

# THE UTAH LAND USE INSTITUTE

## Transfer of Development Rights and Land Trusts

### *Practical Tools to Preserve Community Character*

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# TRANSFER OF DEVELOPMENT RIGHTS (TDR) AND LAND TRUSTS

## Introduction – Preserving Community Character and Open Space

Over the last 25 years, Utah has experienced unprecedented growth that has changed communities in a variety of ways. Many communities are concerned that the reasons that people came to live in their town are slowly, or even rapidly, disappearing. The agricultural fields, the orchards, the open hillsides, and the historic character of Main Street, are changing in ways not always viewed as positive. Growth is generally seen as good but losing our character is increasingly seen as a problem.

There are many tools that are used throughout the country that can help to preserve community character. Zoning alone usually is not enough. There are programs, such as Transfer of Development Rights (TDR), Agricultural Protection Zones, Conservation Easements via a Land Trust or non-profit, Purchases of Development Rights (PDR), and the politically difficult concept of “just say no” to development proposals, that address many of the issues facing communities with high growth rates. This report will address TDR and the use of Conservation Easements by Land Trusts/non-profits and briefly touch on several other tools, because no one program is likely to be sufficient to solve the loss of community character.

## DEFINING TDR

### Short history and national examples

TDR has been used across the Country for a long time. The concept was first introduced in New York City, during a time when skyscraper technology and zoning laws began to allow very tall structures. Grand Central Station (now called Grand Central Terminal), which is a hub for trains (but now includes subways in addition), was privately owned (today it is owned by the Metropolitan Transit Agency (MTA) North – a public transportation entity). The building was not very tall but, was an iconic part of New York’s history and special places. The private property owner proposed creating a structure, an office tower, over the top of the Station. Zoning at that time, would allow that to occur. The City established a system where the air rights could be transferred elsewhere – bought and then moved to a different location, thus preserving the building for generations to come. This process which involved a court case, where the owner complained that the City was taking his property rights, by not allowing him to build over the Station, was resolved when the TDR system was established. This occurred back in the late 1960s.



Since that time many communities have been able to set up TDR systems and preserve large tracks of land. There are city-based systems and county-wide systems all across the US. The New Jersey Pinelands, a large reserve of waterways and undisturbed pine forests, started as a TDR program and became a National Forest. In that program, 840,000 acres have been preserved. The

Central Pine Barrens on Long Island in New York has preserved 52,000 acres. In Seattle, as part of a program to retain affordable housing units (instead of knocking them down and building anew) and to preserve landmarks, additional TDRs were assigned to such properties that allowed the landowner to gain financial profits, if the owner agreed to deed restrictions and/or conservation easements for the property. Significant farmlands in Maryland and Pennsylvania have been preserved using a variety of techniques including TDR. Here in Utah, transfers have occurred in Mapleton, Summit County, Farmington, the Ogden Valley, West Valley City and in several other communities. It is currently being considered in Spanish Fork and Nibley.



**The New Jersey Pinelands protects one of the largest and least-polluted aquifers in the northeastern United States** Courtesy of AC Nelson, R Pruetz, D. Woodruff, *The TDR Handbook*, Island

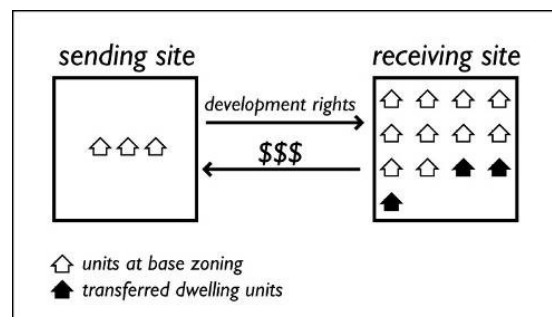
Land Trusts have been operating in Utah for some time and have actively preserved large swaths of land of local significance, mostly through the use of conservation easements.

### What is TDR?

Transfer of Development Rights (TDR) is a zoning tool that helps to preserve the character of a community by assigning theoretical developments rights to properties intended for preservation that can be transferred to an area where more density is acceptable. TDR provides a **new property right**, one that landowners do not have now. In a TDR system, the theoretical development rights attached to a property that the community wants to preserve can be purchased by a developer in a private, market-based negotiation for use in another part of the community. The land that the development rights are purchased from is permanently preserved for farming or some other open space purpose. TDR is a **totally voluntary process** where the City simply sets up the framework for a private transaction (e.g., developer/farmer negotiation) through an ordinance. It becomes an alternative to selling for development purposes.

