

Transfer of Development Credits (TDCs) in Alberta

An Information Session and Application Workshop Hosted by Red Deer County and the Miistakis Institute

August 13-14, 2008

Meeting record prepared by Guy Greenaway, Kimberly Good, and Anna Cartmell



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Red Deer County Office, August 13-14, 2008

– Agenda –

August 13, 2008

Emcee – Harry Harker, Red Deer County

10:00 am	Welcome
	Earl Kinsella, Mayor, Red Deer County
	'Information Session' Introduction
10:15 am	"Transfer of Development Credits 101" – Kimberly Good, Miistakis Institute
10:40 am	"Legal Consideration of Transfer of Development Credits in Alberta" – Arlene Kwasniak, Faculties of Law and Environmental Design, University of Calgary
11:15 am	BREAK
11:30 am	"Rural Resources and Character Preservation Through Transferable Development Rights and Transferable Development Credits: Boulder County, Colorado", Peter Fogg, Senior Planner - Boulder County, Colorado
12:00 pm	LUNCH
1:00 pm	" TDU (Transfer of Development Units) in Larimer County, Colorado", Russell Legg, Chief Planner - Larimer County, Colorado
1:30 pm	"Preserving Agricultural Land by Transferring Residential Density: Calvert County, Maryland's Experience", Jenny Plummer-Welker, Principal Planner - Calvert County, Maryland
2:00 pm	BREAK
2:15 pm	Panel discussion – question and answer with American TDR program presenters
3:30 pm	Harry Harker, Red Deer County
3:55 pm	Greg Birch, Municipal District of Bighorn
4:15 pm	Brenda Wispinski and Glen Lawrence, Beaver Hills Initiative
4:45 pm	Adjourn

August 14, 2008

Emcee – Guy Greenaway, Miistakis Institute

8:00 am	'Application Workshop' Introduction
8:15 am	<i>Workshop 1: Sending Area Selection</i> break out session
9:15 am	BREAK
9:25 am	<i>Workshop 2: Receiving Area Selection</i> break out session
10:25 am	BREAK
10:35 am	Designing Credits Systems - instructions
10:45 am	<i>Workshop 3: Designing Credits Systems</i> break out session
11:45 am	LUNCH
12:45 pm	Break-out group wrap up (in groups)
1:15 pm	Breakout group presentations (plenary)
2:45 pm	Wrap up
3:00 pm	Adjourn

TDC'S IN ALBERTA – OVERVIEW

Guy Greenaway, Miistakis Institute – TDC 101

OVERVIEW

- clustering development in areas that are not suitable for agriculture, and keeping viable agricultural land together
- no intermixing of agricultural and residential
- maintaining ecological parts of the landscape
- directs development from areas where it is not appropriate to areas where it makes better sense
- ensures that landowners suffer no serious property value reductions
- allows large groups of parcels to be conserved in contrast to parcel clustering techniques
- the programs are used mostly by Americans although there are some Canadian cities that use them as well
- municipal governments and the surrounding landowners
- communities that face rapid growth and land conversion use these programs as well
- need to have some amount of development pressure to provide the dollars needed for programs
- communities worried about the loss of landscape
- the terminology may vary between different communities but the tool remains the same
- designation of sending (conservation areas), and receiving areas (more appropriate lands to develop)
 - o assigning credits to each parcel, and developers can buy credits and develop them in the receiving areas
 - o development does not occur on the sending parcels
- credit goes from sending to receiving, and payment goes to receiving to sending
 - o or the municipality will help in starting the process and purchases credits which they hold and can sell to developers in the area
 - o banks or brokers can act as a third party as well
- prices depend on the market price of the land in the area
- multiple sending and receiving areas

BACKGROUND

- Since the 1960's, NY
- First attempt in Canada, Cypress County, 2003, public hadn't quite bought into it yet
- Has gained more prominence in Alberta

FEATURES

- planning tool for promoting land conservation
- significant land conversion pressure

- many groups can initiate, private, public etc
- supports a community vision
- method for restricting development
- market based system for transferring credits, can have assistance
- credits can be based on development or conservation potential
- for sub regions, entire county, multiple counties

CONDITIONS FOR SUCCESS

- assessment based on review of American programs, consultation, and lit review
- success varies with time and measures that are appropriate
- needs to be a connection to the community vision, and pre existing goals
- engagement of key stakeholders
 - o local community
 - o conservation landowners
 - o municipal staff and council
 - o development community
- well conceived credit system
- value of parcels, must balance simplicity with complexity
- attractive to both developers and conservationists
- preservationists and government organizations have more success demonstrated
- needs to be flexibility and stability, everyone needs to be on the same page with changes
- equity and fairness, communication and transparency
- complementary programs, experience with American programs confirmed that
- support at state/provincial level for financial and program support, legislation is not the only thing that is needed

Arlene Kwasniak, U of C Faculty of Law – Legal Considerations of TDC's

INTRODUCTION

- Was involved with the Cypress hills program in 2003

PROPERTY RIGHTS AND TDC, HOW ARE THESE RELATED?

