

# GENERAL PLAN 2030 MAUI ISLAND PLAN

## *Directed Growth Strategy- Transfer and Purchase of Development Rights Program Implementation Study*



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## **1.1 Overview and Purpose of the Report**

The County of Maui is currently updating its General Plan to 2030. A primary objective of the update is to develop a directed growth strategy to accommodate population growth in a manner that is fiscally prudent, safeguards the island's natural and cultural resources, enhances the built environment, and preserves land use opportunities for future generations.

An important element of the directed growth strategy will be to establish Transfer of Development Rights (TDR) and Purchase of Development Rights (PDR) programs. TDR's and PDR's have been in use for many years nationally to preserve agricultural lands, open space, and sensitive environmental resources. These tools provide landowners the option of being compensated for giving up development rights to lands that serve an important public purpose in their current use, or undeveloped condition. With PDR programs the landowner is compensated by a land trust or local government agency that buys development rights from the landowner so that the property can be preserved in its current condition. In a TDR program, a landowner can sell development rights to a developer who then uses those rights to develop at a higher density than what would otherwise be permitted. TDR and PDR programs usually contain a set of incentives to facilitate the desired landowner behavior.

The implementation of a TDR/PDR program on Maui will be done within the context of General Plan 2030's directed growth strategy, which will include the establishment of urban and rural growth boundaries. The purpose of this study is to develop a conceptual TDR/PDR model, and implementing ordinances, for a Maui-based program.

## **1.2 Project Approach**

### ***Phase 1 - Conduct Literature Review***

For this preliminary report, Chris Hart and Partners conducted a literature review and internet search on TDR and PDR programs nationwide. The intent of the literature review was to:

1. Gather background information on the general mechanics, challenges, and opportunities associated with TDR and PDR programs;
2. Summarize the different purposes for which TDR and PDR programs are typically used, and the utility these programs offer as a growth management tool; and
3. Uncover common costs and benefits associated with TDR and PDR programs.

## **Phase 2 – Conduct Case Studies**

From the broader literature review, case studies on six (6) nationally recognized TDR programs were conducted. The six (6) programs included:

- Chattahoochee Hill Country, GA;
- Chesterfield Township, NJ;
- Montgomery County, MD;
- Pinelands, NJ;
- St. Lucie County, FL; and
- Seattle, WA.

The intent of the case study approach was to help shed further light on some of the on-the-ground experiences associated with operating a TDR program, and to compare similarities and differences among programs.

From these six programs, three were selected for closer evaluation and are discussed in greater detail below. In addition, one case study of a PDR program was also included in order to juxtapose examples of the two types of programs. The four programs include:

- Montgomery County, Maryland TDR program;
- Chattahoochee Hill Country, Georgia TDR program;
- Seattle, Washington TDR program; and
- Dunn, Wisconsin PDR program.

Montgomery County's program was chosen largely because the program has been in place for over twenty years, allowing a history of performance from which to evaluate the program. Much of the available literature on TDR programs, and the pros and cons thereof, includes information on the Montgomery County program. Montgomery County's program is widely cited as a successful example of how TDR can be used to accomplish land preservation. Relative to many other programs, Montgomery County's program is also less complicated, likely contributing to its success.

The Chattahoochee Hill Country program was chosen because of its powerful approach towards regional landscape analysis. The program's goal is to create a landscape of compact, small towns interspersed with agricultural land and open space. As Maui is an island of small towns, Maui County can benefit from studying the Chattahoochee program in its efforts to affect the form that future development takes across the landscape. Furthermore, of the TDR programs reviewed, the Chattahoochee program offers the most detailed set of environmental sustainability goals, which is an important consideration in guiding future land use and development on Maui.

The Seattle program was chosen because it provides an example of how TDR can be used for a multitude of tasks, including: preservation of important historic and civic

landmarks, provision of affordable housing, and rural land preservation. Maui County will likely confront a host of rural, agricultural, urban, cultural, and affordable housing issues as it continues to grow and plan for future growth. The Seattle TDR program may be helpful in exploring how TDR could be used to address land use and economic issues other than agricultural preservation on Maui.

The PDR program for the Town of Dunn, Wisconsin is important for several reasons. First, the program is both comprehensive in scope and yet simple and straightforward in its approach. The program has also enjoyed strong political support from the community. Community support is critical to the success of a PDR program, as evidenced by the nearly 2,000 acres of farmland the program has preserved. Further, the Town of Dunn has taken on a private non-profit land trust as its partner in its PDR program, while incorporating rules governing the purchase and management of the easements by the partner land trust. The town has also successfully procured grant funding from Federal, State, and County government sources. Both outside partnerships and grant funding could allow for the implementation of a PDR program in Maui County while saving taxpayers money.

### ***Phase 3 –Conduct Scoping of Maui Island Land Use Issues to be addressed Through a TDR Program***

Chris Hart and Partners and the Maui County Planning Department conducted a detailed scoping process to address a number of key Maui Island land use issues to be addressed through a TDR program. The intent of the scoping process was to:

- Identify priority environmental and land use issues to be addressed through the General Plan update;
- Review existing land use planning processes and regulatory controls that affect the timing, type, and location of growth;
- Review current and projected land use patterns;
- Identify key land parcels, or areas, of significant conservation interest;
- Identify key land parcels, or areas, suitable for greater density of rural and/or urban development;
- Identify potential key partners including landowners and nonprofit land trusts whose help may be enlisted to establish a TDR and PDR program.

### ***Phase 4 - Develop Conceptual TDR and PDR Models***

The information gathered from the literature and case study reviews, as well as the issues identified through the scoping process, were used to develop two conceptual TDR/PDR models that would accomplish specific land use and preservation goals. The first model is a more limited program with a narrower focus on a few key parcels and involving only a few landowners. The second model is a more comprehensive program involving a

county-wide TDR program and potentially incorporating more restrictive zoning in areas of conservation interest.

***Phase 5 - Draft TDR and PDR Ordinances***

The final phase of the project required the drafting of a TDR Ordinance and a PDR Ordinance that would address General Plan 2030's land use and preservation goals. The ordinance is informed by the information gathered and summarized throughout the planning and scoping process. The ordinances draw upon the strength of nationally recognized programs, and yet are unique to Maui's land use and preservation goals.

