PERPETUAL GUARDIAN OF THE CONSERVATION EASEMENT TERMS AND CONDITIONS
- STEWARD OF COMMUNITY OPEN LAND RESOURCES
- DEFENSE OF PROTECTED OPEN SPACE



Land Conservation In Utah Communities

- 1985 Conservation Easement Enabling Statute
- 1999 Utah Critical Lands Task Force
- 2000 LeRay Critical Lands Fund
- 2000 First Community Open Space Bond Park City
- Open Space Bond Communities: Park City, Summit County, Wasatch County, Midway City, Draper City, Salt Lake City, Salt Lake County, Cache County





Types of Conservation Purposes All are Conservation Easements

- Scenic (agriculture and Forest), Clearly Delineated Governmental Conservation Policy (NRCS, WRP, REPI, ACUB, Open Space Bonds), Public Recreation and Education, Natural Habitat, Registered Historic Landscapes





Conservation Easements & Landowner/HOAs/Conservation Subdivisions

- Working with Landowners
 - Tax deduction, reserved rights
- HOAs as successive Grantors
- Successive Lot Owners as Grantors
- Open Space Maintenance
- Social Trails/Privatizing community benefits



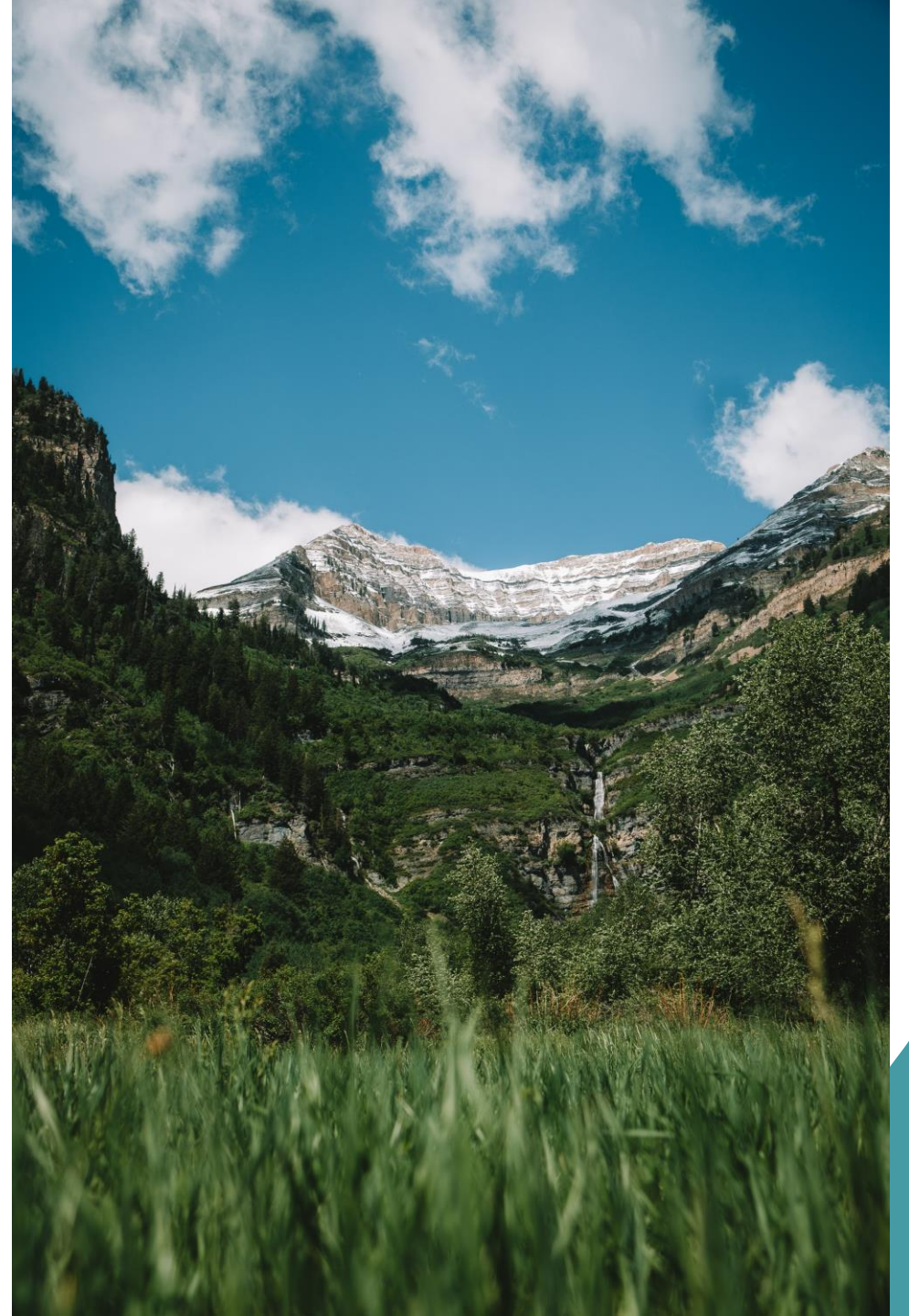


- TDRs and Land Trusts
- TDRs and Deed Restrictions
