

***THE FEASIBILITY OF A
TRANSFERABLE DEVELOPMENT RIGHTS PROGRAM
FOR
ATHENS-CLARKE COUNTY, GEORGIA***

Prepared By
Jeffrey H. Dorfman
Jorge H. Atilas
Jamie Baker Roskie
Jeffrey Boring
Nanette Nelson
Beth Gavrilles

Alliance for Quality Growth
The University of Georgia

and the

Athens-Clarke County Planning Department

February 2, 2005

***Preparation of this study was funded in part by a 2003 Quality Growth Grant awarded to
Athens-Clarke County by the Georgia Department of Community Affairs.***

Contact author: Jeffrey Dorfman, Dept. of Agricultural & Applied Economics, The University of Georgia,
312 Conner Hall, Athens, GA 30602-7509. Ph: 706.542.0754; email: jdorfman@agecon.uga.edu.

This study is a product of the Georgia Department of Community Affairs Quality Growth Grant Program

Table of Contents

I. EXECUTIVE SUMMARY	1
II. TDR BACKGROUND AND BASICS.....	3
A. Basic Features of TDR Programs.....	4
B. TDR Banks.....	5
C. Public Involvement.....	6
D. Examples of TDR Programs -- Success Stories, Warnings, and Lessons Learned.....	7
E. Necessary Elements of a TDR Ordinance under Georgia's Amended TDR Legislation.....	13
III. FEASIBILITY STUDY OF A TDR PROGRAM FOR ATHENS-CLARKE COUNTY.....	18
A. Legal Analysis.....	18
B. Identification of Potential Sending Areas.....	21
C. The Economic Issues of a TDR Program in Athens-Clarke County.....	27
D. Assessment of Interest of AR Land Owners.....	33
IV. CONCLUSIONS: CAN ATHENS-CLARKE COUNTY SUPPORT A SUCCESSFUL TDR PROGRAM?.....	34
A. Setting Goals to Direct the TDR Program.....	35
B. Regulatory/Operating Changes to Help the Program.....	37
C. A TDR Bank?.....	38
D. Final Conclusions.....	39

I. Executive Summary

A transferable development rights program in Athens-Clarke County is feasible and has a reasonable chance of success if it is properly designed. Given community consensus on the goals of the program, appropriate sending and receiving areas can achieve those community goals over the next 10 or 20 years. TDR programs operate on a completely voluntary basis; if citizens do not believe in the goals and want to participate in the program, they will not. If TDR holders want to sell and developers want to purchase TDRs, the program will be a success.

To properly design a TDR program for Athens-Clarke County, the goals of the program must be clearly articulated. More than one goal can be accomplished by a single TDR program, so policy makers can choose more than one goal. Goals identified in this study are:

1. Farmland, Timberland, and Open Space Preservation
2. Corridor Preservation
3. Environmental Protection
4. Historic Preservation
5. Affordable Housing

After choosing the goals of the TDR program for Athens-Clarke County, the sending and receiving areas should be easy to identify based on the stated program goals. Potential sending areas include land zoned Agricultural Residential, Commercial -Rural, Employment-Office, Employment-Industrial, and Industrial; lands that are environmentally sensitive; and those containing historic properties. Depending on the goals of the program, different subsets of these land categories would be included in the sending areas. For example, land zoned Commercial-Rural might be included in a sending area to further a goal of corridor preservation.

Potential receiving areas include virtually all undeveloped land zoned as Residential, Commercial, Commercial-Rural, and Employment-Office. If higher density in specific single-family residential neighborhoods does not fit with the community's wishes, those areas can be excluded from receiving zones. Some commercial rural zoned land may be excluded if preservation of corridors is important. Receiving areas should be carefully chosen to ensure sufficient demand for the TDRs, to fit with the goals of the program, and to bring additional development only to those areas with infrastructure capable of handling the impacts of that growth.

TDRs must be awarded to landowners in the sending areas at a rate high enough to encourage a significant percentage of the land owners to sell the TDRs and preserve the land, thus achieving the program goals. Because this is a voluntary program, both landowners and developers must benefit from participating, or the program will fail.

The demand for TDRs is clearly related to the level of building permits issued. There were 954 residential permits approved for 2004, and an additional 99 new commercial construction permits issued over the same period. Thus, the potential market for TDRs exceeds 1053 per year. Clearly, not all projects will involve TDRs. However, if the TDR program is properly designed many projects will be developed using TDRs. Based on the findings in this study, developers are likely willing to pay \$8-10,000 per additional single family unit and about \$6,000 per additional multifamily unit. At these prices, a reasonable estimate is 400-600 TDRs purchased per year.