***Sending Areas*** (Example: productive agricultural land)

***Receiving Areas*** (Example: areas contiguous to major development clusters or planned centers)



## TDR COMPONENTS

### Sending and receiving zones

Although an enabling ordinance is required by State Law, determining the sending and receiving zones is a major task in developing a TDR program. Usually, the areas that a community wants to preserve, the sending areas, are relatively easy to define. Community engagement on the lands that are suggested to be included in the sending areas is important, however. Conformance with the community General Plan

and other associated plans should be clear. Sending areas usually include open spaces that have a recognized community character or historic/cultural importance and are often orchards, farm and grazing lands or natural open spaces that define a community. As Utahns, we see how growth has absorbed many of these areas with subdivisions. Historical, productive, orchards in Box Elder County and Utah County have disappeared and those that remain are under a constant threat as land values rise and farmers see an easy way to bolster their retirement plans. Large open spaces that are not in some sort of grazing or agricultural use are also feeling pressure to develop. Communities like Park City and Mapleton have successfully addressed the preservation of important community assets through active programs.

On the other hand, in a TDR system, finding a receiving zone(s) becomes a difficult task. Receiving zones need to be areas where the community believes denser growth is appropriate. The issue of allowing density increases anywhere is always subject to a lot of disagreement in most communities. The community might be agreeable to more density



in and around its' town center, or along Main Street, or the nearby highway, but unfortunately anytime greater density is discussed, many people will disagree. Even with today's housing crisis and the need for affordable and/or workforce housing, and even if the community's general plan suggests the best places for more dense housing, people will disagree. Increases in density in every community are met with political resistance. Yet, this is what TDR needs to succeed. There has to be a reasonable amount of receiving ground for the system to operate. Achieving consensus on where density should go, is a major hurdle in the process.

The issue of permanent preservation is also sometimes a hurdle – is preservation for this particular parcel the right decision 200 years from now?

### **Private market transactions**

One of the most challenging messages to get across to the public, is that TDR is a private market transaction. The local government sets up the framework, but the actual negotiation is between a developer and the landowner in the sending area. If this is a farmer, the farmer meets with the developer and they have a negotiation that leads to an offer to purchase the farmer's theoretical development rights. These development rights are "theoretical" because they are provided for by the ordinance and are only for "sale". They are not development rights that the farmer has to develop the farmland, those are still governed by the actual zoning already established on the property. So, these development rights are provided for in the ordinance and are only to be sold if tied to a conservation easement. Again, the community sets up the system, but all of the transactions are private, market based decisions.

Farmers and developers need to be educated about how the system works. Although TDR systems exist in Utah, how they actually can work to everyone's benefit, is not commonly understood.



## **Estimating your sending area credits**

Determining how many credits are needed for sending area property owners and developers to have a successful negotiation, is an important aspect of the ordinance development. Many communities seem to end up in the 3 to 4 units per TDR credit range but this has to be based on local property values and an analysis of what a developer is willing to pay for another “door” in the developer’s proposed project located in a receiving area. This takes some time to determine but generally involves looking at recent sales of similarly zoned and utility served properties (the ease of attaining utility connections can effect the value of the property) and then through interviews with developers, trying to get a value for that additional door. Most likely this will end up a range and not a precise number. Then an estimating the number of credits process ensues. Communities that have a lot of support for the program may create incentives within the credit determination, so that they are assured that the system will work. If the data supports 3 credits per acre they might go to 4, thus increasing the likelihood of the sending area property owner being willing to sell their development rights/credits. This decision also involves how much density a community is willing to accept in the receiving area. Again, this is another discussion that needs to be held and can be a hurdle for some communities. There may be incentives, extra credits, considered for higher priority preservation areas

## **TDR ISSUES**

### **Property Rights**

You often hear that property rights are like a “bundle of sticks”. The “sticks” include all of the things you can do with your property (buy, sell, build, etc.), some of which are determined by zoning, but zoning is just one of those “sticks”. TDR is a new property right – one that an owner of property does not currently have, but, gets added to the bundle of sticks via an enabling ordinance that the local community adopts. TDR credits are also something of a currency that can be spent, traded and used to a property owner’s advantage. It does not restrict property rights, it simply adds a new one. For the sending area owners, they have the new currency, called credits, to sell, if they want to. For the receiving area owners, it creates an economic advantage by adding units to a project. For the community, it has the potential to preserve open space by creating additional options for property owners.



### **Development in receiving zones**

A caution that needs to be discussed is the end product of a successful TDR negotiation. This is likely to be a higher density project such as townhomes, an apartment or condominium complex, a mixed use development or some other more intense development project. The site planning and form of that project should not be ignored. Some TDR programs have started and then stopped because the end product was not really acceptable to the community. Good design ordinances and appropriate site planning, especially addressing



transitions to lower density development, are an integral part of a TDR program. The lack of a well designed project can result in a short lived program.