Rights vs. Interests

- sell, lease, encumber, occupy, use and develop (interests)
- rights are linked to title of land
 - o phones, utilities, develop on certain property
- TDC program, is it taking the land rights?
 - o De facto expropriation? Requires compensation

- Easier for governments to regulate property in Canada than in the US, hard to prove *de facto* expropriation
- Canadian Constitution does not protect property rights
- Very difficult to prove a *de facto* compensable expropriation by virtue of government legislation or programs limiting property interests and rights

CPR vs. Vancouver (see slides)

- Granted land in Vancouver area, and became unprofitable to have land there for rail and wanted to have development to make profit
- City of Vancouver had planned this land to be bought for greenways and non-motorized transportation corridor, and put development freeze on land
- Went to supreme court and Vancouver won
- Violation of any of the four rules for taking of land were not present
 - The existence of a property interest(Not Right) that was extracted by virtue of government action
 - The deprivation of the interest by government action.
 - The acquisition of the interest by the government.
 - Legislation explicitly or impliedly provides for compensation for the taking of the right.
- Case suggests that if government regulation prohibits *all* reasonable uses then there is no *de facto* taking, and no compensation payable
- there needs to be a reasonable use for the property
 - cannot deny any reasonable use
- the TDC program is not a taking program because if it is properly constructed should be more of a giving program
 - it allows at least one reasonable use on a property in a sending area
- Because instead of having a TDC program a municipality could limit development and invoke a development freeze through using its zoning, subdivision and development powers

TDC Legislation

- need to have municipal authority to have policy objectives and instruments to secure restrictions on the sending parcels
- municipal development plans
- future land use
- recommend that they put and amend the development plan to describes the programs and help to establish and carry out the program
- have a regulatory framework
 - area structure plan
 - land use bylaw
 - there needs to be a system to give credits and formalized density transfers
- In either case, there must be appropriate securement instruments in place

Biggest Challenge

- conservation easements
 - o are limited in their application they can only be granted for purposes set out in the environmental protection act, to serve protect and enhance the environment
 - o biodiversity and esthetic values
 - o can be used to protect rangeland biodiversity but extensive agriculture it is not
- restrictive covenants
 - o dominant tenement
 - owned and occupied by different persons
 - o servient tenement
 - restrictions on the servient tenement must benefit the dominant
- historical resources act covenants
 - o historic resource" means any work of nature or of humans that is primarily of value for its palaeontological, archaeological, prehistoric, historic, cultural, natural, scientific or esthetic interest including, but not limited to, a palaeontological, archaeological, prehistoric, historic or natural site, structure or object.

Other tools

- zoning
- overlay zoning
- development setbacks
- personal agreements
- etc

Questions

- need to know what the value of the lands are and not deny the long time landowners the right to sell their land for a fair price
- ecological goods and services need to be taken into account
- provincial level legislation
 - o lobby for agricultural easements for years and the new framework recognizes the value of TDC programs and the urban municipality organizations have resolutions to develop TDC programs

TDCS (TDRS) IN THE UNITED STATES

Rural Resources and Character Preservation Through Transferable Development Rights and Transferable Development Credits: Boulder County, Colorado

Peter Fogg, Senior Planner - Boulder County, Colorado

FACTORS SHAPING THE "NO GROWTH" GOALS OF THE BOULDER COUNTY COMPREHENSIVE PLAN

- municipal and county government are separate in the US
- municipal has more land use control
- preservation of agricultural land was a main goal
- aggressive open space program
 - o great deal of public land
- has a policy of no growth for about 30 years
 - o conversion of agricultural land and ecologically significant land to urban uses between 1959-1973, 150,000 acres
 - o no statewide legislation mandating planning
- over-subdivision of land absent strong state regulations (200+ approved, 12,000+ lots)
- the counties are not service providers
 - o Proliferation of over 40 water and sewer special districts in the unincorporated areas and next to municipalities
- significant public support for stronger growth control measures

CORNERSTONE GOALS OF THE BCCP

A.1 "Future urban development should be located within or adjacent to existing communities in order to eliminate sprawl and strip development, to assure the provision of adequate urban services, to preserve agriculture, forestry and open space land uses, and to maximize the utility of funds invested in public facilities and services".

A.2 "Existing communities should grow at whatever rate they consider desirable, within the limits of what is acceptable to the citizens of areas potentially affected by that growth, and to the citizens of the county, while preserving and improving the quality of life and the aesthetic and functional fitness of land uses within the county". (From slides)

- future development should be within the levels considered acceptable to the citizens of the county
- preserving the quality of life of the area
- started the planning process for these lands in the 1970's
 - o approval of the first and only land use plan for boulder county
- wanted to develop tools to keep rural land rural
 - o down zoning to 38 acre minimum lot size
 - o changed zoning from agricultural to rural
- Non urban planned unit development (NUPUD's)
 - o 2 homes per 35 acres, 3 for 52, etc
 - o already established houses are bonuses

- economic opportunities for farmers to build more houses, but still keep the producing land as well
- this was a good idea, but there was no control as to where NUPUD's were located, therefore increasing fragmentation
 - developers were buying up tracts and splitting parcels and fragmentation was occurring
 - needed to keep fragmentation to a minimum