- TDRs and Conservation Easements
- Can TDRs create long term community benefit without a deed restriction?



Why A Land Trust?

- * Community Promise - Third Party
- * Unrestricted Open Land
- * Conservation Easements Role in Permanent Protection
- * Other Tools





Ensuring the Promise Conservation Easement Defense

- * *Violations by third parties*
- * *Swaps*
- * *Amendments for development*
- * *Curing Violations*





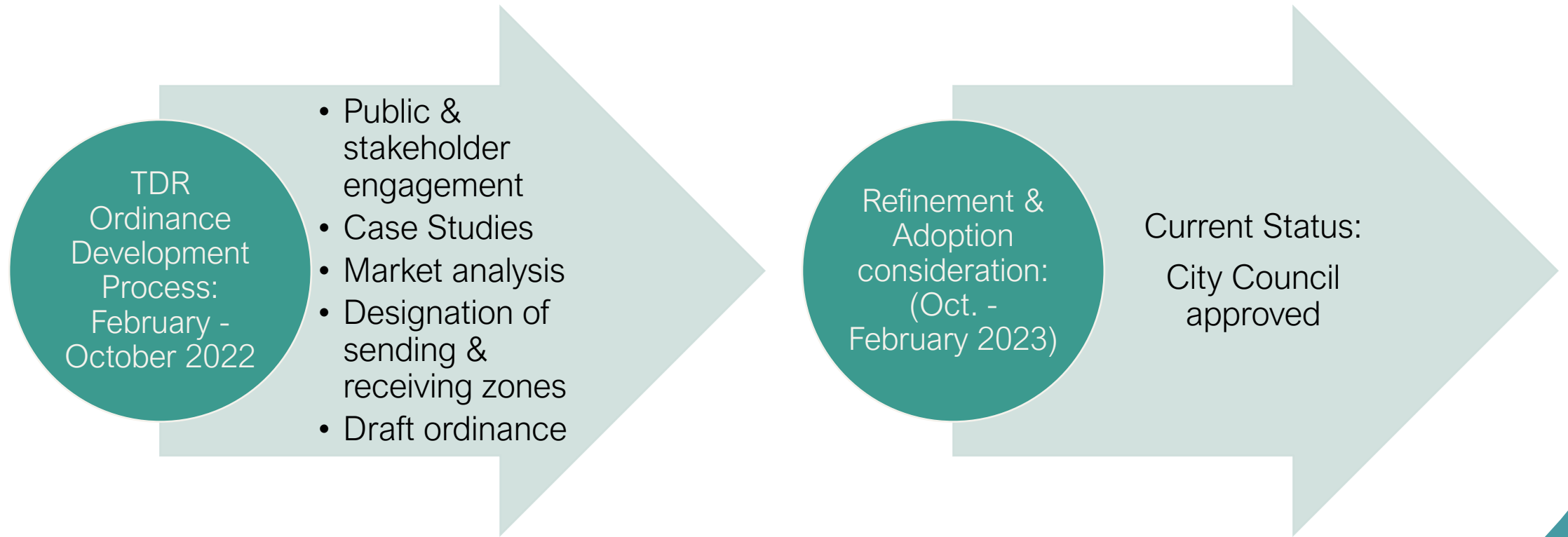
Protecting the Lands We Love



The Nibley Story – TDR lessons learned – Levi Roberts



Nibley City TDR Process



Nibley TDR Process: Lessons Learned

- City may be the holder of the Conservation Easement
- General support to preserve somewhere or something in your community is needed.
- Gauge support for TDR early and throughout process
- Sending & receiving areas should be defined early
- Define the scope of the TDR program
- TDR can be complicated. Visual aids can help.
- Clear communication with the public and other stakeholders about what it is and what it isn't
- Harp on VOLUNTARY nature of TDR – sending owners may not “embrace” additional government regulations