### **Zoning Discipline**

Another issue that arises, is the decision to require TDR credits to exceed the base zoning in the receiving area. Most TDR ordinances provide the extra density in the receiving zone as an incentive for developers to participate in the program. Not allowing a developer to achieve the extra density without bringing TDR credits to the project is called “zoning discipline”. Why would a developer participate in a TDR program if the desired density by that developer can be attained via rezoning anyway? If a community wants a successful program it has to not hand out more intense zoning unless the developer brings TDR credits to the table. Some communities have attempted to preserve land through TDR without committing to zoning discipline. Those communities have generally not had successful TDR programs.

## **DEFINING LAND TRUSTS**

A land trust is a charitable, community based non-profit organization that actively acquires land or conservation easements, and often manages lands (called stewardships) or easements, for permanent conservation purposes.

The conservation purposes may include protecting natural habitat, water quality, or scenic values or protecting farmland/orchards, forests, outdoor recreational areas, and historical and cultural properties.



Land trusts work cooperatively with landowners to educate and complete real estate transactions, that includes purchasing property interests, creating conservation easements, and sometimes accepting donations of those interests. Often their funding is provided through grants and charitable donations, but conservation easements by themselves, can have benefits for a landowner that make them attractive. The Land Trusts’ role in preservation programs is generally to hold the easement and manage the land that is permanently preserved. Land trusts are unique to a community since the land trust’s stated purpose will vary from community to community. Land Trusts seem to be interested in larger parcels of land and have been very successful in such efforts all over our State.



### **Conservation easements**

Conservation easements are the mechanism used to preserve land on a permanent basis. Conservation easements are the tool most often used, but occasionally deed restrictions are also used. Conservation easements are held by a non-profit, generally a Land Trust but can be a variety of other non-profits including a local governmental unit. Such easements restrict the use of the land, but do not restrict to the point that there are no uses allowed on the land. A good example of this, is farming and orchards –

they get to continue producing alfalfa or apples for example, but the development of a subdivision is not allowed. The TDR program might allow one house on a preservation parcel, but no more than one. Recreation uses are usually allowed. The conservation easement preserves the land for the uses the community wishes to see retained on that site.

Smaller TDR parcels may be more easily managed by the local government, since they are on-site essentially, and often land trusts want larger parcels to manage.

### **Stewardship costs**

When you think about maintaining a property in perpetuity, there are bound to be costs associated with the land. If an agricultural property has a conservation easement on it, what if the farmer decides to stop farming? How does the holder of the easement find a new farmer to continue the desired use of the property? What if the property becomes an invasive weedy mess? What if a preserved open space gets crisscrossed with too many “social” trails or becomes a homeless camp? The holder of the easement needs a revenue source to provide for the long term costs of managing that land. This is usually accomplished by an up front “donation” to the Land Trust. Often this is paid by the developer and needs to be accounted for the consideration of credits and their value. Some non-profits, like a governmental entity, may not charge a stewardship fee, as an incentive to assure the success of the program. Also, because they have local maintenance capabilities and are on-site essentially, while larger land trusts maybe be headquartered in a remote location.

### **Decisions about holding a Conservation Easement**

It would be great if all Land Trusts wanted all properties generated by a TDR program. For a land trust, there is a decision process concerning these TDR parcels. Some might not be big enough or they have concerns about having too many dispersed smaller parcels which might not be easily managed or the stewardship/management fees or maintenance expectations are too great, for them to willingly accept the parcel. Other non-profits might be an option, even a new one set up to handle the preserved properties in an area. The local city/town or county might also consider holding the easement. Where a community wishes to provide a trail system, for example on the Bonneville Shoreline, or a creek corridor, the community may want to hold and manage those conservation easements. A water company may have a need for a water tank or a well, which could be accompanied by a large open space that they might e willing to manage. Options are available, if a land trust is hesitant to hold the conservation easement.

There are several Land Trusts in Utah; Utah Open Lands that manages 58,000 plus acres, The Summit Land Conservancy with 8000 plus acres, the Bear River Land Conservancy, and numerous smaller organizations manage wetland and bird habitats in our State.





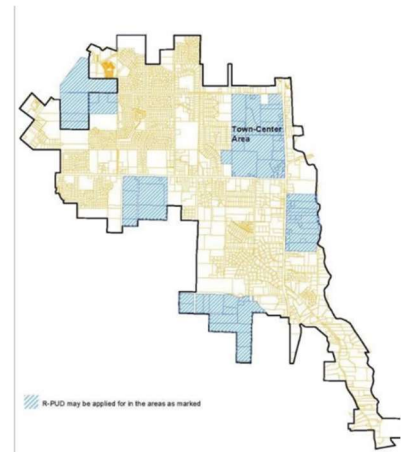
## THE BASIC TDR ADOPTION PROCESS

Although every TDR process will be unique given the differing circumstances in each community, the following general process is consistently used:

- Be sure to have addressed this topic in your General Plan. Without the suggestion in the Plan to preserve your community character and define what that is, politically, adoption of a TDR ordinance may be difficult.
- Staff research and/or a consultant – gather some successful community ordinances. Compare them and then cater one to your community. Just using another community's TDR ordinance with making it fit your local situation, your community goals, is not an option.
- Appointed and Elected Officials Education – this is an important step since TDR systems are not commonplace knowledge. It is important to stress the voluntary nature of these systems and the idea of introducing a new property right.
- Public engagement/PR efforts – surveys that address community values, potential sending and receiving areas are vital to provide community based direction. Establish a prominent link on your website to accurate information about TDR and the survey. Provide updates regularly. Engage in a focus group with developers and the property owners in the sending areas.
- Case studies - see the appendix to this report. Case studies provided by Jake Young, Citidesign toward the end of this report
- Market analysis – this can be performed by staff or by a real estate/finance firm with local knowledge. It is important to understand property values and development potential in the analysis. The intent is to determine how many TDR credits could entice a sending area property owner to sell the development rights on the property and to compare that to what a developer might need to add an additional unit to a receiving area project. Basic trends should be reviewed for the area in addition to just property values – what is the market like for higher density projects?
- TDR feasibility and credit formula analysis – this is the actual determination of a formula to be used within the ordinance for sending area credits. It usually also includes maximum density or building types or building heights for the receiving area. If the receiving zone has good design standards, there is not a need to add design standards here. In the absence of a good zone that achieves community design standards, this is where options should be considered.



- Designation of sending and receiving zones – mapping the collective comments from the surveys and any PC/CC comments to create a sending and receiving area map. TDR becomes an overlay of those areas. Introduce the public to this map through a second survey or an open house or other means of obtaining comments.
- Draft ordinance catered to the community's unique development issues – main components are: new definitions, purpose, remaining uses that will be allowed, references to the map, the formula and how the credits are calculated for a particular property, legal procedures for “severing” the TDR credits from a sending area, conservation easements, flexibility in the standards for the receiving areas, tracking via a certificate from the City, and you may add the legal paperwork for a “Deed of Severance and Conservation Easements”, but not to the actual ordinance.
- Adoption process is the same as a rezone process. A public hearing is required for the Planning Commission and a public meeting or an optional public hearing is held with the City and/or Town Council.
- TDR implementation and management system set up is relatively simple using a spreadsheet approach.
- Even though most of the real activity in a TDR transaction happens outside of the public realm, in a private market transaction, staff will have additional work to keep track of the transactions, assure that all transactions are recorded against the properties, continued education of owners and developers, etc.
- Don't forget – adopting an ordinance does not mean it is written in stone. Use the ordinance and evaluate its' performance. Change it if you find problems, tweak the formula, but please don't think it should never change. Since the market changes all the time, there will be a need to take a second look at the ordinance.



**UTAH STATE LAW - 10-9a-  
509.7. Transferable development  
rights.**

State Law has very little guidance other than making it obvious that to engage in TDR you need an ordinance. The intent of this provision is to treat everyone that participates in a fair, equal manner. Some communities have tried to accomplish a TDR transfer without an ordinance through a development agreement process. Although this could be possible, the State decided it could be too variable, too inconsistent, and revised State Law to assure that all participants would be treated equally.

- 10-9a- 1) A municipality may adopt an ordinance:  
509.7. Transferable development rights.
- (a) designating sending zones and receiving zones within the municipality; and
  - (b) allowing the transfer of a transferable development right from a sending zone to a receiving zone.
- 2) A municipality may not allow the use of a transferable development right unless the municipality adopts an ordinance described in Subsection [\(1\)](#).

## **COMMON “HURDLES” IN A TDR ADOPTION PROCESS**

There are certain issues that need to be addressed in a TDR process and that usually represent a difficult hurdle. Here is a list to consider:

- Receiving area issues – determining where is the most appropriate place for additional density, building heights and transitions to neighboring properties, site and building design
- Sending area issues – determine what land trust or non-profit organization will hold the conservation easements, long term maintenance of the preserved property
- Political issues – zoning discipline, community readiness and commitment, myths about taking property rights when in fact that is the opposite case, just the fact that it is something new and different. It also is important to determine how the community will address rezoning requests in the sending areas. Some communities have had a “just say no” philosophy there which usually results in very negative feedback to the elected and appointed officials.
- Sometimes administering a TDR system can be a burden on the community

### **Common misunderstandings**

- Often the biggest misunderstanding is that somehow TDR is taking a property right. It is an important part of the educational process and the conversation to assure that property owners understand that currently it is not a property right they have until there is an enabling ordinance adopted.
- The issue of government imposing a new zoning system that is voluntary is also difficult for people to grasp. Many will believe that somehow the government is taking their property when in fact all the negotiations are private, owner to developer transactions that the local government is not involved in.