RURAL PRESERVATION WITH TDR'S AND TDC'S

- Non-Contiguous Non Urban Planned Unit Developments (NCNUPUD's)
 - First attempt at sending and receiving sites
 - Send development from one site to another therefore keeping contiguous tracts of land
 - See slides from presentation for visual representation of sending/receiving areas
- guidelines were set out in legislation
 - see slide 16 in presentation
- development rights certificate journey can be seen on slide 17
- conditions that help the program to work
 - minimum land size from 35 to 320 acres
 - aggressive in buying lands around municipalities to come into negotiations, and all land transactions are controlled by the free market
 - County acquired development rights from conservation easements post-TDR adoption available for purchase (a "seed bank" of sorts)
 - Other development/subdivision options limited Market could support the costs of acquisitions and sale of residential products
 - Public support

Niwot Community

- Developed a program for community within the county
- Designated sending sites within the land use code, negotiated with community
- Receiving sites as well, very successful program, see presentation for slides representing the sending and receiving sites, starting at slide 18

Intergovernmental agreements (IGA's)

- Between some municipalities and the county
 - Example between Boulder county and town of Longmont
 - See slide 22 for agreement terms
- Needed to have a great deal of communication
- 13 PUD's in the county that involve TDC's
 - see slide 23 for complete listing
- these agreements are legally binding and can be taken to court
- Map provided to help with vision for county

PROS

- county is a processor of the TDR's, issue the certificates, look at the sites and approve the sites
- value of the receiving sites has gone up tremendously
- county makes its revenue from taxes, not from selling the properties
 - o not losing money
 - o can lease back conservation easements if people want to stay in farming
- also selling easements to provide funds for the open space programs

CONS

- housing is not affordable or diverse
- how do you maintain the CE's long-term
- sustainability concerns, water resources, riparian areas, other resources used in building the houses located on the receiving areas
- running out of sending sites, now comes to maintenance
- housing size regulations have shown that there is a need to develop TDC's rather than TDR's, to allow for more size and density of developments on properties
- see final slides to see more details on this

QUESTIONS

IGA agreements

- how did the public agree to this
- took 12 years to develop the plan
- make sure all needs are met, informed consent
- no annexations, or else the agreement has to be amended by all parties

Open Space

- fee title acquisition of .25 cents on the dollar to acquire lands that cannot be developed intensely
- putting land into public ownership and control, but not necessarily public access
- tax has been renewed four times since 1993 on the ballot

Program Oversubscription and land use planning national security issue

- sustainability a main concern more so than being self sustaining in the national security perspective
- there is more demand from the developers and there are less rights for them

Financial Concerns

- Voluntary

TDU (Transfer of Development Units) in Larimer County, Colorado

Russell Legg, Chief Planner - Larimer County, Colorado

INTRODUCTION

- not allowed to downzone
- study, there was potential for 1 house per 2 acres for zoning, and that density scared people
- trying to create tools to solve the problem of increasing density
- agreement with the public, no up zoning or down zoning, only when able to annex to the adjacent town
- The Larimer County Transferable Density Unit (TDU) program was created by the County in October, 1998. It is administered by the Larimer County Planning Department and closely coordinated with the Larimer County Open Lands Department and Fort Collins.

TWO TDU PROGRAMS

- Red Feather and Fossil Lake
 - o See slides for maps of locations in the county
- Growth pressures are significant
- 1997 land use framework was implemented
- intergovernmental agreements in 1980's
- wetland wildlife regulations 2000
 - o no TDU's here
- rural land use centre 1999
 - o partnership land use system
 - o give them bonuses if they cluster conservation easements on the balance of the property
 - o maintaining the 35 acre limit
 - o voluntary group
 - o talked to farmers about it to get them involved
 - o process is more user friendly and takes land out of the zoning problem
- conservation developments were required in 2000
 - o residual land to be used and productive in ranch or farming uses
 - o 80/20 cluster
- open land program
 - o tax program, purchasing some of the 1 unit per 2 acre zone
 - o great support
- TDU is one of many tools, Units as opposed to credits
 - o Helped the hump with focusing on rights as opposed to land

FOSSIL CREEK

- grassland community
- had all the ingredients for success
 - o brought in many experts
- TDU is a tool, not a desired outcome
 - o Community separator process between the two urban centers in the county, they cannot overlap
 - o Density needs to stay within the city limits and not expand into the county
 - o Work from the desired outcome and then decide how you can make it work
 - o Complex to administer, need to keep it simple because the concept is new, and the public does not understand that yet, they still are in the dark about it

Sending Area Issues

- needs to meet the desired outcome
 - o had a plan to get to the goal
- keeping sending and receiving areas close to each other so that they can see the results and get excited about the tool
- public turned it into a legal issue, but that was already a concern that had been brought up
- zoning is 1 unit per 2.29 acres
- make sure that there is not a tight market in the area
- sending area has to be 2 or 4 times bigger than the receiving area to create a stable and steady supply of land that can keep up with demands
- maintain hands off approach, no mention of the certain cost of a TDU, so as to not mislead the public
- concern about what the remaining development potential is with the rest of the land
 - o down zoning
 - o have to have an understanding of what happens when some remainders are left over
- in the sending area there are base number of TDU's in the area, there is a base formula that is used, and bonuses if people are above and beyond the base number of units
- if a certificate is signed, there are certain restrictions as to what can be developed on the land
- first time you sell certificate, the restriction is placed on the land at the moment of sale

Receiving Area

- not enough receiving areas to go around
- Fossil Creek to annex into Fort Collins, then to create a new system with Loveland
- town from another county was not interested in TDU's and started annexing with Loveland
 - o this ruined some ideas as to where other receiving areas could be

