



## Four American TDR Programs

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In February of 2007, the Miistakis Institute had the opportunity to visit and review in depth the following four different successful Transfer of Development Rights (TDR) programs in four communities in the United States:

- Larimer County, Colorado
- Boulder County, Colorado
- Montgomery County, Maryland
- Calvert County, Maryland

The four programs were chosen from the approximately 200 American programs based on a mix of factors including their high level of success, applicability to Alberta in terms of goals and landscapes, and their amenability to meeting. Across the case studies, the authors had the opportunity to meet with a variety of program participants including county planners, developers, landowners, brokers, real estate agents, agricultural preservation organizations, protected area program managers, and others. There was a uniformly high level of welcome, and requests for an hour or two routinely turned into full-day events.

The following is a summary of those programs, including brief program descriptions and overview of their results, and an account of the lessons learned which were applicable to the Alberta context.

### Larimer County, Colorado

There were plans as early as the 1970's that described the regions' vision of maintaining separation between the cities of Fort Collins and Loveland. As the communities expanded towards each other, options were discussed to achieve the goal of city separation for the purpose of open space and wheat fields. Transferable Development Units (TDU) program was introduced as a tool to more fairly implement down zoning that resulted from the regional plan between Fort Collins and Loveland in 1995.

Initially, legal and planning consultants were brought in to develop the TDU program. After a short time that approach changed and a facilitator who helped the community realize an up to date vision for their landscape, was brought in instead. Once the vision of separate communities was reaffirmed work began on establishing the tools to achieve the vision.

State law called Planned Unit Development (PUD) already allowed transferring density from one property to another. A local developer owned land north of Fossil Creek Reservoir which was identified in the County's Master Plan as rural residential or as a



TDU receiving site. To initiate that development process the developer purchased land south of the Reservoir and transferred density from it to the land north of the Reservoir. This was the first step towards the creation of a more formal program.

### *PROGRAM*

Larimer County's transferable development right program is called a Transfer of Density Units Program. It is geographically specific to a sending area between Fort Collins and Loveland and to a receiving area called the Fossil Creek Reservoir Area. Its purpose is to maintain significant natural areas, views of the foothills, and farmland between the two cities and to focus development north of the Fossil Creek Reservoir while avoiding development in areas south of and immediately surrounding the reservoir that are important for protecting wildlife habitat and area within the Airport Critical Zone.

TDUs are established on a checklist basis. There is a baseline determination of 114.5% of density allowed by the current zoning assigned as TDUs in a sending area. The baseline can then be increased for sites that include significant natural resources, community buffers, and corridors for wildlife migration or hiking, agriculture, park sites, historic landmarks or important scenic views. Conversely available TDUs can be decreased on sending sites of 40 acres or less, low development potential, property location and existing development. Once the number of TDUs is established the landowner receives a certificate that is in effect for two years. The landowner can sell all or some of the TDUs. Once sold, the landowner has a covenant in favour of the county registered on their title that restricts all future development of the sending parcel. On the receiving sites one and half units can be built for each TDU purchased.

This program is administered by Planning and Building Services Division of Larimer County.

### *KEY LESSONS*

The planners found it quite straight forward to set the sending areas. The goals of what was to be conserved were very clear. It was however more difficult to set the receiving areas. There is a perception that there will be concerns from the neighbours of increased densities. That the "not in my back yard" sentiments will be expressed. It was brought up that "Good Urban Planning" is necessary. That means talking to landowners and gaining input on what people want their community to look like and showing people what these TDU receiving site communities could be like.



It was identified that having a “champion” (e.g. a long standing community member who has an interest in the end result) or two was very important to the success for this project. In the early stages of the program it was felt that there was high public support which was likely a result of significant publicity through newspaper articles. As the Fossil Creek development has been completed and there are no other receiving sites there is likely less public knowledge now.

It was also pointed out there needs to be incentives for landowners and developers to use the program. In Larimer County they used a multiplier of 1.5 to encourage uptake by developers. Essentially that means for every TDU purchased the developer can develop 1.5 units.

Larimer County has unsuccessfully tried to re-create similar programs to the Fossil Creek Reservoir Project in other areas. It is felt that the right timing, market, and environment are essential to the success of a program. As well as the TDU program, the County uses two other programs – Rural Land Use Process and Parks and Open Space to achieve open space, environmental, and agricultural conservation.