## Legal Considerations

Although there was litigation in Summit County years ago, the issue they had which was doing TDR without an ordinance, has been resolved by State Law. Some general suggestions are:

- State Law requires that you have an ordinance
- The ordinance needs to treat everybody the same
- Clear purpose
- Vague mapping
- Don't turn the process into some sort of City or County negotiation

## CASE STUDIES

The following case studies were provided during Nibley City's TDR process, which is still ongoing as of January 2023. Jake Young from Citi Design provided this research as part of a consulting effort through People+Place (Christie Ostemma-Brown, John Janson, Susie Becker from Zions Public Finance, and Steve Pastorik, AICP)

### Case Study #1 Mapleton, Utah

**Summary:** The Mapleton Transfer of Development Rights (TDR) case is probably the best example of a completed TDR program in the State of Utah. Approximately 750 acres of land have been preserved through the program. The conserved land is on the east bench of the City. The conserved land is intended to be used for open space, trails, viewsheds, and habitats. The program is wrapping up and no longer accepting additional land for conservation purposes. Not all TDR certificates have been used and it is expected that in the future, limited additional developments will have bonus density from TDR. The Mapleton program offers higher TDR credit densities for properties that are given (fee title) to the City. Lesser density is awarded for areas that remain in private property ownership but have conservation easements recorded on them.

Part of the reason the program stopped was that the public was only seeing the added density part, they were not seeing the full value of the conserved areas and trails in conservation areas.

### Lessons Learned:

- TDRs work, even in Utah.
- TDRs can conserve large areas of land.
- The program potentially could have continued if there were ongoing (periodic) public educational efforts and training for elected officials/Planning Commission.
- The receiving density is always tough for the public/receiving area neighbors to support.
- TDR certificates are a good way to manage "bonus density" or offer additional residential units for a new public resource (conserved open space).
- Conservation easements are a good way to manage the conserved lots (making the conservation binding).

### Background

- The TDR ordinance starting the program was adopted in 1998.
- The purpose was to preserve open space/sensitive areas throughout the City with a primary focus on protecting the Mapleton bench from development.

- The program stopped establishing additional TDRs in 2010.
- The TDR zone is an overlay zone called the Transfer of Development Rights Overlay Zone

### **Applicability**

- The program and ordinance are specific to Mapleton City only.
- Both sending and receiving areas must be within the City.

### **Process**

- Property designation is by General Plan or per TDR ordinance.
- Receiving areas are designated by zone, listed in the ordinance.
- Sending areas are designated as TRD-S (TDR-S) or OS-P (Open Space Parks).
- Sending areas have both a TDR certificate and conservation easement.
- Sending areas require a rezone to be conserved.
- A certificate is issued after fees are paid, and the easement is recorded on the property documents (title/plat).
- The Planning Commission makes a recommendation on the TDR.
- City Council makes land use decisions for TDR.
- TDR program should follow the General Plan.
- Structures and development disqualify land from being a sending area.

### **Incentives for Conservation**

- Density credits for conservation areas are given as follows:
  - Land within the Critical Environment zone is as follows:
    - For the land which records a conservation easement in the TDR program, the density credits are three times the base density.
    - For the land which is given to the City as a transfer of title, the TDR program density credits are five times the base density.
  - Land outside the Critical Environment (zone) one density credit is given per every lot that could be built per current zoning code.
- The Planned Development (PD) Zone is a potential receiver of the TDR.
- The following zones may become TDR receiving areas
  - A-2 – Agricultural Residential
  - RA-1 – Residential Agricultural
  - PRC – Planned Residential Community
  - PRD – Planned Residential Development
  - PD – Planned Development
  - SDP – Specific Development Plan
  - R-2-B – Residential Zone
- The maximum density for the receiving areas is no more than double the underlying zone.
- For receiving areas a certificate of received TDR is awarded after the fees are paid.

Weblinks to information:

City presentation:

<https://www.mapleton.org/wp-content/uploads/2019/11/Transferable-Development-Right-TDR-Program-Summary.pdf>

City ordinance:

[https://codelibrary.amlegal.com/codes/mapletonut/latest/mapleton\\_ut/0-0-0-7456](https://codelibrary.amlegal.com/codes/mapletonut/latest/mapleton_ut/0-0-0-7456)



## **Case Study #2 Spanish Fork, Utah**

**Summary:** The Spanish Fork City (City) Transfer of Development Rights (TDR) program is still in development. The purpose of the TDR program is to preserve a large agricultural area called the “River Bottoms” Spanish Fork City has been working to develop the program for more than 3 years (starting in 2018 or 2019).