# SUMMARY OF TDR & PDR PROGRAMS



## **2.1 Purchase of Development Rights: a Predecessor to TDR**

The concept of TDR evolved out of a concept known as Purchase of Development Rights, or “PDR.” PDR is a voluntary program through which a non-profit land trust or local government agency makes an offer to a landowner to buy the development rights on a parcel of land. The landowner is free to turn down the offer, or to try to negotiate a higher price. Once an agreement is made, a permanent deed restriction is placed on the property, limiting the type of activities that may take place on the land in perpetuity. In this way, a legally binding guarantee is achieved to ensure that the parcel will remain in agricultural use or as open space forever. The deed restriction may also be referred to as a conservation easement. A case study of the Dunn, Wisconsin PDR program below outlines the mechanics of one PDR program aimed at farmland preservation.

Purchase of Development Rights programs provide a way to financially compensate willing landowners for not developing their land. The owner still owns the land, and can use or sell it for purposes specified in the easement, such as farming or timber production. The owner is also compensated for relinquishing the right to develop the land as real estate. For the public, PDR programs enable land conservation at a much-reduced expense, as the cost of PDR is less than outright purchase of the land, and the costs associated with land management remains the responsibility of the landowner. PDR can also make agricultural land more affordable to farmers while neighboring residential values can be enhanced by proximity to protected agricultural land or open space.

The primary disadvantage of PDR is the high cost associated with development right acquisition. Typically, PDR programs are funded by taxes. Taxes used range from cigarette excise taxes assessed at the state level to local property, income, and sales taxes. The prospect of instituting new taxes for any new program is controversial.

Purchase of development rights is most useful near growing urban areas where rural constituents perceive a threat. PDR is also a useful land preservation tool for local governments where a parcel of land is deemed more important as open space than in economic production, regardless of high development value (for example, significant areas of shoreline on Maui). Sometimes creating a PDR program is desirable because a municipality is too small to establish enough appropriate sending and receiving areas to create a functional TDR program within its boundaries. PDR programs are typically more effective when used in conjunction with other land planning tools.

## **2.2 Transfer of Development Rights**

Transfer of development rights, or “TDR,” allows a landowner to sell some or all of the rights to develop a piece of property (known as the “sending area”) and transfer those rights to a different piece of property (called the “receiving area”). TDR programs are designed to encourage a shift in growth away from agricultural land, environmentally

sensitive areas, open space, or other significant regions and to concentrate growth in more appropriate areas. They are also used in some instances to protect historical landmarks, urban open space, or affordable housing.

TDR programs have been instituted in numerous cities and counties around the United States for over 20 years. The intent of a TDR program is to provide a market-based process for permanently preserving lands or landmark structures that provide a public benefit. With TDR, landowners in sending areas sell their development rights, and purchasers may then use those rights to build in a designated receiving area at higher density than is normally allowed by existing zoning. A conservation easement is then put in place on the sending area property and the property is permanently protected from development.

Landowners who sell development rights receive cash while retaining ownership and private use of their land. Land from which development rights are sold can never be developed, but may still be used for agriculture, hunting, timber and recreation. The original owner can continue to live on the property and may sell the property in the future. The only restriction is on new development.

Transfer of development rights is one preservation tool that is intended to supplement other land use regulations, resource protection efforts, and open space acquisition programs. The fundamental goal of TDR programs is to encourage increased residential development density, especially inside cities, where it can best be accommodated with the least impact on the natural environment and public services. A TDR program typically comprises at least four fundamental elements:

- A designated preservation zone (sending area);
- A designated growth area (receiving area);
- A pool of development rights that are legally severable from the land; and
- A procedure by which development rights are transferred from one landowner to another.

The transfer of development rights between parties is typically accomplished through one of two mechanisms:

- **Private Transactions:** Transactions between willing sellers (in sending areas) and willing buyers (in receiving areas) occur simultaneously with subdivision or development in the receiving area. Under this scenario, the developer and the sending area landowner engage in a private negotiation for sale of development rights. The developer receives a density bonus upon demonstrating that necessary conservation easements have been recorded on the sending area property. This

process requires very close coordination between the sending area landowner and the developer, and involves legal and time costs on the developer's part.

- **TDR Banking With Public Purchases of Development Rights.** A publicly owned and operated TDR bank is established that provides an automatic willing buyer for TDRs. A TDR bank can help jump-start a reliable market for TDRs and build credibility – both legal and political – for the program. By bringing buyers and sellers together through an established institution, a TDR bank simplifies the developer's task of finding transferable density. It also creates a revolving fund that keeps money available for future development rights purchases in sending areas. This program requires a high level of administrative cost for the administering agency. Program staff are necessary to seek out purchases, locate start-up funding, and track the flow of money through the system.

Two variations on the themes of private TDR transactions and TDR banking are Clearinghouse TDR systems and Density Transfer Charges.

- **Clearinghouse TDR Systems.** The administering agency can issue TDR certificates to any sending area property owner who extinguishes onsite development rights through recordation of conservation easements. The property owner is then free to hold, sell, or gift the certificate and the associated TDR to any interested party at any time. This provides developers in the receiving area with a more fluid market of TDRs, since the legal process of severing the development rights has already been undertaken. Development rights transfers involve a simple monetary transaction, and require no further coordination between the TDR sellers and buyers.
- **Density Transfer Charges.** Some communities allow receiving area landowners to pay a fee in lieu of transferring development rights, known as a Density Transfer Charge (DTC). This fee is held in a separate fund used by the administering agency to purchase development rights in sending areas at a later time. A DTC is similar to a TDR banking system, but does not involve a resale of development rights to property in receiving areas. This technique provides the advantage of flexibility, but involves upfront work in calculating fee amounts.