If TDRs are issued in the AR zone at a rate of 1 TDR per 10 acres (the amount of residential development allowed under baseline zoning), the total number of TDRs in the AR would be between 750 and 890 depending on precise program rules, too few to supply a TDR program for very long. Further, these landowners are unlikely to sell their TDRs if the bonuses are designed to have a value in the \$8-10,000 range. Issuing TDRs at a rate of 1 TDR per 1 acre will make landowners willing to participate in the program, increase the supply of TDRs enough to keep the program running for an extended period of time, and help preserve the “greenbelt.”

If each TDR bought represented one acre of land preserved and 600-800 TDRs are purchased per year, this will preserve 3-5% of the undeveloped and underdeveloped land in Athens-Clarke County each year. This would be a successful rate of land preservation and makes the idea of a TDR program worth pursuing. It also suggests that additional land preservation tools should be employed along with a TDR program if the community wants to secure land more rapidly.

There has been some concern that growth management programs in general can have adverse impacts on housing affordability. Research detailed in this report shows that policies such as TDR programs do not generally help or hurt housing affordability.

Any impact of a TDR program on property tax collections in Athens-Clarke County should be small given the current size of the tax base. Athens-Clarke County has a property tax digest of approximately \$2.5 billion (on a 40% assessed value basis) and 2004 county millage rate of 13.40. After landowners sell their TDR, they are legally entitled to be reassessed, assumedly reducing the taxable value of the property. Reducing the assessed value on 800 acres per year (to use a high value) would cause the loss of less than \$40,000. The use of the TDRs would add taxable property to the digest, offsetting this loss. Given that the average assessed value of residential property in Athens-Clarke County is a little over \$30,000 (on a 40% basis), the additional tax collected could be as high as \$300,000.

One could argue that the same number of units would be built regardless, and the TDR program would merely change the location and density of the development. If this is true, the \$40,000 figure is an upper-bound estimate of the property tax loss on an annual basis (with a new \$40,000 being subtracted each year as more land is preserved). Taking this as a starting point of a worst case scenario, one should still factor in two offsets: reduced service costs due to more compact and higher density development and increased property values of properties surrounding preserved land. Research suggests surrounding property may rise in value by up to 10% due to proximity to permanent open space.

Overall, the program appears quite affordable in terms of fiscal impact. The program may actually result in a gain in property tax collections. At worst, there will be a small annual loss. Compared to the Athens-Clarke County budget of over \$86 million, this loss is equivalent to 0.04% of the budget. Even 20 years into a TDR program, the total property tax collection decrease due to the program would be less than 1% of the annual budget. This is before any offsetting due to increased tax collections on surrounding properties or additional development caused by the program or decreased service costs due to more efficient development patterns encouraged by the program.

II. TDR Background and Basics¹

Local governments are increasingly using Transferable Development Rights (TDR) programs to accommodate growth without increasing the amount of developed land or overextending the infrastructure within their jurisdictions. Many commentators see great promise in the power of TDRs. TDRs can be used to preserve or conserve a wide range of resources – natural, scenic, agricultural, environmental, historical and cultural.

The idea of harnessing the power and severability of development rights began in the 1960s with an Urban Land Institute document that initiated a flurry of scholarly discussion on “transferable density.”² In turn, the first TDR program was initiated in 1968 for the purpose of historic preservation; the New York City Landmark Preservation Law allowed the transfer of density from a designated landmark property to adjacent lots. Despite the historic preservation roots of TDRs, only seven out of 112 programs nationwide today are targeted exclusively at historic preservation. More popular are open space and land preservation TDR programs. For example, the national model for farmland TDR programs is Montgomery County, Maryland, where more than 40,000 acres of farmland have been preserved in a county pressured by the growth of adjacent Washington, D.C.³

TDRs in Georgia

The first local TDR program in Georgia was Atlanta’s preservation-oriented program,⁴ begun in 1977, and to date it has been utilized only once to protect a historic property. In 1998, the Georgia General Assembly passed state TDR legislation that was, unfortunately, burdened with a procedural snag. TDR programs were encouraged, and the legislation made clear how a program should be structured, but for each actual transfer of development rights, the local government was required by the statute to hold a public hearing analogous to the hearing held for a rezoning request. (This was in addition to the required hearings to initially pass a TDR ordinance.) This burden proved too great for many local governments who felt no TDR program was better than a too-complicated program. The legislation was amended in 2003 to alleviate this hurdle and improve other areas of the statute regarding issues like regional TDR programs and marsh hammock TDRs.⁵ The first TDR program developed in Georgia under the 1998 TDR enabling legislation is in the Chattahoochee Hill Country area of Fulton County.

¹ Thanks to Land Use Clinic Research Assistant Jennifer McStotts for her significant research and writing assistance with this section.