The City has gone through a very rigorous process which has included:

- research
- public outreach (videos, meetings, presentations, and online documents)
- stakeholder input (including landowners)
- draft ordinance
- public hearing

In November 2021 the City held a public hearing for the proposed TDR ordinance. Most of the public comments were against the program. The City decided to temporarily table the item and consider the next steps. During an April 2022 conversation with the City Planner (Dave Anderson), he mentioned they were preparing to reboot the program.

### **Lessons Learned:**

- It is easy for the public and landowners to misconstrue a TDR program. Myths that were presented in the public hearing (by the public) include:
  - The program is mandatory.
  - It is a taking (e.g. taking land without purchasing).
  - Landowners would not be compensated.
  - The program pushes for new development.
- The public/landowner educational process is critical.
  - Spanish Fork has done a lot of public outreach meetings, social media, and videos.
- Functioning TDR programs are difficult to get started and may take years.
- A TDR program is worth doing, especially if you have a critical area that is desired to be saved.
- Spanish Fork is also requiring a severance rights document, as a mechanism to bring permanency to the removal of development rights for sending properties. This may be a strategy to investigate further.
- The Spanish Fork ordinance doesn't address the potential need to adjust development regulations (lot sizes, setbacks, etc.) in receiving areas.

### **Background**

- The purpose is to conserve the rural “River Bottoms” area to the south of the City.
- The City started the background work in 2018/19 and was ready with an ordinance in 2021 (2020 Covid may have interrupted it).
- Concerns from Public Hearing held in November 2021 include:
  - Farmers want full value for land.
  - Farmers want autonomy and ‘the City to not tell them what to do’.
  - Farmers want their children to receive the land or have a say.
  - Adjacent land is being developed, ‘so why can't my land be developed’.
  - Concerns with density in receiving areas.
  - Concerns about the permanency of TDRs for landowners.
- The City intends to learn from the public hearing and move the program forward.

### **Applicability**

- The program and ordinance are applied to the River Bottoms area which has a small area within the City, but most of it is located within Unincorporated Utah County. Unincorporated land would have to be annexed to participate in the program.
- The receiving areas must be within the City and may go to several locations.

#### **Process (based on draft ordinance November 2021)**

- Sending areas to be designated on the Land Use Map of the General Plan.
- A Deed of Severance and a Conservation Easement shall be recorded on the sending property from which development rights were severed, and the property can only be used as outlined in this section
- All areas within the Floodway or with 30% slopes or greater will not be eligible for TDR.
- The Community Development Director shall establish and maintain a system for monitoring the determination, severance, ownership, assignment, and transfer of TDRs.
- To determine if the land is eligible for TDR the landowner files a Determination of Eligibility Application.
- "A severance of development rights occurs after the owner of the sending property receives a signed TDR Certificate with the number of allotted TDRs from the City and records a Deed of Severance. The Deed of Severance must transfer development rights to one or more parties, which may include the grantor, and may, but is not required to, affix development rights to one or more receiving properties."
- The Deed of Severance and Conservation Easement is recorded at the County Recorder.

#### **Incentives for Conservation**

- Density credits for sending areas are as follows:
  - 1 unit per acre for areas in the 100-year floodplain.
  - 2 units per acre for areas outside of the 100-year floodplain.
  - Lands with slopes greater than 30% or within the floodway are not eligible for sending areas.
- Density in the receiving area as per this table. Density increase is significant in some areas.

Base Zoning	Base Density	Receiving Density	Density Multiplier	Density Increase	Maximum Density
R-1-12	2.61	2	1	2	4.61
R-1-9	3.48	2	1	2	5.48
R-1-8	3.92	2	1	2	5.92
R-1-6	5.23	2	1	2	7.23
R-3	12	2	3	6	18
R-4	20	4	4	16	36
R-5	18	4	2	8	26

- Density multipliers are based on proximity to an existing or future freeway interchange, lighted highway intersection, major transit facility, downtown main street, existing or future transit station, existing or future commercial center, existing or future employment center, an existing or future mixed-use center.
- A transfer of development rights occurs when the owner of the development rights records a Deed of Transfer against the receiving property in the land records of the County.

- Upon recordation of the Deed of Transfer, the transferable development rights are conveyed to one or more parties and/or are affixed to one or more receiving properties stated in the Deed of Transfer.