While TDR programs have the advantage of using free market mechanisms to create the funding needed to protect valuable farmland, natural areas, or other properties of public value, many programs are often criticized for being too complex and administratively challenging. Local units of government, or other organizations in charge of the programs, must make a strong commitment to administering a potentially complicated program, and educating citizens and developers. Another challenge is to find receiving area sites that can accommodate denser development without significant impacts to the environment, infrastructure and public facilities, or to neighborhood character. TDR programs must be combined with strong comprehensive planning and local controls in order to be successful. Successful TDR programs offer the following:

- An effective and predictable incentive process for property owners to participate in the program;
- An efficient and streamlined administrative review system to ensure compliance with the programs goals and policies;
- Creation of sending areas and receiving areas in a timely manner so that the supply of receiving areas is always sufficient to create demand for development rights;
- Provision of sufficient incentives to facilitate landowner and developer participation in the program. To accomplish this, density in receiving areas must be sufficiently higher than existing zoning to boost the market for TDRs.

Drafting an effective TDR ordinance is daunting. The ordinance must set forth procedures to accomplish density transfers, the allowable use of lands subject to conservation easements, TDR transfer ratios and allocation rates for residential and non-residential uses, and other development standards as deemed appropriate. Transfer of development rights can be a powerful tool, but must be designed in a way that addresses complex issues while remaining easy for landowners and developers to use and understand.

## **2.3 TDR Glossary**

**FORM-BASED CODE:** A method of regulating development to achieve a specific urban form. Form-based codes are intended to create a predictable public realm by controlling physical form primarily, and land uses secondarily, through city or county regulations.

**MANDATORY TDR PROGRAMS:** A mandatory TDR program is one where land use regulations, such as a zoning change decreasing the maximum amount of residential density, are adopted at the time of the program's creation to reduce the amount of development in a sending area. Under mandatory programs, landowners who wish to realize their full equity based on previous zoning must sell development rights.

**RECEIVING AREAS:** Development rights sold from sending sites are placed on receiving sites. A receiving site is a parcel of land located where existing services and infrastructure can accommodate additional growth. Landowners may place development rights onto a receiving site either by transferring them from a qualifying parcel they already own; by purchasing the development rights from a qualified sending site landowner; or purchasing them from a TDR Bank. With transferred development rights a landowner may develop the receiving site at a higher density than is otherwise allowed by the base zoning.

**SENDING AREAS:** Some parcels have productive agricultural or forestry values, provide critical wildlife habitat, critical shoreline areas or provide other public benefits such as open space or regional trail connectors. Preservation of these types of areas is

critical for maintaining the unique character of Maui County. By selling the development rights, landowners may achieve an economic return on their property while permanently maintaining it in farming, forestry, habitat or open space.

**TDR BANK:** A TDR bank creates a place for willing sellers and buyers to complete the transfer of development rights, and helps to generate demand for TDRs. The purpose of a TDR bank is to assist in the implementation of the TDR program by purchasing and selling development rights. The TDR bank purchases development rights from qualified sending sites at prices not exceeding fair market value and sells development rights at prices that equal or exceed the fair market value of the development rights. The fair market value of the development rights is established by the administering agency and is based on the amount paid for the development rights in conjunction with prevailing market conditions.

**TRANSFER RATIO:** The number of TDRs that must be purchased from the sending areas compared to the number of additional density that can be constructed in the receiving areas.

**TDR ALLOCATION RATE:** The number of TDRs that a sending area landowner can sell, e.g. one development right per one acre or one development right per five acres.

**URBAN SERVICES:** The full range of public services and infrastructure including sewer, water, police and fire protection, roads and transit etc.

**URBAN SERVICE BOUNDARY:** A designated limit to the urban infrastructure (e.g. water and sewer) development of cities and unincorporated communities. Urban service boundaries are used as a component of most TDR programs, to further discourage inappropriate development in sending areas.

**VOLUNTARY TDR PROGRAMS:** Voluntary programs do not involve changes in land use regulations at the time of a TDR program's creation, and therefore conventional development can continue at levels allowed by existing zoning. The incentive to use TDRs in a voluntary program depends on the extent to which developers can create added value to their project by increasing density beyond that allowed by the base zoning. Incentives such as the provision of urban services or an expedited review process may also be used in conjunction with voluntary TDR programs.

## **TDR & PDR CASE STUDIES**



## **3.1 Montgomery County, Maryland**

### **3.1.1 Background**

Montgomery County, Maryland lies immediately northwest of Washington, D.C. between the Potomac and Patuxent Rivers. The southeastern portion of the county is part of the greater D.C. metropolitan area, containing the cities of Bethesda, Silver Spring, Wheaton and Rockville. Montgomery County's population grew by over 89,000 people between 1990 and 1999 to 850,000, representing the largest population gain in the state. Estimates for 2005 place the County's population at 927,583. Despite this intense development pressure, the northwestern part of the county remains rural and is in active agricultural use. Major commodities include nursery and greenhouse crops, dairy products, and horses and ponies.

Montgomery County was the first county in Maryland - and among the first counties in the nation - to respond to sprawl. Montgomery County's TDR program was launched in the early 1980s and the first transfer was completed in 1983. By 1997, the program had protected 38,251 acres of farmland. However, participation then dropped off and by the summer of 2000 the program only had protected an additional 2,332 acres to bring the total to 40,583 acres.

The lowered participation in Montgomery County's TDR program during the late 1990s has been attributed to increased demand for large-lot, executive-type housing that made it profitable for developers to build homes on large agricultural lots rather than buying TDRs to develop in receiving areas. John Zawitoski, Director of Planning and Promotions with Montgomery County's Economic Development Department adds that a major reason for the lack of participation at that time was a lack of receiving area capacity, and that this underscores the importance of timing the creation of sending areas with the creation of an ample supply of receiving areas. In recent years, participation in the TDR program has again picked up; the past three years have seen the protection of more land than was preserved over the previous six. The TDR program through June 30, 2005, had protected 64,998 acres.

According to the State of Maryland's 2002 agricultural census, despite a statewide trend that saw a decrease in the market value of agricultural products sold for the first time in census history, seven (7) counties in Maryland saw increases. Montgomery County's increase was the greatest among the seven. Expansion of the agricultural industry included gains in traditional agriculture (small grains, dairy, swine and beef production): \$41,634,000; horticulture: \$125,330,000; and the equine industry: \$84,855,896, for a total value of \$251,819,896. Zawitoski noted that solid growth management, combined with both aggressive PDR and TDR programs and a diversification of the agricultural industry all contributed to the industries success.