The Rural Land Use Process is administered by the Rural Land Use Centre and is a way for landowners to develop their land within the current zoning rules but by using clustering techniques and then applying conservation easements to the remainder of the land. There is some discussion at the centre about using a process similar to a TDU program to move some lots from one RLUP property to another property, either in the RLUP or not.

[www.larimer.org/rluc/](http://www.larimer.org/rluc/)

The Parks and Open Space program uses funds acquired through a County wide ¼ cent sales and use tax. The mission of the program is to protect and preserve significant open space, natural areas, wildlife habitat, and develop parks and trails for present and future generations. The open lands are intended to provide opportunities for leisure, human renewal and protection of natural and cultural resources. They use fee simple and conservation easement purchase and donations to secure land. The goal is to hold 50% in fee simple and 50% in conservation easement. They select the land they are interested in protecting with a Land Use Evaluation System that considers soil, water, and social factors. [www.larimer.org/parks/](http://www.larimer.org/parks/)

### *RESULTS*

The Fossil Creek development is complete. The density of the development was increased between eight and 10 times what it would have been had the program not been used with 721 units being transferred. 503 acres were protected over seven years in the sending



areas. Two developers participated in the program. No secondary markets involving real estate agents or brokers have developed in Larimer County.

## Boulder County, Colorado

As early as 1973 the county recognized a loss of agricultural land to residential development and began instituting planning tools to reduce this affect. Originally a clustering technique called Non-Urban Planned Unit Development (NUPUD) was adopted where any property larger than 35 acres could have 2 units with an additional developed unit per 17.5 acres conserved. A maximum of 25% can be developed and a conservation easement is to be placed on the remainder. The intention of NUPUDs, to allow farm families building sites, did not stop the trend of agricultural land loss as developers were purchasing 35 or greater acre properties and using the NUPUD program to develop country estates.

Twenty years later the county increased the land required to do a NUPUD to 320 acres and adopted a TDR program where densities could be moved to non-contiguous parcel under different ownership. The county also has a Purchase of Development Rights program. Not all PDRs are extinguished upon purchase as they are in some other programs. They may be sold as TDRs after public review with the proceeds going to further open space and conservation easement acquisitions by the county.

### *THE PROGRAM*

Boulder County is 2/3 mountainous and 1/3 plains. The Transferable Development Rights program is currently only used in the Plains portion of the county, although the county is in the process of designing a program in the mountainous parts. The purpose of the program is to protect lands with productive agricultural value or environmentally sensitive areas such as wetlands, rare plants or wildlife habitat. It is not specific to one geographic area.

Under the TDR program 2 TDR units per 35 acres can be transferred with an extra unit per 35 acres if an undivided interest in water rights stay used on the land is deeded to the county.

With very limited opportunities, no subdivision developments can currently occur in the county without the use of TDRs. Receiving sites are not designated in this program with two exceptions – Longmont and Niwot. Other receiving sites are approved by assessing



“performance” driven factors; for example if the site is near a major transportation artery and water and sewer is available it is a likely candidate as a receiving site.

In the unincorporated areas around Longmont TDR sending and receiving developments can be permitted pursuant to an intergovernmental agreement between the city and the county. The county uses development standards that match those of the city since once the development is complete it will be annexed into the city at some future point. Platted TDR receiving site densities range from 0.75 – 2.0 acres per unit. Without TDRs, these same lands could only be developed at much lower densities of one unit per parcel (i.e. any parcels under 70 acres in size and which are legal buildable sites cannot be subdivided further and can therefore only be developed with a single residential dwelling). The conservation easements acquired as a requirement of the TDR program are held jointly by the county and the city.

Niwot is an unincorporated community with about 4,500 people. With county assistance the community designated a number of TDR sending areas in their buffer and four receiving sites within the Community Service Area. The county has sold some of the PDRs they had acquired from eligible buffer area properties to developers around Niwot. Currently each TDR costs between \$60,000 and \$90,000 on the free market.

Public support for programs that preserve open space is considered very high in Boulder County. Very few people attended open houses or filed any type of complaint in response to the TDR program. The “Open Space Sales Tax” has been reauthorized repeatedly in Boulder County since initial voter approval in 1993.

### *KEY LESSONS*

A very positive feature of this program, especially to the development community, is that the County Commissioners (akin to Alberta’s municipal Councillors) will provide the developer an opportunity to present and have a review or “pre-screen” of their draft plans at an earlier stage than if developing without TDUs. This saves up-front resources and provides some indicator to the proponents about whether or not they have a viable proposal before they make significant expenditures in time, finances, and specific site design/layout work.