Legal Issues to Avoid

- State Law requires that you have an ordinance
- The ordinance needs to treat everybody the same
- Clear purpose
- Avoid vague mapping
- Turning the process into some sort of City or County negotiation
- No support in your General Plan

Cache County Preserving their Rural Heritage Through Cluster Concepts— Tim Watkins

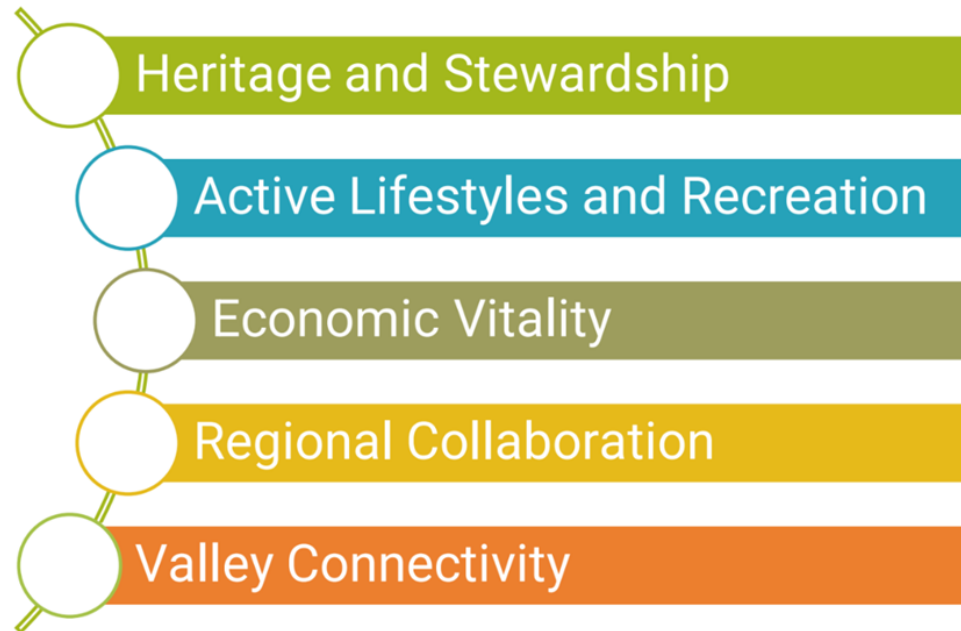


Photo Credit: Shauna L Hart



IMAGINE CACHE GUIDING PRINCIPLES

The ***Imagine Cache*** Mission and Vision are firmly supported by five Guiding Principles. These Principles show commitment to the community values and priorities and provide a compass to guide and shape the community into the future. The General Plan's goals and policies are organized by each Guiding Principle.





1. Heritage and Stewardship

The open and rural nature of the County's unincorporated areas is an important component of the community's character that should be preserved.