### **3.1.2 Administration**

Two public entities play a role in administering Montgomery County's TDR program: the Maryland-National Capital Park and Planning Commission (M-NCPPC) and the Agricultural Services Division. The M-NCPPC is a bi-county agency serving as the planning agency for Montgomery and Prince George's counties. The Agricultural Services Division is a unit within the county's Department of Economic Development (DED) that administers the county's farmland protection programs.

The TDR program officially functions under the auspices of MNCPPC (as they created the program over 26 years ago). In practice, MNCPPC focuses on coordinating the receiver side of the TDR program, since receiving areas are designated through individual communities' master planning processes. DED administers the sending side of the program, by working with developers and landowners in coordinating the necessary documentation, processes, and legal reviews to create TDRs.

### **3.1.3 Sending and receiving area characteristics**

Sending areas were originally designated during the creation of the TDR program based on their current agricultural use or potential agricultural use as determined by soil or other conditions favorable to agriculture. Receiving areas were designated because they were either already developed or were adjacent to developed areas, showed potential for development pressure in the near future, and were not deemed to be critical agricultural areas. The baseline zoning for lots in sending areas is 25 acres; the baseline zoning for receiving areas varies by community.

Whereas sending areas are designated by the county, receiving areas are designated by each community through its master planning process. In 1987, the Maryland Court of Appeals ruled that the designation of TDR receiving sites should appear in the zoning code. As a result, the county adopted a comprehensive zoning ordinance in 1987 that established TDR receiving zones in those communities with TDR receiving areas in their master plans. Master Plans in the County are updated every 5 years. Updates begin with planning staff developing a draft plan to manage and direct growth, and address other community-wide issues such as parks, natural areas, trails, infrastructure, economic development etc). The draft plan is then taken to the community, where input is obtained through public hearings and public community meetings. The designation of new receiving areas evolves out of this process.

### **3.1.4 Incentive Structure**

Montgomery County's program is categorized as a "mandatory" TDR program because restrictive zoning was adopted to reduce the amount of residential development allowed in the sending areas. Sending areas are designated by the "RDT" zoning type. In general, the RDT zone limits on-site development to one unit per 25 acres. This zoning represents a down-zone from the 5-acre zoning that existed prior to the creation of the TDR

program; hence development rights are allocated based on the original 5-acre agricultural zone. In other words, every 25-acre parcel represents five development rights. Since the current zoning prohibits density higher than one unit per 25 acres, in order to realize their full equity based on the prior zoning, landowners must participate in the TDR program.

The 1/25 acre zone is established merely for the purpose of calculating permissible density, however. The minimum lot size in the sending zone is 40,000 square feet or about 1 acre. That means that on a 100-acre parcel, for example, a landowner at 1/25 acre density could choose to cluster three one-acre lots and have a 97 acre agricultural parcel, which could yield the 4th lot at 1/25. Conversely, this same landowner could choose to create four 25-acre lots. On average, landowners who have chosen subdivision over TDR preservation have created lots between 3-7 acres. Very few 25 acre lots have been created. Therefore, there is typically a substantial remnant agricultural parcel remaining. Conservation Plans are not required of sending area lands protected by TDR.

There are two exceptions to the maximum allowable residential density permitted on agricultural lots of at least 25 acres: tenant houses and mobile homes associated with farming activities; and lots for children of individuals who owned sending sites prior to the RDT zoning. However, one development right must be reserved for every permanent dwelling on the sending site, regardless of whether the units were built before or after the RDT rezoning. This type of arrangement is known as a “partial TDR.”

For TDR buyers the program’s major incentive is that TDRs allow them to build more residential dwelling units than allowed by existing zoning. However, there is no obligation for landowners in receiving areas to develop their land or to build at densities above the base densities allowed. A second incentive for the use of TDRs is that in certain cases, developers may build commercial or mixed-use developments in areas zoned residential by purchasing TDR’s.

Montgomery County has been careful to make TDR the primary means of exceeding the base zoning of a receiving site. The only alternative to TDR for increasing density in a receiving area is the development of affordable housing. Affordable housing can compete against the use of TDRs, however the County advocates heavily that in TDR receiving areas, the use of TDRs should take precedence.

As a further incentive, Montgomery County’s capital improvement program ensures that sewer, water, transportation and other public services are extended into receiving areas, and not extended into sending areas where they could subvert the program’s goal of farmland preservation.

Montgomery County’s program has not been without challenges. Changes in the market for housing affected the market for TDRs in the late 1990’s, as developers found it more lucrative to build fewer houses at lower densities.

This was exacerbated by a lack of supply within receiving areas. Timing the creation of sending areas with the creation of receiving areas at the outset, and continuing to ensure a ready supply of receiving areas, are critical to maintaining a market for TDRs.

### **3.1.5 Transfer and Pricing Mechanisms**

At the program's inception, a TDR bank was established to help create a demand for development rights. The bank was seldom used due to a high demand by developers from the outset of the program, and therefore was sunsetted shortly after the program's creation.

Development rights are now transferred through private formal negotiations between sending area landowners and developers wishing to build in receiving areas. Developers can find out which properties qualify to send TDRs through the County's functional master plan for the preservation of agriculture and rural open space and its supporting sectional map amendment. The County also assists developers by maintaining a GIS data base that shows the following:

- Where all the PDR easement properties are located (as they do not represent a pool of available TDRs).
- Where TDR easements are already shown encumbered by easements (since All TDRs do not need to be created all at one time, these properties may have TDRs remaining).
- The location of properties where no PDR or TDR easements have been purchased (These properties represent the greatest potential to find TDRs and allow developers to focus their outreach efforts on locating and negotiating TDR sales).

In addition, the County maintains a TDR buyers/brokers list that is made available to landowners who are willing sellers seeking a willing buyer.

The TDR Program is intended to serve as a market-based mechanism for distributing the costs and benefits of development. As such, prices for TDRs are determined by supply and demand. The price of one TDR over the program's duration has ranged from a low of \$5000 to a high of \$45,000. Zawitoski attributes the fluctuation in price directly to the supply of receiving areas, noting however that fluctuations in real estate markets generally have had a compounding influence on price.