Another positive feature is that effort to encourage a healthy matrix of land uses in the receiving areas. In Boulder County, up to 5% of receiving areas may be used for non-residential purposes such as office parks, industrial or public uses (e.g. schools). The use of TDUs is not required to build these kinds of facilities.



## *RESULTS*

Boulder County's land conservation programs (e.g. PDR, open space, TDR, NUPUD) are considered very successful. However with success sometimes comes criticism. The county estimates that perhaps less than 20% of private unincorporated lands are unencumbered and vacant or undeveloped. Following basic supply and demand rules this means the remaining land can be quite expensive to develop. This has caused some people who work in Boulder County to live in surrounding counties where they can buy land and accommodations for less money. As a result, quality of life issues associated with a fairly large commuter population have become an increasing concern to residents in both the municipalities and county.

As this program has evolved naturally there have been changes made to the "rules". As a result there was caution expressed from a public support perspective that the program needs to be very clear in its purpose and function. The developer and the landowner really need to understand what they can and cannot do on the land once the TDRs have been transferred. It was suggested that when changes are made that there needs to be very clear communications around those changes and about their implications on the old rules, restrictions or guidelines.

### Montgomery County, Maryland

Montgomery County has one of the oldest TDR programs in the country. After WWII there was substantial population growth in Montgomery County and it was starting to have an impact on the land use which was primarily agricultural. In 1956 a preferential tax system was introduced to assess the land at its agricultural value instead of development potential to help encourage landowners to keep their land in agriculture.

Early on in the program the county considered the amount of development possible if the pace of land use change did not slow down. They figured that 3,000 – 5,000 acres could be developed each year. By putting in an Agricultural Land Reserve (ALR) and establishing a TDR program only 6,000 acres have been developed in the last 25 years.

When the ALR was established the zoning was changed from allowing 1 unit / 5 acres to allowing 1 unit / 25 acres. In an effort to make the downzoning fair a TDR program was implemented that allowed the landowner to sell the development rights that they could no longer develop as a result of the downzoning (e.g., before the downzoning a landowner with 100 acres could develop 20 units; while after the downzoning they could only 4 units therefore the remaining 16 units would be available as TDRs). All land in the ALR became the sending area in the program and all acres were treated equally with respect to how



many development rights could be sold on each property regardless of landscape features.

### *THE PROGRAM*

Unlike all other programs that we visited the program is administered by two separate groups - the sending areas are administered by Agricultural Services while the receiving areas are administered by the Planning Department. To enter the program a landowner would place a conservation easement in favour of the county on their property. The landowner can sell any number of development rights at any time. Each TDR is given a serial number as it is created and registered on title. All future TDRs on a property reference any previous TDRs sold on that property. The landowner can also sell the TDRs for the “allowed” units (1 unit / 25 acres) except for one building lot.

Receiving sites are chosen based on existing infrastructure (e.g. roads, water, sewage, etc.). Developers can choose not to purchase development rights but then must use current zoning and cannot increase density. By purchasing development rights a developer can increase the density of their project by up to 20% or higher if doing a condo or garden apartment project.

### *KEY LESSONS*

There have been some low activity times in the program when there were not sufficient receiving sites for the TDRs being sent. For that reason, it was recommended that there be twice as many receiving sites available as there are sending sites thereby creating a market for TDRs.

Until now TDRs have only been used in residential developments. The county is considering a Building Lot Termination (BLT) program where landowners could sell the remaining building lot for mixed use zoning developments – e.g. commercial, industrial, retail, etc.

Montgomery County has two tax programs through which public funds support land conservation programs - the “Agricultural Transfer Tax” and the “Real Estate Transfer Tax”. Each was voted in by the public and fund “Purchase of Development Right” program and an “Open Space” program, respectively.

Montgomery County also has a Conservation District certify stewardship plans to help land owners become better land managers, dealing with such things as off-stream watering, grassed waterways, fertilizer and pesticide management, etc.



In Montgomery County conservation easements can be “layered” meaning a landowner may have sold their TDRs to protect the agricultural land base, but still have some forested area on their land that could be logged. They can then sell a conservation easement on the forested area. Many landowners who layer conservation easements work with a consultant to help them keep track of all the programs that are available, and can work with farmers to help them maintain the agricultural value of their land while realizing other economic benefits.

One point raised was that these programs need to look at agriculture as a resource, with the underlying assumption that once the land is protected, the industry will take care of itself. For instance many of the farmers in Montgomery County farm 3,000 – 5,000 acres while they may only own about 200 acres. The ALR and TDR program have set up a situation that is very conducive to rental agreements for farmland, thus keeping more land in agriculture.

