

Transfer of Development Credits (TDC): Conserving land equitably and efficiently

Adapted from an article by Guy Greenaway for Action for Agriculture

Today, as we try to do more and more on this finite land base, the multitude of land uses we pursue in Alberta are increasingly vying for the same acres. Traditionally, we have tried to accommodate all of those land uses without constraint, encouraging ‘growth’ and ‘development’. Now, however, decision-makers are slowly starting to recognize that there are trade-offs to be made on this over-allocated landscape, and that the expansion of one land use generally means the reduction of another.

At the municipal level, land use planning has a tremendous impact on the character and capabilities of Alberta’s landscapes. Rural municipalities face this fundamental challenge: how do we reconcile competing land uses, and their benefits and impacts? Despite their pivotal role in this issue, municipalities have relatively few tools available to them that address the root causes of this problem in a practical way.

In an effort to address the issue of competing land uses in a way that is effective, equitable, and an efficient use of public dollars, some American jurisdictions have been working with a tool called *Transfer of Development Rights* or in Canada *Transfer of Development Credits*¹.

It is a tool that allows communities to direct intensive development away from areas where they feel it is inappropriate to areas where it seems most sensible. It goes beyond traditional zoning by providing a framework for long-term community planning, and doing so based on an open-market mechanism.

Briefly stated, the program identifies areas where increased development is desirable, and areas where it is less appropriate, then assigns ‘development credits’ to each parcel within the program area. Those in the ‘development’ area are required to purchase credits from parcels in the ‘conservation’ area before being allowed to increase the density of their development beyond their own single credit.

How does a *Transfer of Development Credits* program work?

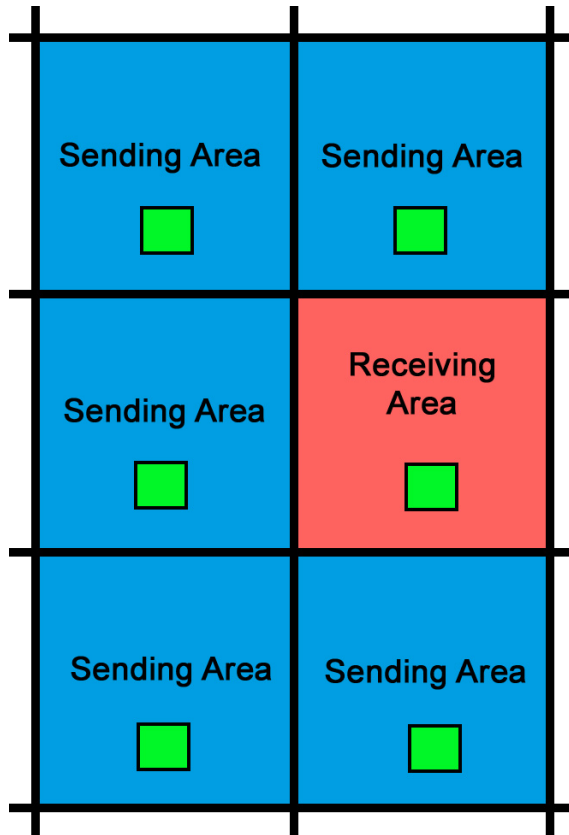
A municipal government looking to establish such a program would consider the following items:

1. Determine an area to which the *Transfer of Development Credits (TDC)* program would apply

A TDR program is not for every situation, so a municipality must decide on what area seems appropriate. In general, the tool works in areas that are facing a significant amount of pressure for re-development (a change in land use), and where there is concern about losing too much of an existing land use.

¹ In the United States, Transfer of Development Credits programs carry many different names, but are referred to generically as Transfer of Development Rights (TDR) programs. Because property rights are not constitutionally enshrined in Canada as they are in the United States, Transfer of Development Credits has become the commonly accepted generic term in Canada.

These programs have been applied on relatively small areas, and on very large areas. In Alberta, TDR programs could be developed under Area Structure Plans (ASP), Land Use Bylaws and Municipal Development Plans (MDP).



2. Designate 'sending' (conservation) and 'receiving' (development) areas

This can be the most difficult and most important part of the program – identifying the places within the program area where the community wants to see greater development, and areas for conservation. Successful TDR programs generally include background studies, inventories and extensive community involvement at this stage.