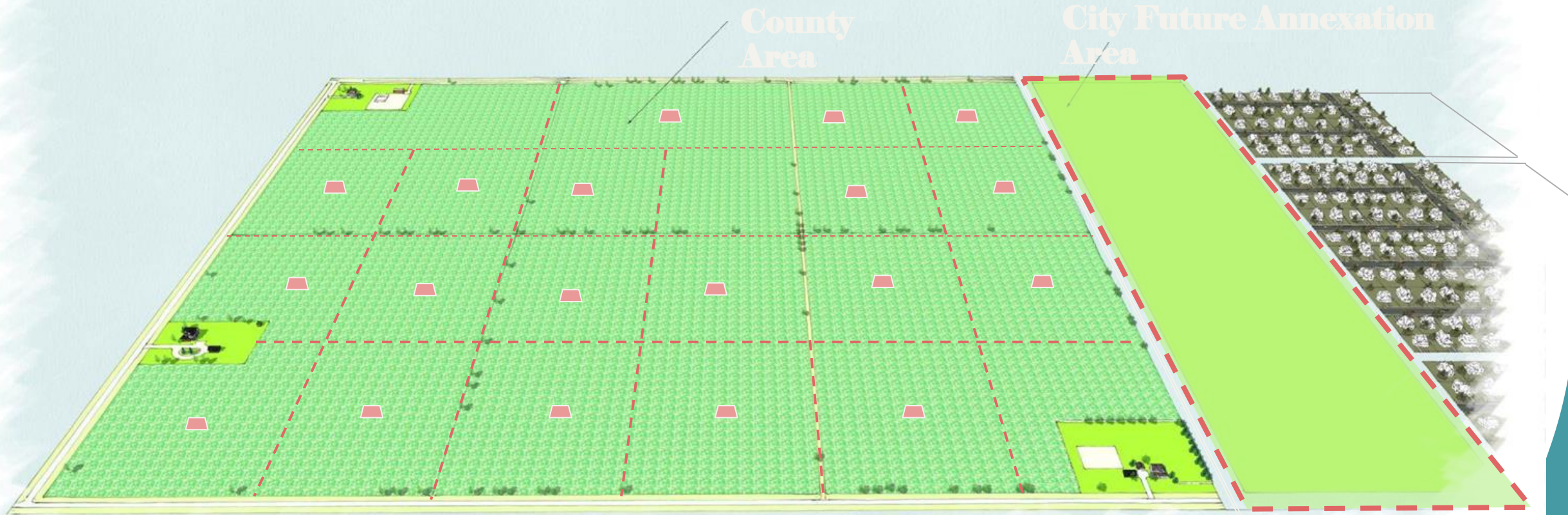
- Apply appropriate land use zoning to limit development in sensitive land areas
- Protect watersheds, air, soils, and water supply through appropriate growth management.
- Explore new regulatory tools to support development and agland preservation (eg. TDR and PDR).
- Support agricultural community to identify and remove barriers to agricultural success.

Cluster Zoning

- Somewhat like a PUD but with an emphasis on preserving agriculture
- Creates an option for farmers/ranchers to develop a smaller piece of their property – transferring density from the overall acreage to a corner. More than one parcel could be involved with an enabling ordinance.
- The original use can continue on the remainder
- Needs a preservation technique