The vision of Montgomery County was very clear to protect agricultural land. The ALR and TDR program do this very well. To encourage a more sustainable agricultural *industry* the county offers other programs such as a farmer’s markets registry to promote the local industry, and management plan services which can promote best management practices.

### *RESULTS*

With a goal to protect 93,000 acres of agricultural land, Montgomery County has secured nearly 49,000 acres through the TDR program. This added to the acres protected in other preservation programs results in almost 65,000 acres in total protected from residential development.

### Calvert County, Maryland

In 1976 a committee was created to review options for preserving land in response to rapid population growth in the early 1970’s. The options they reviewed included downzoning, conservation easements, and transferable development rights. Around the same time University of Maryland wrote a paper suggesting that whichever options were adopted should be equitable to all landowners. The options were presented at a series of farmers meetings after which 80% voted in favour of a transferable development rights program.





It was felt that such a program had to be designed by the people who would be using it. The government provided the framework and then the community built the program. In Calvert County's program they downzoned the entire county and then only allowed densities to be increased on receiving areas by using TDRs. There was also a decision that there would be no rezoning anywhere. The result of this is that there was an automatic market for TDRs.

In the late 1990's the county completed a build out scenario that looked at population growth and land use change over time if all possible building sites were used. A mail out survey was sent to all county residents in which all agreed that the results of the build out scenario showed too much development relative to the vision of what they wanted for their county. County wide downzoning was approved from one unit (or home) per five acres to one unit per 10 acres. In 2003 another downzoning was implemented to one unit per 20 acres.

### *THE PROGRAM*

A group of volunteer citizens form the Agricultural Preservation Advisory Board (APAB) which promulgates rules, develops procedures and reviews all applications. To participate in the program, a landowner applies to the APAB to have their land designated as an Agricultural Preservation District (APD). Land zoned as Farm and Forest District by the County or located in a Designated Agricultural Areas by the APAB are priority preservation areas. Land outside of the priority areas may still be eligible, but needs to meet higher standards. All applications are reviewed based on soil classification and quality, as well as suitability for cropland and/or managed forestland. Once accepted as an APD, the numbers of TDRs the land owner can sell are determined based on preset criteria. A sale of any TDRs permanently preserves the land and covenants are recorded. If no TDRs have been sold, a sending site can be removed from the APD after five years, with one years notice to the given to the APAB.

The owner of a designated sending site retains the ability to build up to three houses (one house / 25 acres to a maximum of three houses). When in the program the APAB reviews and approves the house and road locations. Building in the program is a simpler process than on land not participating in the program. Another benefit to entering the program as a sending site is that sending areas in the program are only taxed based on the residences on the land; the farm land is not taxed. The prices of TDRs in Calvert County are determined by supply and demand in a free market. Five TDRs are required to build one unit.



### *KEY LESSONS*

Though one of the oldest and most successful programs in the country, Calvert County's program is not without criticism. There was some concern expressed that the program has changed focus from agricultural land preservation to growth management (i.e., managing sprawl). Though the two are compatible, some stakeholders felt that if the focus was now on changing the nature of development there are other tools that can be combined with TDRs to better manage growth, such as "town centre planning" and promoting walkable, mixed-use town centers to establish a sense of community and provide a variety of housing choices for local residents.

Although the market price of TDRs had evolved to an acceptable price for both landowners and developers involved (about \$4500), in 2004 the County entered the 'development right' market directly. The County chose to start purchasing and extinguishing rights to more actively protect open space, and ultimately bought rights at \$9000, effectively setting the market. There was also concern expressed that using public money in a program established on the grounds of private conservation was inequitable and may have negative implications on affordable housing in the county (with 5 credits required to add an additional housing unit, the TDR program could add \$45,000 to the purchase price of a house).

Since the TDR value is a factor of supply and demand in the TDR market rather than the agricultural or speculative land price, there was also discussion about the possibility of combining other options with the TDR program to ensure the landowner receives the full equity potential of their land if deed-restricting it. For example, 'layering' of conservation easements granted for different purposes (agricultural, forestry) would allow landowners to receive multiple payments for restricting multiple land values.

### *RESULTS*

As of 2007 Calvert County has preserved over 25,000 acres out of their goal of 40,000 through state and county programs. Out of the 25,000 acres already preserved more than 17,600 acres have been preserved through the TDR program.