- there are no good or bad TDU's you just have to meet the standards that are set out in the beginning
- some units can be left on the sending area for minimal cost
 - o one unit is on the sending area at least so there is someone to do maintenance on the property
 - o not designed to acquire government land, its designed to reduce density and have productive lands left for use
- TDU's have protected about 6 million dollars of land
- The county reviews and processes development proposals in the receiving areas
- County staff makes the plans like the town wants, and annexes it quickly
 - o Municipalities are providing services to some of these TDU's which shows how much they like the program
- no statutory authorization from the state to do TDU's, use land use tools to enable the tools
- TDU is always connected to the land somehow, not just something you can sell to anyone in Colorado, has to be in the receiving are
- this program has widespread public support
- no legal challenges so far
- see slides for further information on this TDU

RED FEATHER

- mountain community
- developing a program
- program is different because area conditions are different
 - o protecting the natural areas within the communities, and also adding infrastructure to the community
- need to find a developer
- there are no sending and receiving areas designated
 - o there will be a hearing to review the sending area
 - o there are no bonuses in this area
- programs cannot be copied, must be tailored locally
- must have public involvement
- need cooperation from all parties
- also see slides for further information

QUESTIONS

Ensure no subdivision

Value difference between units

- 8 to 9 percent difference

Preserving Agricultural Land by Transferring Residential Density: Calvert County, Maryland's Experience

Jenny Plummer-Welker, Principal Planner - Calvert County, Maryland

INTRODUCTION

- county has experienced much residential growth
- located in the regional watershed
- people commute out of the county to their jobs
- seen as a greenbelt, therefore want to preserve agricultural areas
- long history of agricultural use, strong history of tobacco growth
 - o crops are auctioned to the tobacco companies, not just sold at market value
 - o tobacco crop buyouts, given transition time to try other crops
 - o flowers, grass-fed beef, and tourism as alternatives
- working with the southern Maryland agricultural commission
 - o asking people to buy locally
- natural and heritage resource promotion
- nuclear and natural gas energy export
- rapid growth in 80's and 90's
- 1970's
 - o large lot zoning reduced the number of households located in rural areas
- 1980's
 - o protect the rural character and keep up growth
 - o "keep calvert country" was main slogan
- comprehensive plans creates town centers
 - o guide development out of resource areas
 - o goal of 40,000 acres preserved
 - o houses need to be in and around town centers
 - o to direct commercial & higher density residential development away from farms, environmentally sensitive areas, and highways

TOOLS

- growth suppression, need to put up the infrastructure before development
- See slide with different initiatives and maps
- 1999 down zoning
- market for TDR's today very strong
- population projections
- wanted lower growth and less dense population in the county
- directing growth to the town centers for commercial growth
- greater variety of residences and also mixed development
- town centre concept adopted 24 years ago
- Calvert adopted zoning in 1967.
 - o Residential lot size was three acres with five 1-acre lots grandfathered.

- In 1974 zoning was changed; the new requirement was for 5-acre lot size, with three 1-acre lots and two 3-acre lots grandfathered
- In the mid-1980s residential growth rate was over 6% for several years
- Over two decades successive Boards of County Commissioners have adopted growth management tools, including Adequate Public Facilities for Schools and cluster subdivision regulations
- The growth rate last two years was 1%
- The Farm and Forest District is shown as green on the map (slide 13)
 - o These are the areas are designated for preservation.
- The Rural Community District, the white areas, is comprised of low density residential and a patchwork of farms
- The major growth strategy is to move commercial and residential growth to town centers, shown in red

GROWTH PROJECTIONS

- In preparation for the 1994 Comprehensive Plan, staff conducted a build-out analysis to determine the potential number of dwelling units that could be built under existing zoning.
- A public survey was mailed to every postal patron. Response – a build-out of 120,000 people was too many.
- County Commissioners responded to the public mandate by down zonings residential density twice, in 1999 and 2003. The Commissioners increased funding for land preservation.
- The number of dwelling units at build-out was reduced from 54,000 to 37,000. The down zoning was across the board – not just in the rural zoning districts.
- In 1997 the State of Maryland created the Smart Growth and Neighborhood Conservation initiative with the goal of using state funds as incentives to direct growth. In 2000, the Maryland Smart Growth initiative was recognized by the annual Innovations in American Government as one of 10 most innovative new government programs.

TOWN CENTERS AND TDR'S

- town centre plans increased the value of the land in the town centers
- with the TDR program balances the values of the lands that surround town centers
- farm sending, town receiving
- separation from farm value and development value
 - o proven technique, done for 30 years in this county
- helps land trusts protect land
- low density zoning does not preserve land in the long run
- Commercial development is concentrated in a few locations rather than scattered all up and down Rt. 2/4

FACTORS THAT AFFECT LAND VALUES

- In Calvert, the farmland value is typically 2/3rds of the total value of a property, no matter where it is—from lands with poor access or topography to high valued land in the north areas of the county. When we set up our TDR program, we thought the opposite would be true – that the farm values would be a 1/3rd of the market value of land. What we have discovered is, 'Anything less than "market value" is a deal to a farmer or conservation buyer.'
- Topography
- Farm Productivity
- Road Access
- Adjacent property uses and views
- Allowable zoning density
- Market demand