Where parcels in the sending area have a potentially higher development value, due to scenic or other amenities, a combination of PDR and TDR has been used. Payment from the County is used to subsidize the purchase of higher-value development rights, thereby allowing for harmonization of the higher-value TDRs with the prevailing market price paid by developers.

A secondary TDR market has also developed with real estate agents becoming TDR brokers, purchasing TDRs and speculating on future value. Because there is a legal

process required to separate TDRs, those purchased by brokers are readily available for transfer (when compared to those still attached to the land). As a marketing feature to developers, brokers can sell TDRs that are ready to be used and therefore sell them at higher prices because of the savings in time and associated legal costs.

**Montgomery County Program Summary**

<b>Purpose</b>	Preserve the County’s agricultural economy and rural character in the face of Metro – D.C. sprawl.
<b>Administration</b>	Maryland-National Capital Park and Planning Commission (M-NCPPC), a bi-county planning agency for Montgomery and Prince George’s counties (coordinates receiving areas). The Agricultural Services Division of the County Department of Economic Development (coordinates sending areas).
<b>Receiving Area Characteristics</b>	Areas designated by each community through its master planning process as desirable locations for added density.
<b>Sending Area Characteristics</b>	Any land under the restrictive agricultural “RDT” zoning type. The RDT zone limits on-site development to one unit per 25 acres
<b>Contact</b>	John Zawitoski, Director of Planning and Promotions Montgomery County Economic Development Department (301) 590-2831 john.zawitoski@montgomerycountymd.gov

**3.2 Chattahoochee Hill Country, Georgia**

**3.2.1 Background**

The Chattahoochee Hill Country is a 65,000-acre area of South Fulton, Northwestern Coweta, Eastern Carroll, and Eastern Douglas Counties in the State of Georgia. The transfer of development rights (TDR) program for Chattahoochee Hill Country is one component of a master plan for the 40,000 acres of Hill Country that lie within south Fulton County.

The program is unique because it grew out of a citizens’ initiative. In response to sprawling development in nearby Atlanta, residents and landowners within the Hill Country decided they wanted to preserve the rural character of their area and wanted to control the type, form and location of new development within this landscape. In 2001 a consortium of local landowners, together with representatives from the Nature Conservancy, began a series of meetings to discuss concerns that local residents and landowners had about Atlanta’s growth and sprawl moving into their region. Small and large landowners alike voiced enough common concern and interest in preserving the character of their region that a Chattahoochee Hill Country Community Plan quickly emerged. The Community Plan was incorporated into the South Fulton County 2015 Amended Comprehensive Land Use Plan in 2002.

A grassroots effort then began to educate lawmakers and policymakers on TDR. Fulton County passed a TDR enabling ordinance on April 2, 2003, making Chattahoochee Hill Country the first area eligible for TDR transactions, not only in Georgia, but in the entire southeastern United States. On April 22, 2003, the Georgia State Legislature passed an amendment to the Transfer of Development Rights legislation (Senate Bill 86), making TDRs available to any county that adopts enabling TDR ordinances. After three years, enabling legislation was finally passed on the State level. The Chattahoochee Hill Country Land Use Plan represents the first plan in the region that was developed by a community through a grassroots initiative, and the Chattahoochee Hill Country TDR program still remains the only TDR program in the state. Moreover, the Chattahoochee Hill Country Land Use Plan incorporates form-based zoning to ensure a denser, mixed-use type of urban design in the receiving areas.

### **3.2.2 Administration**

Administration of the TDR program is accomplished through coordinated activity among three different entities: the Chattahoochee Hill Country Alliance, the Chattahoochee Hill Country Conservancy, and a nonprofit community TDR bank.

The Chattahoochee Hill Country Alliance grew out of the initial stakeholder meetings in 2001, beginning as a grassroots organization formed by South Fulton County landowners in partnership with The Nature Conservancy. It later split into the Chattahoochee Hill Country Alliance and the Chattahoochee Hill Country Conservancy.

The Chattahoochee Hill Country Alliance (CHCA) is now in charge of public education and promotion of the TDR program; they also lead ongoing public education efforts for landowners and potential developers on sustainability principles. The CHCA also serves as a watchdog organization; their grassroots organizing capacity provides an extra push for well-planned development in the region.

The Chattahoochee Hill Country Conservancy (CHCC) works on greenspace and land planning initiatives for the region. The CHCC provides ongoing review of how sustainability goals for the region are being implemented, and works with the design review board to encourage appropriate development design in the receiving areas.

Importantly, the CHCC is also the agency with day-to-day oversight of the TDR program. The CHCC processes applications for sending area TDRs and works hand in hand with the TDR bank to broker the sale of development rights.

The nonprofit, community TDR bank oversees the transfer of development rights. The bank buys TDR credits, holds them, or sells them to help ensure a stable market for TDRs. Through the bank, buyers can hold TDR credits for later resale, retire them from possible development by donation to a conservation trust, or use them in order to develop one of the villages.

### **3.2.3 Sending and Receiving area Characteristics**

Receiving areas comprise three new urbanist village sites of a minimum 500 acres each. In designating the three receiving areas, the community was actively involved in selecting where development would occur and those areas that would be preserved. Proximity to existing transportation, sewer, water, community service infrastructure, and areas of existing population density were key factors in determining the appropriate location for receiving sites. Additionally, the community sought large contiguous parcels of land – ideally 500 acres or more - as receiving sites. They reasoned that owners of large parcels of land might already be inclined to develop it at some future point, and that finding large contiguous landholdings mitigated the problem of land assembly.

Landowners who own land comprising the receiving sites are not obligated to develop their land, but neither do they have the option of selling TDR credits for that acreage. In order to develop a village site, a developer must purchase TDRs. Densities in the villages are expected to be in the range of 10-14 dwelling units per acre, each unit added to the base zoning through the purchase of one TDR credit. One credit is also required for every 2,000 square feet of commercial space within the villages. Further, a minimum of 10% of housing in the villages must be affordable to residents making 80% or less of the area median income.

All lands, with the exception of the three village sites, represent a potential sending area. Sending area landowners may sell one TDR credit per acre, corresponding to the one-dwelling-per acre baseline zoning in the region. The land is thereafter permanently undevelopable. Landowners who wish to sever development rights from their land must apply to do so, thereby imposing some time cost on the sending area landowners.