Existing Condition - 1 Unit per 10 Acre Zoning



Maintain A10 zoning as a base property right

Alternative 1. 2 Ac. to 5 Ac. Rezoningings

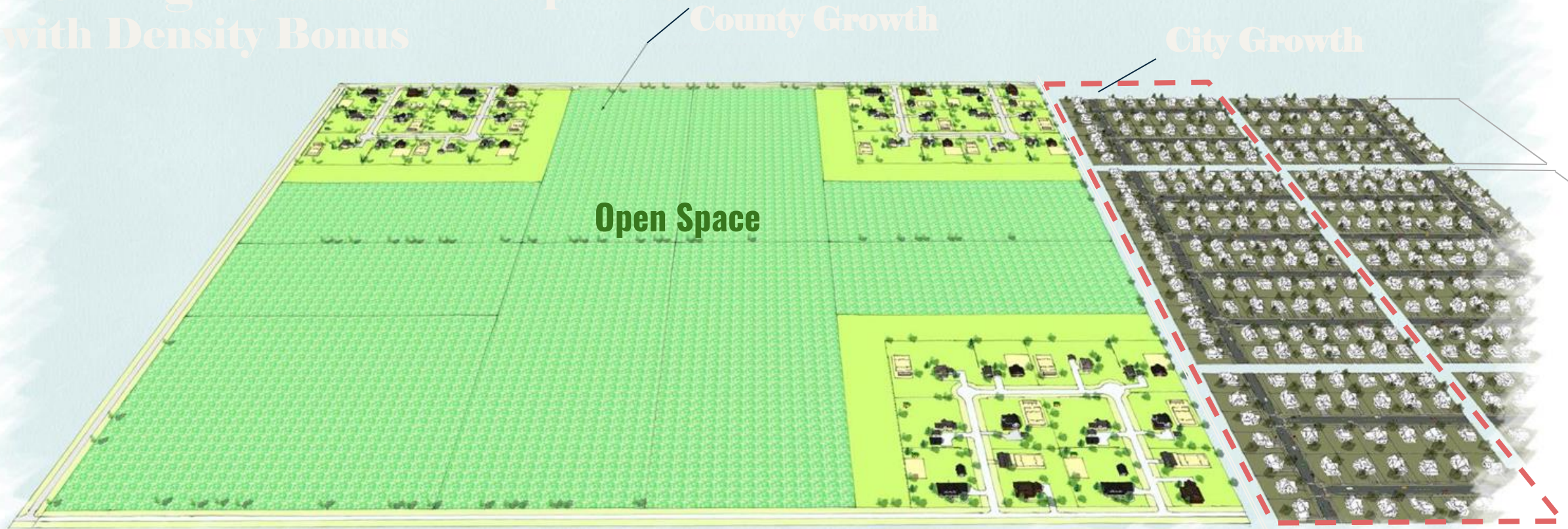
County Growth

City Growth



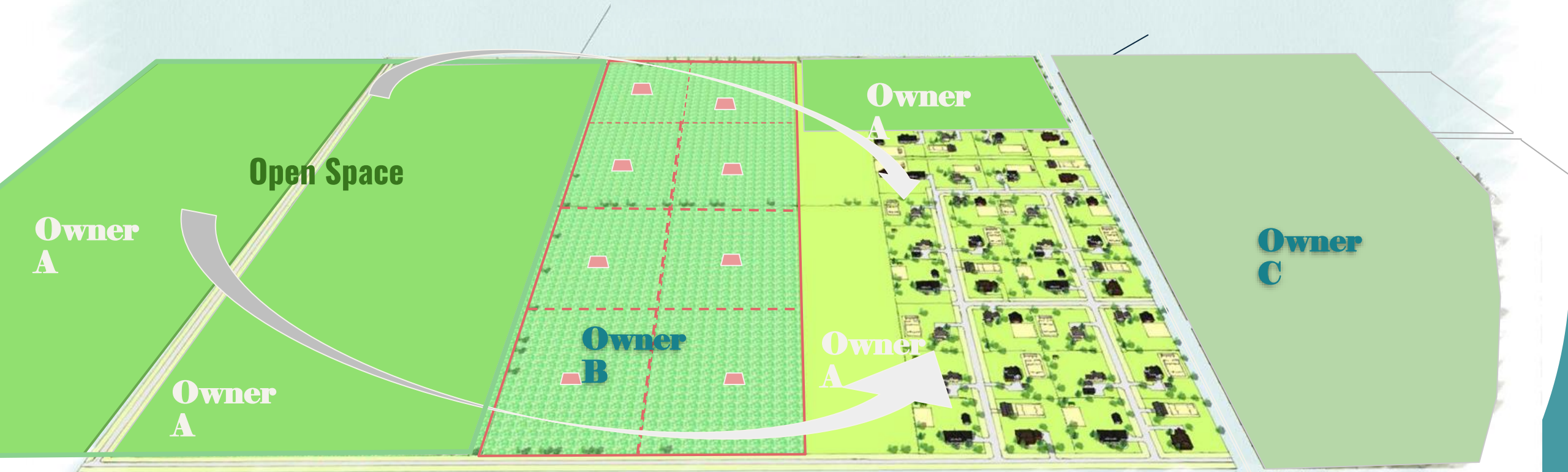
More public and private road miles and utilities required

Alternative 2. 10 Acre Zoning - Cluster Development with Density Bonus



**Less public and private road miles and utilities
required**

Cluster / Transfer Development



Less public and private road miles and utilities required

Cluster / Transfer Development



Less public and private road miles and utilities required

Transferable Development Rights

- Most Development Rights Sold to Developers
- 1 Unit per 20 acres developed in County

... City of New Community
Receiving Zone

• Allows more density with
purchase of TDR's

Open Space

160 Un

**Substantially Less public and private road miles and
utilities required**

Flexible Agricultural Zones

- A new trend of allowing more uses along with farms, orchards, and ranches
- Add uses like:
 - Restaurants
 - Fruit and vegie stands
 - Associated retail sales
 - Temporary worker housing
 - B&B
 - Sell other “stuff”
 - Agritourism activities
 - Cluster development