AGRICULTURAL LAND PRESERVATION PROGRAM

- Offer an incentive for preserving prime agricultural & forestry land
- Reimburse landowner who voluntarily places covenants on land
- Use free market system to finance preservation
- Guide development away from prime lands
- Promote & preserve intact rural agricultural communities
- Minimize potential conflicts between agricultural and non-agricultural land uses

Achievement

- preserved 13,200 using their TDR program, 10 % of county
- has wide support on both sides
- land trusts are also in as well, 1700 acres
- 110,000,000 dollars saved
- TDRs can prevent the inevitable rezonings that occur when owners try to attain higher values with piecemeal requests

Requirements

- petitions for an application for designation, need to be in a designated sending area
- must permit the continuation of agricultural or forestry production, 75%
- meet soils criteria, and cannot be all floodplain
- 1 acre, on development right
- subtract 5 for each residence
- see slides for maps and detailed information

Land Use

- requires 5 to create one residential lot, 20 acres in farm to create a lot, 10 acres for rural district
- developer has to show proof of purchase
- almost like stock certificates
 - o keep track of prices and publish the prices as well
- projects have been successful
- The number of TDRs needed to create an additional dwelling unit is 5. At one time, 1974 to 1999, the residential density was one unit per five acres.

Receiving Areas

- We've had dozens of successful projects, from single family subdivisions to multi-family developments.
- Developers have done quite well with the use of TDRs. They've actually been in support of the program because they prefer it to the process of rezonings.
- There have been no residential rezonings in Calvert since 1978, developers get their higher density in receiving areas through the purchase of TDRs.

Properties in our growth areas can be developed at their base density, or they can be developed at a higher density with the use of TDRs. In our growth areas, properties can be developed at their pre-1999 down zoning density with the purchase of TDRs.

Types of Credits, and the Values

- TDR values have grown steadily over the past 30 years. Rebalancing zoning densities in 2003 increased TDR values substantially. The highest price paid for a TDR was \$11,000.
- A strong TDR market adds a new value to the farm value of properties. Often the combined value can meet or exceed the development value. TDR values this year range from \$7,500 to \$9,000 per TDR.
- There are two County TDR programs available to property owners. One is the Agricultural Land Preservation Program and the other is the Small Lot TDR Program.
- Two types of TDRs can be created from APDs – regular TDRs for residential density and Forest Conservation TDRs. When land develops, there are State requirements for tree coverage through the Maryland Forest Conservation Act. If requirement cannot be met on site, developer can plant trees off site or purchase TDRs with covenants that place specified area of the farm or forestland into a Forest Retention Area. Timber may be harvested in a Forest Retention Area. Area in APD must be platted to show the Forest Retention Area.
 - o Small Lot TDRs
- Many small lots were created prior to zoning. Most of the easily developable ones have been developed. Many of the remainder have steep slopes or other challenges. If owner can prove the lot is developable – it meets setbacks and perks – then owner can obtain 2.5 DRs for the lot. Used like the Agricultural Preservation District TDRs to increase density.

Buyer and Seller Transactions

- they have to negotiate price
- Agricultural Rural District becomes protected as soon as the first development right is transferred

PRESERVATION OF AGRICULTURAL PRESERVATION DISTRICT

- The Agricultural Preservation District is preserved when the first Development Right is transferred.
- Covenants area recorded that restrict future uses.
- The District owner can potentially still create a limited number of residential lots based upon District size.
- Districts less than 25 acres – no additional lots or houses
 - o 25 to 50 – 1 additional lot plus existing house
 - o 50 to 75 – 2 additional lots plus existing house
 - o 75 or greater – 3 additional lots plus existing house.

OTHER LOCAL PRESERVATION TOOLS

- governments buying out land for a certain set price, and then has to sell those pieces of land to developers
 - o Purchase and Retirement (PAR) Fund
 - o Leveraging and Retirement (LAR) Fund
- County purchases of development rights, 5350 acres preserved
- this system is fair for other outside of cities landowners
- to make this work for other communities, there needs to be collaboration to determine what goals are in sight
- helps with affordable housing
- preserving quality of life and also to preserve the way of life of the farming community
- In recent years, voters and jurisdictions have approved billions nationwide to be spent on land preservation. Calvert County began using public funding to buy and retire development rights. In recent years, the Commissioners set the price at \$9,000 per TDR. PAR & LAR provide market
- In Calvert, we think that programs to purchase Development Rights can be very helpful when the TDR market is soft. We also use it to reduce residential build-out.
- The credits can be taxed as a part of the land or can be taken out of that context and just in the context and credits
- Owners can come together to form a district that meets the 50 acre minimum

LOCAL PRESERVATION PROGRAMS: ACHIEVEMENTS

- We met our 1997 goal of preserving 20,000 acres.

- The new goal, set in 2004, is to preserve 40,000 acres. We have preserved over 25,550 through the State and County preservation programs, over 60% of our goal.
- TDRs are the primary tool for preservation.
- Other tools include the County's Purchase and Retirement of Development Rights and State easement purchases.
- 40,000 acres is about 30% of the County's land mass. To date, we've preserved about 18% of the County's land mass.
- By comprehensive planning, comprehensive zoning, and the effective use of TDRs we've begun to turn the vision into reality.
- Last year only one percent of the lots recorded, occurred in the Farm and Forest District.
- Over the last five years, the land area preserved has been three times the rate of development. The properties shown as darker green (slide 46) on the map on the right are protected.
- We are over half way in achieving our goal.