#### **Weblinks to information:**

City presentation:

[https://www.spanishfork.org/document\\_center/Economic%20Development/Planning/RB\\_TDR\\_Handout.pdf](https://www.spanishfork.org/document_center/Economic%20Development/Planning/RB_TDR_Handout.pdf)

[https://www.spanishfork.org/document\\_center/Economic%20Development/Planning/RB\\_TDR\\_Program.pdf](https://www.spanishfork.org/document_center/Economic%20Development/Planning/RB_TDR_Program.pdf)

[https://m.facebook.com/SpanishForkCity/videos/tdr-program-discussion/534125647897815/?so=permalink&rv=related\\_videos&locale=ne\\_NP&rd=](https://m.facebook.com/SpanishForkCity/videos/tdr-program-discussion/534125647897815/?so=permalink&rv=related_videos&locale=ne_NP&rd=)

#### **Draft City ordinance:**

[https://www.spanishfork.org/document\\_center/Economic%20Development/Planning/RB\\_TDR\\_Ordinance.pdf](https://www.spanishfork.org/document_center/Economic%20Development/Planning/RB_TDR_Ordinance.pdf)

#### ***Case Study #3 Weber County, Utah***

**Summary:** The Weber County TDR program is intended to conserve land by sending potential TDR units to the Destination and Recreation Resort Zone-1 (DDR-1). The DDR-1 includes Snowbasin Ski Resort and Powder Mountain Ski Resort lands. The TDR program zoning is listed in multiple location including the County Code (municode) Sec 104-29-3 Transferable Development Right (TDR) Eligibility through Sec 104-29- Sec 104-29-6 Transferable Development Right Easement. In addition, it is part of the Chapter 44 Ogden Valley Destination and Recreation Resort Zone DRR-1. Chapter 44 is the most detailed. It is unclear how the two ordinances work together (or not).

#### **Lessons Learned:**

- The Weber County program is adopted but hasn't necessarily seen a lot of TDRs happen.
- The Weber County program is more complex than others with Transferred Base Units (TBU), Transfer Incentive Matching Units (TIMU), and/or Density Bonus Units (DBU).
- The Weber County program only works if the property owners in ski resort areas desire to transfer TDRs to their properties.
- Having the TDR ordinance in multiple locations might not be the most effective, it may be better to reference a single location for all TDR applicability.
- The very nature of TDR programs is complex, ordinances and procedures should be as clear and simple as possible.
- No TDR educational information can easily be found on the internet for these specific ordinances and processes.

#### **Background**

- The Weber County program only works if the property owners in ski resort areas desire to transfer TDRs to their properties.
- The purpose is to transfer development right potential from the Ogden Valley to the ski resort areas and preserve the Valley. Ogden Valley is seeing a lot of development in recent years and is moving closure to mountain suburbia.

#### **Applicability**

- The receiving areas include the DDR-1 zones which include Snowbasin Ski Resort and Powder Mountain Ski Resort.
- The DDR-1 requires a minimum of 1,000 contiguous acres in Ogden Valley.
- Sending areas include

#### **Process (based on Weber County ordinance)**

- A property owner wanting to participate in TDR registers with the County. The transferrable development right register shall be maintained by the county planning division and shall be made available to any resort upon request.
- A property owner who has chosen to transfer development rights applies for a certificate. The application includes fee payments, plat, legal description, TDR site plan of land, slope analysis, title report, TDR easement, TDR rights deed, and subordination agreement stating acknowledgment of transferring development rights.
- The County issues a certificate of TDR rights.
- "The certificate shall state the number of transferable development rights approved and available for transfer and shall be valid for a period of time not to exceed 60 days from the date of issuance."
- "Prior to the expiration of a certificate of transferable development rights and prior to or at the time of application for a specific land use (e.g., subdivision or site plan approval) within a destination and recreation resort zone, all transfer documents, including an approved transfer of development rights deed and an approved transfer of development right easement, shall be executed by appropriated signature and recordation in the office of the county recorder. Recording of the transfer of development rights deed and a transfer of development right easement shall constitute a complete transfer, therefore, enabling resort land use applications to be accepted and processed through the county planning division."

#### **Incentives for Conservation (from Chapter 44 see link below)**

- TDR densities are on top of existing density.
- Density credits for sending areas are as follows:
  - For the shoreline of the Pineview area units that are transferred get a match or increase as follows:

<b>Percentage of Units Transferred from Parcel</b>	<b>Match</b>
<b>Less Than 40%</b>	0.0
<b>40% to 55%</b>	1.25
<b>56% to 70%</b>	1.5
<b>71% to 85%</b>	1.75
<b>86% to 100%</b>	2.0

- "For every unit transferred, to a Resort, from a CVR-1 Zone located adjacent to the shoreline of Pineview Reservoir - Weber County may match that number at a rate of three (3) units to each transferred unit. "
- "For every unit transferred, to a Resort, from an area within the Important Wildlife Area, as shown on the adopted Ogden Valley Sensitive Lands Map - Weber County may match that number at a rate of 2.0 units to each transferred unit. "
- "For every unit transferred, to a Resort, from an area within a Ridge Line Area that skylines as viewed from any scenic corridor at a distance of less than 2.5 miles, (as described in the adopted

Ogden Valley Sensitive Lands Ordinance) - Weber County may match that number at a rate of 2.0 units to each transferred unit.”

