

“Pros” and “Cons” of Transfer of Development Rights (TDR) Programs

Transfer of development rights is a system that gives landowners in places where development is discouraged an incentive to “sell” some or most of their land development rights to landowners in places where public policy wants new development to occur. The titles to both properties remain with the original owners. No government expenditures are involved, except for the administration of the program.

PROS

- TDR protects and preserves open space, agricultural land, historic sites, and other valuable natural resources. Promotes the maintenance of a more rustic/rural ambiance.
- The 134 communities have developed TDR programs throughout the country (as of 2002) can provide examples or models for Puna.
- TDR focuses development into a few specific locations/centers, which minimizes sprawl, reduces the cost of providing infrastructure and services, and promotes alternatives modes of travel.
- The sale of development rights generates revenue for individual landowners who may otherwise find it unattractive to sell their land in fee (e.g., a farmer who wishes to continue farming the land.)
- TDR increases development and economic activity in town centers where existing zoning may limit development potential.
- TDR uses free market mechanisms to create necessary funding to preserve natural resources, thereby reducing government expenditures and the use of non-profit foundation funding sources.
- TDR banks can store development rights that may be transferred to any buyer developing within specified development areas, including potentially areas outside of Puna.

CONS

- No single TDR program or model works for every community. Hawaii and Puna would have to tailor one to fit local needs and conditions.
- TDR may require State enabling legislation.
- TDR is voluntary rather than compulsory program. It will not work unless there is a willing number of property owners to sell and buy development rights in the designated donor and receiver locations.
- TDR works best where there are large-tract properties to be preserved. It would be very difficult to implement this approach successfully in Puna’s subdivisions, where there is a very large number of relatively small vacant lots.
- TDR programs can be complex and administratively challenging; they require strong comprehensive planning and a local administrative apparatus capable of monitoring market conditions.
- If development rights of potential donor sites are overvalued, developers of potential receiver sites will not buy. On the other hand, a surplus supply of donor

sites undervalues the development rights on those properties, so owners are unwilling to sell.

- For a successful TDR program, it has generally been found that there needs to be more receiver sites than donor sites. Thus, TDR probably has very limited potential in Puna, where there are so many more potential donor sites (i.e., vacant subdivision lots) than receiver sites.
- If the community decides to completely restrict development where individuals own land in a particular area or on particular parcels, legal “takings” cases may become prevalent; even though TDRs are available (U.S. Supreme Court Case: *Suitum v. Tahoe Regional Planning Agency*)
- TDR requires a good public education program for both citizens and potential developers.

Bibliography

Pruetz, Rick, AICP; Saved By Development: Preserving Environmental Areas, Farmland and Historic Landmarks With Transfer of Development Right; American Planning Association; 1997. *Examination of 112 TDR programs throughout the U.S.*