PANEL QUESTION PERIOD

Q: Use referendums when introducing these programs and getting support for these programs?

Jenny

- No referendums, strong citizen participation in all of the process

Peter

- No, however in the sales taxes documents there is a way you can choose to purchase of easements to accede a broader TDR program
- to broaden the goals of the TDR program, there is a great deal of public outreach
 - o mailouts
 - o open houses

Russ

- Not subject to referendums in counties
- Use public outreach to help set up the basis for TDC use, and also been talked about putting it to a vote, but it is compromises between groups and tools.

How do you communicate with the public? Problem with junk mail in people's boxes, and no telemarketing in September (optional)

Russ

- sending and receiving are defined areas
- went door to door and talked to residents, and got the feeling from them that way
- unspoken expectation that you will be given big windfall from annexation, but the need to is tell people about TDR's and how the windfall is there but not as prevalent
- Goal of the commissioners, is the informed consent model, and talking enough with the affected parties, hire PR firms that help with the outreach and design of the programs, using interactive methods to show residents how the concept of TDC's would work

Jenny

- longer standing program, most people know about it no need
- Targeted mailings to people that are on the tax record, also sent off a newsletter for people that are on a mailing list, that have requested to be on the list
- kitchen table information transfer, word of mouth, and directly talking with the public
- Tax credits for tobacco barns in Maryland
 - o met with property owners that are interested in the programs, and make it clear to them that she makes no gain from this, she just wants to get the word out, and give as much information as they can to get them into the program

Peter

- slipping notices in with property tax notice
- list of groups and notify them at any time of the changes in the TDR programs
- newspapers are also methods of communication with the public
- word of mouth
- websites, email contact

Q: Once a property has sold its credits can it be negotiated out of the program, can it be integrated back in, etc?

Russ

- public process of doing a land use plan first
- don't want to surround cities with a wall
- base where sending areas are on area structure plans
- anything can be broken if all parties are amenable to it, related to the legal system
- in rural land use plans there are 40 year covenants
- That was not in perpetuity (TDU's are permanent, rural land use centers are not permanent only for 40 years).

Jenny

- no they cannot buy out, they are in place for good

Peter

- conservation easements are in perpetuity, but they can have an amendment clause written into them, provided they are consistent with the plans and agreements that are in place at the time the amendment is proposed
- if easement is tied to the plan, there are mechanisms to allow it

Q: Receiving areas: who plans the land, and puts in the services/infrastructure in these areas, is it economical/efficient, and who benefits in these situations?

Jenny

- receiving areas are in and around town centers within a half mile radius, and development is still up to the individual owner of the land, which is usually the developer
- generally identified the area, and then the free market determines which properties are going to develop
- 2 units per acre with purchase of TDR's
- engineering fees are responsibility of developers
- up to individual parcel owner as far as timing goes
- county generally identifies areas
- up to free market to determine which sites develop

Peter

- the requirements for the receiving side are not dictated by the TDR program
- sites are within or next to municipal planning areas and the city, if a co approver of the receiving site
- the city has an active role in the servicing of the property so it can be annexed to the city, and there is a base zoning allowed in the county
- we try and share the design with the jurisdiction so that it can provide services
- once all is said and done, provisions can be made to meet the needs of all parties involved, not as rigid as doing straight zoning

Russ

- all of the TDU areas have been preceded by traditional land use planning, and there is a public discussion of what's going to happen with utilities, etc.
- there have been times there have been offers to developers to get to this land if the county can't, paying for the assessment and how the land is zoned
- in smaller areas there is a need for a developer to put in infrastructure due to the increased density

Q: Could the situation happen where there is a receiving area across the street from a school and other infrastructure, what happens if people don't want to move there?

Russ

- there should be a market expectation for any development,
- growth will occur there, there just needs to be an assessment of the market conditions

Peter

- the county has removed other options other than doing that, and so there is no other option but to do that
- there would have to be a search other places for other lands

Q: Certificates – how are they recognized legally, how are they tracked, and how are they used in the legal situation?

Peter

- go out to a property determine if it is an eligible sending site, and then once it is, they can request certificates for whatever amount they were assessed at, and then a conservation easement is recorded the same time or before filed with the county clerks office
- If someone brings one into the recorder with no number and stamps, it is not valid, it is the responsibility of the seller to make sure they are validated and made valid.
- This is at the county level in the cities and the counties in Colorado.
- The final platting process, they will only record the number of certificates that they submit at that time, and how many TDR's are required for the final plat that is submitted.
- Also assures the developer that if zoning changes over time, they still have the right to come in and redeem them to what was agreed on in the past

Jenny

- once the property is designated, there are no options until they apply for the options that they can get/want, then there is a formula that is used to calculate the amount of credit
- once agreement is formalized there is a document submitted to the land records
- This conveyance document states the purchase between the developer and the farmer, which they have negotiated as per market values
- they require a title history of the property and then a covenant form is recorded
- They have to demonstrate that things have not been sold, identifying TDR with unique numbers that way they can be tracked individually.
- The purpose is to continue farming, there is no restriction to farming uses, they have full right to erect such structures, and covenants states that no building can be on there except farm buildings, etc

Russ

- certificate being issued to the landowner in the sending are, attached to that is the agreement about the land what he can do with it, etc
- hand delivered and has a unique year ID and number
- we maintain the record in our office, the certificate always is attached to the land and its always listed in the land records, the landowner also holds it
- Once you are going to record the development with the county clerk you need to have that certificate before you can record the plat of land that is going to be developed and that.