- “For every unit transferred, to a Resort, from any other areas within Ogden Valley, with the exception of units transferred from an elevation of 6,200 feet and above - Weber County may match that number at a rate of 1.0 unit to each transferred unit.”
- Bonus densities are also offered for areas/lands with the following characteristics: cemeteries, agricultural, access to public lands, historical, community interests (identified in the General Plan), sewer facilities, park, or cultural facilities.

**County ordinance:**

[http://www.co.weber.ut.us/wiki/images/c/c9/Chapter\\_44.pdf](http://www.co.weber.ut.us/wiki/images/c/c9/Chapter_44.pdf)

[https://weber.municipalcodeonline.com/book?type=ordinances#name=Sec\\_104-29-6 Transferable Development Right Easement](https://weber.municipalcodeonline.com/book?type=ordinances#name=Sec_104-29-6_Transferable_Development_Right_Easement)

**TDR Application:**

<https://fill.io/Weber-County-Request-to-Certify-Transferable-Development-Rights>

## **OTHER COMMUNITY CHARACTER/PRESERVATION TOOLS**

*Agricultural Protection Zones* - State-enabled zones for agricultural properties:

- Protects the farmer from neighboring development complaints through notifications on new development plats
- Provides veto ability for zoning changes that impact the agricultural property
- Provides veto ability for planning infrastructure changes that could impact the agricultural property

*Purchase of Development Rights* – through local funding or grants the existing development rights are purchased and retired off of a property. Land Trusts or non-profits continue to manage the property indefinitely.

- 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
- Fund raising, grants, 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”



*Conservation Easements* – can be used by themselves due to the many tax advantages provided in the federal laws (see Utah Open Lands web page)

- Option for natural habitats, forests, ag lands, if you allow some public access, needs to follow your local General Plan
- Often donated because of the tax benefits
- Sometimes the development rights are purchased by a Land Trust in conjunction with the conservation easement
- Owner continues to use as previously used – can still produce what the land was used for!
- Some other uses can still be allowed
- Tax deductions up to 50% of your income for 16 years – based on the difference in value (pre CE, post CE) – see federal tax related requirements

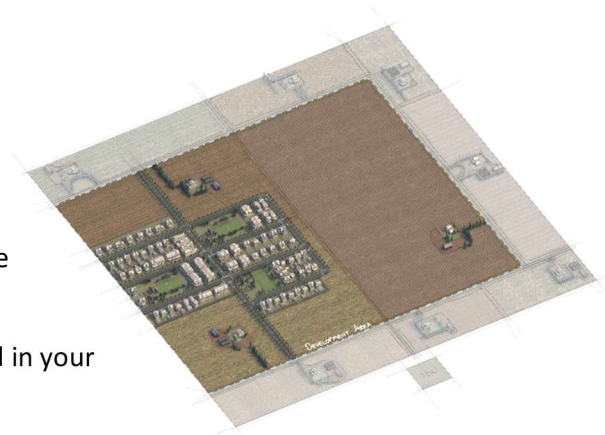
*More Flexibility with Agricultural Zones* – past zoning practices were very restrictive for related uses

- Add uses like:
  - Restaurants
  - Fruit and veggie stands
  - Associated retail sales
  - Temporary worker housing
  - B&B
  - Agritourism activities

*Clustering concepts within a property* – allow within property “transfers” so that development can be concentrated in a certain percentage of the area and the rest left open for continued use in farming or orchards or open space. Typical clustering allowances are in the 25% of the site range.

*“Just say no” to rezoning* – politically very difficult even if reinforced in your General Plan

- Especially in smaller towns
- Especially when development is happening all around
- Especially when the GP says it is ok for residential
- Especially when you realize that a farmer has worked hard for years and this is their “retirement plan”
- Especially when land prices are headed up



- Especially in this litigious world we live in!

### *Overlays*

- Overlays can shape the kind of development that a community might consider “better” for an area
- Examples
  - Limited uses, building size, and height – assures more similar development to the established pattern that a community has.
  - Design ordinances – assures the retention of the character of your downtown or your Main Street – sometimes hard to define but usually address materials, building facades, setbacks, etc.
  - Town Center Development – creating unique zoning to augment an area of the community or assuring that a new town center is reflective of the current community center (s).

## **RESOURCES**

- Dr. Arthur C Nelson, Rick Pruetz, Doug Woodruff - The TDR Handbook
- 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.
- Spanish Fork – working on preserving their river bottoms
- Nibley – TDR system underway
- Utah Open Lands Website - <https://www.utahopenlands.org/>
- [National Land Trust Alliance](https://landtrustalliance.org/land-trusts) - <https://landtrustalliance.org/land-trusts>