Agritourism



Purchase of Development Rights

- Development Rights under the current zoning are purchased
- Land is preserved with a conservation easement, held by a Land Trust or other non-profit like a City or County
- Fund raising and/or bonding required
- **Voluntary**
- Owner can retain the property but with reduced value and reduced uses
- Property can be leased
- No issues about where to move the density – development potential is “retired”



Overlays

- Overlays can impact the kind of development that a community might consider “better” for an area
- Examples
 - Limited uses
 - Design ordinances – assures the retention of the character of your downtown – sometimes hard to define
 - Town Center Development

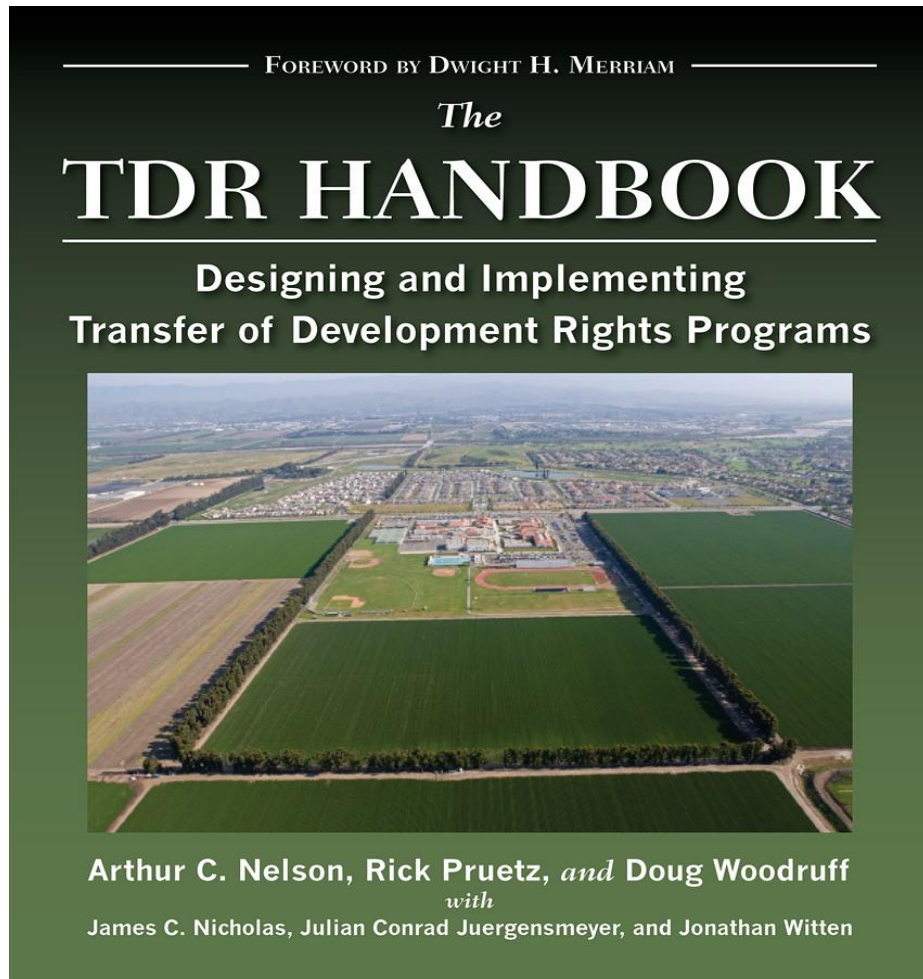


Hopefully we learned a bit about a few helpful tools to hang onto that community character

- Transfer of Development Rights
- Land Trusts and Conservation Easements
- Clustering
- Flexible Agricultural Zones
- Purchase of Development Rights
- Overlays



Good Resources



- [Utah Open Lands](https://www.utahopenlands.org/)
<https://www.utahopenlands.org/>
- Utah Open Lands works with landowners and partners across the state of Utah - helping individuals, families, municipalities, and organizations realize their conservation hopes.
- [National Land Trust Alliance -](https://landtrustalliance.org/land-trusts)
<https://landtrustalliance.org/land-trusts>

Questions, Suggestions, Thoughts?