Q: TDC program works when you have the economy to drive the market. The CRP as an example to achieve the triple bottom line (to be financially stable, ecologically stable, and socially rich), we need to reevaluate our development techniques. This program is dependent on the success of the receiving areas, developer, public, and government confidence. Comment.

Jenny

- if something is designed well, this is what something can look like; this has to be passed on to the public
- considers her plan rural, and good suburban
- Has to be a 2 part system; can't do without places people want to live. If they don't want to live there, there will be no conservation

Peter

- too obsessed with making the map green and not paying attention to the community needs, and the other design needs of the community
- TDR programs can also look at mixed use TDR's as well and have this all occurring on the receiving side
- shuffling the houses around is all well and good but there needs to be an attractant to people to come and live in the community

Russ

- concurs with Peter, city needs to have involvement, and what their quality of life needs to be
- need to look at the county and to see what the county values, and if they want to stay country they should be able to and be able to transfer the development somewhere else that wants to expand more, not collection of subdivisions that are collected together
- counties need to take full responsibility for this because some of the towns are not on board, this is needed to have viable communities

Q: How much of a guarantee is having a TDU will get the density somewhere else that a developer wants. By having a program do we move some of that discretion?

Russ

- Doing the land use plan and allocated the densities first gives more certainty to the developer
- the TDU receiving areas have been green fields, with adequate environmental standards
- If it's all planned for higher density and no one is there, there is something missing, there needs to be infrastructure, etc
- Commissioners have the power to turn plans down, because they set the guidelines and if there is abuse of these guidelines they can go to court
- Doesn't guarantee that the certificate is worth anything, the certificate depends on the Market value

Jenny

- Maximum densities set forth in zoning ordinances
 - o if you are in this area you can go up to this amount density with the purchase of a certain amount of development rights.
- you can have x number of TDR's and then y number of units per acre
 - o Being near to a major town centre is what is wanted, however if the developer is willing to build infrastructure then that is ok
- The commissioners had to hold a hearing to determine where they are and what the maximum is.
- Needs to make sure there is a rationale for sending areas to create some restrictions that make the lots viable

Peter

- set designation of receiving areas and no restrictions on densities
- the decision is driven by criteria and the entities (town, county, developer) that are providing those services
- Concept plan is a straw vote, to make sure that the area meets the criteria.
- If someone came in and didn't do a plan, they wouldn't get very far, need to do the plan before purchasing
- there is the option that someone can sell units to someone who is having more success

Q: If there is no infrastructure and cluster houses do you encourage communal septic systems?

Peter

- wells are handled at the state level and not at the county level
 - o very loaded issue, need to have proof there was approval from the state to install the system

Russ

- Public facility regulations
 - o if you are near the pipe, you should get the pipe out to where you are, and if the provider believes it is feasible
 - o rigorous process to make sure that is it built right
 - o there needs to be a class b operator to operate the utility
- moving to creating maintenance districts within the county

Q: For a Fluid Program who would be overseeing the projects once they are in place? Would they be working with landowners on both sides, and communicating new opportunities that can benefit?

Russ

- high level of effort needed, contacted the property owners to assess how many TDU's they may have had in their property, hired an administrator to handle that
- once it is a tracking program and in place for 10 years, no one notices it

Jenny

- full time individual, working on the agricultural administration programs
 - o need a site visit every three years
 - o monitor the easements to see what can be done
 - o making sure that the easements have not been violated
 - o making sure that the development codes have not been violated, and permits are not being violated
- Require that a district have a water quality plan, or a forest stewardship plan, or a soil conservation plan

Peter

- conservation easements are filed with the land use department and the open space department
- advise the sending site owner on the practices that they can keep the farm viable in the mean time
- seeing a decline in the traditional row cropping, and also the parcels that are not that big to make it viable they are converting to truck farms, herbs, greenhouse
- try and connect them with the state and the forest service to help with farm conversion
- Fort Collins has an active field service program, if there is a commitment to keep irrigation equipment on the property

Q: Are there any programs that operate across jurisdictional boundaries?

Russ

- there weren't any ten years ago
- Wanted Fort Collins(town) to do the approvals, but a lawyer said that the town should do whatever they want however, in the case they wanted to rezone everything, so that there is consistency in the infrastructure
- not able to convince the municipality to do it
- But the municipality staff seems to want to do it, just not the mayor, etc

Peter

- there are other examples across many jurisdictions in other parts of the US
 - o Anaheim
 - o Nevada
 - o Pinelands
- at the county level it occurs through the IGA's
- it can occur within if the municipality chooses to, so far that hasn't worked, they haven't wanted the receiving areas to be within the city
 - o it is also feasible and legally possible
- it's a new enough program that people are skittish about being too tied up right away

Jenny

- Maryland counties don't always play well together

- when you look at a combined zoning map of the state it's very jumbled with a great deal of discrepancies
- the idea makes sense and more urban areas could have density

Q: Comment on the sending areas, would the value of the system change depending on what is located in the sending area?