### **3.2.4 Incentive Structure**

Developers in receiving areas may not increase density or undertake a mixed-use project unless they purchase TDRs. Further, developers receive no urban services if they choose to undertake conventional development contrary to the Community Plan; thus, they are obligated to invest in their own sewer infrastructure if they choose to pursue conventional development.

The terms of the master plan for the Hill Country TDR program are voluntary – that is, underneath the village zoning overlay, the baseline one-unit-per-acre zoning remains in force. Aside from the density/mixed-use and urban services incentives, there is no formal incentive or disincentive structure. Provided developers develop their own supporting infrastructure, and can create sufficient value without a mixed-use development, property may still be developed in a conventional manner pursuant to the baseline zoning. The only other potential disincentives to conventional subdivision development are bad feelings from neighboring landowners and residents, and potential grassroots organizing by CHCA if developers choose to proceed with conventional development.

### **3.2.5 Transfer and Pricing Mechanisms**

All transfers of development rights are brokered through the TDR bank. The fair market price for development rights is determined through an appraisal process using comparable land sales and existing comparables of conservation easements, when available.

### **3.2.6 Other Mechanisms**

The Community Plan provides for two other neighborhood design types within the Hill Country: hamlets and conservation subdivisions. Although hamlets and conservation easements do not qualify as receiving areas, they are meant to supplement the village design by creating well-planned, compact development that allows for the preservation of the region's open space and rural character.

Much like the villages, hamlets are intended to provide a mix of dwellings and local services to the community in a compact pattern that promotes land conservation, encourages a mix of development types, and includes residential, office, retail, and commercial uses. Hamlets are a minimum of 200 acres with an overall density of one unit per acre, but development is clustered on a maximum of 40% of the land while 60% is preserved as greenspace. There are no designated areas for hamlets - they can occur in any area within the Hill Country.

Hamlet development is not eligible for TDRs, however hamlets must be designed in a manner that addresses pedestrian scale, the area's rural character and the importance of protecting greenspace. The incentive to develop hamlets pursuant to the prescribed guidelines is that they cannot be developed as mixed-use neighborhoods unless they conform to the community's density and design goals. The developer receives a variance to build mixed-use development on land that otherwise retains the base zoning of 1 unit per acre.

The Conservation Subdivision Design is an additional form of development that is strongly encouraged. The conservation subdivision is not permitted to have a mix of residential and commercial uses. However, the conservation subdivision ordinance does allow a developer to cluster homes on smaller lots so that a minimum of 40 percent of the subdivision land is set aside as open space. The primary incentive to building conservation subdivisions, aside from the pleasure one receives from participating in environmental stewardship, is to engender community goodwill and appease opposition from neighboring landowners and the CHCA when proceeding through the development process.

The Community Plan provides another level of protection via three preservation buffers. These buffers protect scenic corridors, historic landscapes and water quality at a higher level than currently exists in the County code. By protecting different types of green space throughout the 40,000 acres of Hill Country, the intention is that a series of open

space networks will evolve, providing additional space for residents to recreate and wildlife to inhabit.

Further, the plan includes economic development forecasts and projections of future demand for housing and commercial space, to inject a sense of economic reality into the planning and design process for the villages. A village build-out and phasing plan outlines the pattern for staging the development over a 25-year period.

**Chattahoochee Hill Country Program Summary**

<b>Purpose</b>	Component of master plan to conserve 40,000 rural acres in the path of suburban Atlanta sprawl.
<b>Administration</b>	Accomplished through coordinated activity among three different entities: the Chattahoochee Hill Country Alliance (public education), the Chattahoochee Hill Country Conservancy (review, oversight, and TDR application processing), and a nonprofit community TDR bank (purchase and sale of TDRs).
<b>Receiving Area Characteristics</b>	Three mixed-use village sites of a minimum 500 acres.
<b>Sending Area Characteristics</b>	All rural land within the 40,000-acre planning area not within a village site or under other protective designation.
<b>Contact</b>	Chattahoochee Hill Country Conservancy (770) 463-1548 chatthill@chatthillcountry.org <a href="http://www.chatthillcountry.org/">http://www.chatthillcountry.org/</a>

**3.3 Seattle, Washington**

**3.3.1 Background**

Seattle's TDR system is part of its overall downtown revitalization program and was structured principally to alleviate development pressure on low-income housing and landmark structures in the city's downtown. It has been expanded to include the preservation of urban open space and some civic structures. Transfer of development rights in Seattle is confined to the downtown core and can take place between sending and receiving areas across downtown or within the same block.

Seattle's program is complex and continues to evolve. Having begun with a single TDR pilot project, the program's goals, objectives, and mechanisms vary by district throughout the downtown area. Certain specialized TDR programs have also been created to allow the transfer of development rights from rural areas of King County. As these specialized obtain their stated objectives they are retired, and others programs are created. Seattle's program is innovative because it simultaneously addresses several different types of development concerns, but it illustrates the challenges of implementing a complicated TDR program.

### **3.3.2 The Denny Triangle Program**

The Denny Triangle program was the first TDR project in Seattle, and has become the inspiration for other TDR programs in both Seattle and King County. The Denny Triangle neighborhood is bounded by Denny Way, Interstate-5, and 5th Avenue at the northern end of downtown Seattle. In 1998, as part of a neighborhood redevelopment pilot project, the City of Seattle struck a partnership with King County to create a transfer of development rights program for the Denny Triangle.

Under the program, rural landowners were eligible to sell their development rights to urban developers. Developers could buy those rights and increase the number of residential units in their development, while rural landowners gave up their opportunity to develop their property, with the goal of maintaining critical salmon habitat and dwindling forest lands. In general, the program had three steps:

- 1) King County purchased development rights from key rural properties deemed important for their resource and habitat value.
- 2) Urban developers in the Denny Triangle receiving area who purchased development "credits" from King County were allowed to exceed the building height limit for housing and add more units on additional floors. To mitigate the impact of the increased density, developers in the Denny Triangle were also required to provide amenities such as open space for the neighborhood since Seattle does not charge impact fees.
- 3) King County also agreed to contribute improvements to the neighborhood to help support additional residential density and to make the area more friendly to pedestrians and attractive for residential development.