As part of this step, the municipality includes a relatively traditional zoning approach, identifying within its planning documents which areas would not be eligible for development, which areas would, and what the types and limits on development there would be.

It is important to note that the word 'conservation' is used here in its broadest sense. Land uses 'conserved' in TDR programs have included agricultural land, historical landscapes, fishing resources, ecologically sensitive areas,

landmarks, etc.

3. Assign a development credit to each parcel

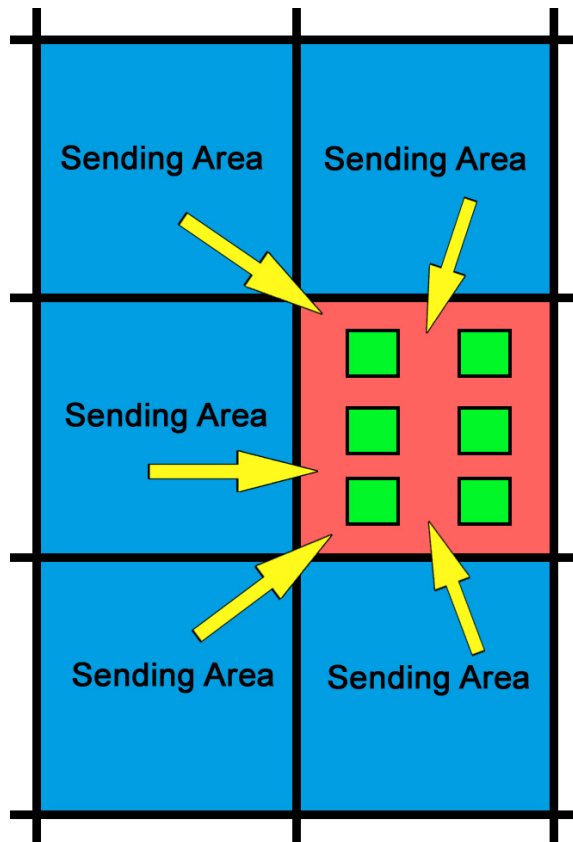
Every developable parcel within the program area, in both the 'development' and the 'conservation' areas, is assigned a number of development credits. This is done under a municipal zoning structure.

Credits can be based on the development potential of the parcel, conservation criteria or simply on a one-parcel-one-credit system. Sending parcel owners generally retain the ability to develop to a maximum even after they have transferred their credits.

4. Require 'developers' to purchase credits from other parcels

The basic element of a TDR program is the ability for parcel owners in the 'development' areas to develop to a higher density by acquiring the development credits from 'conservation' area parcels. TDR zones are often called 'sending' and 'receiving' areas for this reason – development potential is *sent* from one area and *received* by another.

Through either a purely open-market or a brokered system, owners of ‘conservation’ parcels and ‘development’ parcels meet to negotiate the sale of development credits in much the same way they would negotiate any real estate transaction.



Once the owner of a ‘development’ parcel has acquired sufficient credits, they present the evidence to the municipality and receive permission to increase the density of development beyond what would have been allowed.

5. Create a mechanism to extinguish development potential on sending parcels

Everything to this stage could more or less be accomplished through a traditional zoning process. As no municipal council can bind the hands of a future council, zoning generally endures only until someone wants it changed. Someone developing a parcel under a TDR program would want to be certain that the development potential they purchased would not suddenly ‘reappear’ on the ‘sending’ parcel as the result of a new council. Someone who hoped to see the development potential removed from their parcel would likewise be concerned to see their efforts wasted.

A critical aspect of a TDR program, therefore, is some mechanism to extinguish the development potential on the ‘conservation’ parcels. Most TDR programs use ‘conservation easements’ to accomplish this. These are voluntary mechanisms for extinguishing subdivision and development potential, and are attached to the title of the land, binding successive landowners.

The conservation easement may be held by the municipality, but it can also be held by a third party organization eligible to hold such easements. This provides another level of complexity, but also another level of certainty that a change in municipal government will not undo the community’s work.

In Alberta, we need to be cautious as our conservation easements only apply to land that is ecologically important. However, we may have the potential to use restrictive covenants and some instruments under the Historical Resources Act.