Russ

- the environmental regulations that preclude wetlands from other areas from new developments, sending areas are not in development mode, so they don't bother
- if they do have a wetland, they could get bonus densities for that, and therefore providing more units to the marketplace

Peter

- sending formula based on the environmental value of the property (California, Collier and Pinelands), needed more staff in Boulder to do this
- need the value first before you start assigning other values to them, in the new TDC program there will be more reliance on environmental planners to see if decisions are ecologically viable
- Based on raw potential

Jenny

- not done for determination for the number of credits, but there is a ranking formula based on the size, tillable soil or forest, or if it is adjacent to another district
- there are points for these that rank the applicants and how their lands will add density
- Allowed to create own criteria, and make it allowable for a higher offer for the.
- Offering the farm community another option rather than subdividing

LOCAL EXAMPLES OF TDC'S

Red Deer County

Harry Harker, Planning and Development Services Director

- began 8 years ago
- council member ventured down to US and came back with ideas of the TDC
- decided that we needed to figure out what we had
- studies, science and public participation
- agricultural profile
 - o landscape, climate, crops
 - o trying to ID what was happening on the land in red deer county from an agricultural perspective
- commonalities were being found
 - o 19 rural neighborhoods
 - o started to look as susceptibility to urban development
 - o tell us how to we keep agricultural viable in all of these neighbourhoods
- development needs to be more compact, you need to conserve farmland
- if its outside, it needs to be on major paved roads, serviced, and have a place and character
 - o can't put it everywhere
- taskforce in sustainable agriculture and land use
 - o what they thought and biggest problems
 - o opinion and science matched up
- launched a corporate strategic plan
 - o 4 part project
 - economic development strategy
 - new municipal development plan, and there is no map for the plan
 - new land use bylaw
- springboard for the fight between the city and the county
- identified major growth pressure around the city
 - o also identified a number of nodes for development
- resolve what happens in the lands around the city of red deer
- there is not always agreement as to where the development should go
- the city has the right to grow and develop, but also the county needs to identify lands to develop as well
- gasoline alley has a max pop of 8,000
- the county and the city has said that these areas that can be developed on
 - o looking to annex all within 10 years
- dealing with a joint planning initiative and a collaborative planning area with the city of red deer

CLUSTERED RURAL DEVELOPMENT

- what would this development look like
- development in the areas that are less susceptible to impacts of development
- small town centre with a village square to give a sense of place,
- not just creating rural subdivisions

LIBERTY CROSSING

- other name for gasoline alley
- this is the residential community that it will support
- 90 acres with 1150 units
- good density for a rural municipality
- mixed use, walkable community
- major area for future development of the tax base

FACTS

- build out at 8,000
- 60 to 90 quarter sections of land
- directing development to the right locations

SPRING BROOK

- ability to do all activities in that area

FACTS

- 5,000 Slide
- partnering with the urban neighbors, there is a need to work cooperatively with the city for all protection needs
- many problems have been tackled within

See attached slide show for maps and further details

Municipal District of Bighorn

Greg Birch, Assistant Municipal Manager

INTRODUCTION

- TSD: more correctly describes what is happening in a rural setting
 - o Moving subdivision units around to places where they are more suitable
- small holdings area
 - o small part of municipal plan policy

- not a great deal of subdivision, first parcel out policy
- municipalities have more power here so why do we need to have TDC's
 - o but some small holdings areas do get a concession

MDP POLICY

- based on the premise that it is better to conserve in some areas and develop in others
- need area structure plans
- also conservation easements
- MDP – undertake an improvement process for the policy set

CARRAIG RIDGE

- sending parcels: 8 quarter sections, receiving: 4 quarter sections
- bare land condos
 - o high-end, luxury dwellings
- in the end there are 668 hectares that are conserved
- ASP is on website for MD of Bighorn, see slides
- progressive land owner wanted to conserve but also develop as well
- land use bylaw amendments and regulations, also see handout
- sending: conservation easements

WHAT DO PEOPLE WANT TO CONSERVE IN THE NEIGHBORHOOD?

- Ecological goods and services?
- Ecosystems important
- How do you monetize the system? Or make it a transfer banking system
- How do you get a conservation easement?
 - o You need to have land that needs conserving
- assuming that some conservation sending areas are better than others, do they earn more credits
 - o should there be more advocacy at the provincial level

See attached slide show for more details and maps

Beaver Hills Initiative

Brian Ilnicki – Ducks Unlimited

- Located east of Edmonton
- planning based on geography of the area, very topographically varied, due to glacial eskers
- 2002, to look at what could happen in respect to the beaver hills approach, committee established
 - o see slides
- voluntary planning framework
 - o irrespective of jurisdictional boundaries

- there is no authority within the BHI
 - o providing support and collaborating on the dataset and also new ideas that are going to come to the table
- main principles
 - o quality of life
 - o water
 - o land
 - o air
 - o biodiversity
 - ecological goods and services
- Land Management Framework
 - o outcomes include maintaining native upland habitats, and focus on suitable development areas
 - o lessons learned in other jurisdictions
- public consultation
- reduce risks to ecosystems in the area
- looking at starting the process of determining where the sending and receiving areas are

See Slides for maps and more detail