Several projects were built in the Denny Triangle neighborhood, although real estate market conditions did not allow for the successful development of the entire district before the program was ended. Paul Allen's, Vulcan Development Company, constructed the largest mixed-use project in the neighborhood. This project called Olive 8, added 90 feet of additional height, and 50,000 square feet of residential space through the use of TDRs. The final product is a 350-room hotel on the lower 15 floors, and 198 condominium units above. There remains just one additional project to be construction under the Denny Triangle TDR program.

A primary reason for the success of the Denny Triangle program was its political support. Neighborhood residents and businesses supported the increased building height in exchange for neighborhood redevelopment. Stakeholder support will continue to be critical to the success of future TDR projects in Seattle.

### **3.3.3 Administering Agencies**

The TDR program in the Denny Triangle neighborhood was administered by an agency created specifically for the program that is no longer in existence. Since the major goal of TDR in downtown Seattle has been housing, and the bulk of development rights have been transferred from affordable housing structures, the Office of Housing currently administers TDR programs in downtown. The Department of Planning and Development (DPD) reviews and approves the projects that use TDR. The City is in the process of creating a new program that will apply the Denny Triangle model to the downtown Seattle office corridor. The proposed program will again partner with King County to enable the use of development rights from rural land to increase the allowable FAR from 17 to 20 for office development on eligible receiving area properties. This program will likely involve the creation of a separate and specialized agency to administer the transfer of development rights.

### **3.3.4 Incentive Structure**

In downtown Seattle, the principal incentive for developers to use TDR is that they are able to increase their floor-area ratio (FAR) for commercial development, or obtain a height variance for residential development. Seattle's program has worked in part because in the 1980s there was a citizen initiative that resulted in a relatively low-density base zoning for the downtown area. This enables developers to increase their heights and/or densities through TDRs to a point where the TDRs actually become a value-creating tool.

### **3.3.5 Transfer and Pricing Mechanisms**

To facilitate an equilibrium between supply and demand, the program utilizes a TDR bank, from which the City can purchase and hold development rights for later sale to developers. Use of the bank is limited, however. The City of Seattle expresses a preference toward private negotiations between parties to facilitate the transfer of development rights between parties.

### **3.3.6 Sending and receiving area characteristics/issues**

Within Seattle, all of the sending and receiving areas are in downtown. The Seattle downtown revitalization program, administered by the City's Department of Planning and Development, has created a complex schema of sending and receiving areas based on specific planning objectives for particular areas of the downtown. As a result, the mechanisms and guidelines used to transfer development rights within the downtown area varies by district. In a few districts created by the program, such as the Harborfront and Pike Place Market Mixed zone, density cannot be transferred to other receiving districts. These districts are static relative to the TDR program and rely on other aspects of the overall revitalization plan for improvements. In the Downtown Retail Core,

transfers can only take place between buildings on the same block. The provisions of these districts are aesthetically driven and are specifically designed to maintain a mixed building height appearance in these areas for retail use. Still other districts can send and receive with fewer restrictions.

The use of TDRs in Seattle has to date been characterized by the following:

- Purchase of unused commercial development rights from low-income housing sites in downtown, which protects those sites as low-income housing for 50 years;
- The purchase of development rights from landmark and/or historical structures; and
- The purchase of development rights from public open space in downtown (e.g. the Seattle Art Museum’s sculpture garden). The TDR system has also provided a vehicle to help fund major civic and cultural institutions such as the Benaroya Hall Music Center, which is leased to the Seattle Symphony. A within-block TDR program also allows for the transfer of development rights between properties on the same block in order to preserve, for example, smaller structures that add unique character to the neighborhood.

The closed nature of the Seattle TDR program – that is, its confinement to the downtown area – has its advantages and disadvantages. Since all land is in downtown, the market value of land in sending and receiving areas is similar, and transfers can all be done in terms of FAR or height bonuses. This eliminates the challenge of harmonizing development values between urban and rural land, allowing for easier and more predictable pricing of TDRs. On the other hand, the size and effectiveness of the program is compromised because the supply of both sending and receiving areas is limited.

**Seattle Washington Program Summary**

<b>Purpose</b>	Seattle’s downtown revitalization program is structured principally to alleviate development pressure on low-income housing and landmark structures in downtown.
<b>Administration</b>	City Department of Planning and Development (DPD) reviews and approves the projects that use TDR; Office of Housing currently administers the purchase and sale of development rights.
<b>Receiving Area Characteristics</b>	Designated on a case-by-case basis and based on the goals of the downtown revitalization program. The program has included residential, office and retail projects.
<b>Sending Area Characteristics</b>	Largely unused commercial development rights from low-income housing sites in downtown. Some civic and historic properties.
<b>Contact</b>	Dennis Meier, Senior Planner City of Seattle Department of Planning and Development (DPD) (206) 684-8270 dennis.meier@seattle.gov

### **3.4 Town of Dunn, Wisconsin PDR Program**

#### **3.4.1 Background**

The Town of Dunn is located in Dane County, WI, adjacent to Madison, which is one of the fastest growing cities in the state. As a result of its proximity to Madison, the township is experiencing significant development pressure.

The township's first step in protecting its farmland was to adopt a land use plan in 1979. Among other things, the plan states that farmland should be protected. The first planning tool employed by the township for farmland protection was exclusive agricultural zoning, also begun in 1979. To supplement agricultural zoning, the township created a Purchase of Development Rights (PDR) program in 1996. Since its creation, the Dunn PDR program has resulted in the protection of nearly 2,000 acres of farmland.

#### **3.4.2 Program Purpose**

The stated goals of the Town of Dunn PDR program are:

- To preserve farmland and support viable farm operations;
- To protect open space and environmentally sensitive areas;
- To maintain the town's rural character and quality of life; and
- To protect the town from the encroachment of neighboring cities and villages.

#### **3.4.3 Administration**

The PDR program is administered by the township's Land Use Coordinator. The coordinator's responsibilities include meeting with landowners, hiring appraisers, identifying and applying for grant money, and working with the Land Trust Commission chairperson to negotiate easements.