² See Rick Pruetz, Saved By Development: Preserving Environmental Areas, Farmland, and Historic Landmarks with Transfer of Development Rights 9 (1997) (discussing the ULI technical bulletin authored by Gerald Lloyd in 1961 and subsequent related publications).

³ See Natural Resources Defense Council, Montgomery County Agricultural Reserve: The Country's Largest Farmland Protection Program, at <http://www.nrdc.org/cities/smartGrowth/solve/mont.asp> (last visited Feb. 29, 2004).

⁴ Information on the development of the State Enabling Act is from the account of Professor Laurie Fowler, Co-Director of the University of Georgia Institute of Ecology’s River Basin Science and Policy Center.

⁵ See generally S.B. 86, 147th Gen. Assem., Reg. Sess. (Ga. 2003).

A. Basic Features of TDR Programs

The act of transferring development rights requires four elements:

1. Sending area(s) to be protected,
2. Receiving area(s) to be developed,
3. Transferable credits that symbolize and quantify the development rights being sold, and a
4. Procedure for carrying out the transaction.⁶

In short, a community must identify resources it seeks to protect and establish a sending area defined geographically to best protect those resources. A TDR program severs the right to develop a parcel from the land itself, but it leaves the landowner the other rights that came with the land, such as the right to exclude members of the public from the property. That land is then safeguarded with deed restrictions or conservation easements that secure the undeveloped state of the land in perpetuity.

How much are these development rights worth? That depends on how the community chooses to define the sending and receiving areas and the credits themselves. For example, the local government can assign credits to each land owner in the sending area based on acreage, based on resource features on the parcel, or based on the value of an easement on the land. The first is the simplest and most common method; communities often assign one credit per acre, per five acres, per ten acres, etc. The value of the credits then comes from how they can be used in the receiving area where growth is being directed by allowing increased density or other bonuses with the purchase of development credits. How much of a bonus is allowed per credit purchased is what sets the value of the credits. There needs to be a balance of supply and demand in the credit market, which is sometimes protected by the very structure of the program, such as through TDR banks.⁷

In some jurisdictions TDRs can be purchased to receive bonuses that have nothing to do with the size of the building; they can exempt the holder from any development requirement the city chooses, whether floor area ratio, height, parking, landscaping, or subdivision limits. For example, in Pittsburgh, Pennsylvania TDRs can be used for exemptions from minimum lot area and open space requirements. Similarly, in Sunderland, Massachusetts, TDRs get exemptions from minimum lots size and frontage regulations. New York, New York allows variations in height, setback, and yard requirements. This inherent flexibility is an important aspect of TDRs that is sometimes neglected.

⁶ See Pruetz, *supra* note 2 for an introductory discussion of TDRs.

⁷ There are three transactional structures available to TDR program developers: private, bank, or bank-as-purchaser-of-last-resort. See National Trust for Historic Preservation, [A Review of Transferable Development Rights \(TDR\) Programs in the United States](#), SG040 ALI-ABA 409, 411 (2001) (first appeared in *Preservation Law Reporter* 1997).

B. TDR Banks

A TDR bank can be either a “public or quasi-public agency” or a private nonprofit corporation. Usually, the primary purpose of a bank is to buy and sell TDRs and provide administrative assistance in the transfers.

Creating a TDR bank has many advantages. First, the bank can undertake education programs to help landowners understand the concept of development rights. The bank may also provide interested parties with the appropriate forms and requirements for a successful transfer.

Additionally, the bank may take on vital administrative duties to prevent fraud or complications in the transfers. Registration of the rights, transfers, and statistics are important pieces of information necessary to conduct a successful program. Finally, education programs encourage property owners to participate in the program, as well as attract potential TDR purchasers.

Most TDR banks are county-run governmental agencies. However, it is possible for a TDR bank to be a nonprofit organization. For example, a nonprofit corporation in San Luis Obispo, California administers one of the nation’s most successful TDR banks. Chattahoochee Hill Country Alliance is also forming a nonprofit TDR bank, although Fulton County may form one in the future for the entire county.

TDR banks take on different roles in the TDR program and market. Most banks have some administrative duties vital to the efficiency of the TDR program. In some cases, the bank is also involved in the TDR market as a “buyer of last resort,” purchasing rights from landowners who cannot find a private purchaser. Finally, the bank may buy and sell rights in the open market, acting as a competitor.

Seed money for a TDR bank can come from federal and state grants, private foundations, county general funds, SPLOST or other proceeds. Another way to raise funds is through the purchase or donation and sale of TDRs. This strategy has worked well in Malibu, California where large land donations benefit the Malibu Coastal Zone revolving fund. Landowners donate their rights to the bank in exchange for the charitable-donation tax benefits.