The coordinator works with a seven-member Land Trust Commission comprised of four people from the township and three non-township residents. The three non-township residents must have backgrounds and experience in agriculture, finance, conservation or planning. The Township Board of Supervisors approves all Commission nominees. The Commission is responsible for:

- Setting policy and long-term planning goals for the PDR program;
- Establishing ranking criteria for the PDR program;
- Reviewing easement applications and making easement acquisition recommendations to the Town Board;
- Maintaining contact with public and private agencies to maximize resources and coordinate efforts to preserve the rural character of the township;

- Determining the interest of owners of land within the township at least annually to donate or sell interests in real property for the purpose of the rural preservation program. The commission accomplishes this by sending out information about the program twice a year to people who own at least 35 acres of land; and
- Recommending any changes to the Town's Open Space Program and suggesting how the Open Space Fund acquisition program may be integrated with the town's Land Use Plan and Open Space Plan and other local and regional land use plans.

The Commission recommends to the Township Board of Supervisors which easements should be acquired. The easement applications that are approved by the Board are voted on by township voters at the township's two annual meetings. To date, all easement applications recommended by the Commission have been approved unanimously by the Board and voters. The Commission is authorized to expend funds for:

- The purchase of land for rural preservation;
- The purchase or acceptance of donated holders' interests or third party rights of enforcement in conservation easements; and
- Payments to nonprofit conservation organizations for the conservation of natural resources that are within the township or beneficial to the township through the acquisition of conservation interests, provided that the recipient organization submits a detailed plan for the work to be done that is approved by the Town Board.

#### **3.4.4 Funding Sources**

Several sources of funding are used to support the PDR program. In 1996, a 50-cent property tax per \$1,000 of equalized valuation was approved through a local referendum. The tax generates approximately \$175,000 per year. During the following two years, the town received two grants for the program from the Federal Farmland Protection Program: one for \$100,000 and one for \$515,000. In the spring of 2000, township voters approved a 20-year bond of \$2.4 million to increase program funding, using the revenue from the 50-cent tax for the payments over 20 years. In December of 2000, the program was awarded approximately \$291,000 in grant funding from Dane County and \$235,000 in grant funding from the Wisconsin Department of Natural Resources. The township's Land Use Coordinator applies for grants on an ongoing basis.

#### **3.4.5 Eligibility Criteria**

There are currently no eligibility requirements in order to apply to the program. Any landowner can fill out an application, regardless of number of acres of land, location, or any other factors.

### **3.4.6 Ranking Criteria**

Applications to the program are evaluated and ranked according to the following five criteria: quality of farmland; development pressure; historic, archaeological, scenic and environmental qualities; financial considerations (e.g. alternate sources of funding, or willingness of a landowner to sell development rights at below fair market value); and other considerations (such as proximity to other parcels of protected land).

For each criterion, an application is given a set number of points (from 0 to 10), depending on the extent to which that criterion is met. Once the points have been assigned, this value is multiplied by the associated weight, for a score for each criterion. The sum of all five scores is the total score for that application.

### **3.4.7 Program Procedures**

#### **1. Allocation of Funds**

The Land Trust Commission makes recommendations to the Town Board of Supervisors as to how available program funds should be spent and allocated over time. There is no threshold on how much can be spent in any given year. The allocation of funds each year depends on the workload of the Land Use Coordinator.

#### **2. Application Process**

A landowner interested in the program first completes a pre-application form obtained from the township. The applicant then meets with members of the Land Trust Commission to discuss their interest in the PDR program and specific features of their land. After meeting with all applicants, the Land Trust Commission ranks the applications. Members of the Commission then meet with landowners who have received high scores to discuss terms of a potential easement, and to tour sites.

#### **3. Easement Valuation**

Once easement terms have been identified, the town hires a professional appraiser to determine the value of the proposed easement. Using comparable sales on similar properties in the area, the appraiser determines the agricultural value of the land, and the value of the land if it were to be developed to the fullest extent under the town's current land use plan. The difference between these two values is the value of the easement. If the landowner is dissatisfied with the appraisal, the landowner may conduct additional appraisals at his or her own expense.

The Commission negotiates the terms of sale of the easement with the landowner and discusses payment schedules. If the landowner holds a mortgage or lien on the given property, approval in writing must be received from the relevant holders before the sale can be final. The town prepares a baseline data report, consisting of maps, photographs, and other relevant documents, to represent the condition of the property at the time of

sale. A special Town Meeting is held to authorize the town to purchase the easement. Once approved, all relevant parties attend a closing to finalize the sale. There is no standard project cap for the purchase price of an easement. On average, it takes eight months to complete an acquisition after an easement application is submitted.

### **3.4.8 Easement Provisions**

#### **1. Residences and Agricultural Structures:**

Permission to build a residence or agricultural structure on land protected by an easement varies, according to the individual easement. Easements usually contain either an impervious surface requirement or building envelope. The impervious surface requirement allows residences and agricultural structures to be built anywhere on the property but requires them to stay within a specified percentage (usually five percent) of the total easement area. The building envelope specifies that residences and agricultural structures can only be built within a certain location on the property, with the number of acres specified. The size of the envelope is negotiable with each easement.

#### **2. Subdivision**

Provisions for subdivisions are site specific and, therefore, vary between easements.

#### **3. Public Access**

Easements do not provide public access to the protected property.

#### **4. Mineral Rights:**

Easements do not allow mining on properties under easement.

### **3.4.9 Monitoring and Stewardship**

Easements are monitored once yearly, but the township is considering changing to once every two to three years. Either the Town of Dunn or Dane County Natural Heritage (which co-holds all of the township's easements) may enforce the terms of the easement. If a violation of the easement occurs, either one of the grantees will attempt to contact the landowner personally to obtain voluntary compliance. If after receiving written notice, the landowner fails to fix the violation within a given amount of time specified in the easement, the grantees may enforce the easement in court. The Town and easement co-holder will work with the landowner to voluntarily correct any violation of the conservation easement to avoid court enforcement. However, when voluntary efforts fail and a significant violation has occurred, it may be necessary to seek injunctive relief, an order requiring correction of the violation, or an award of monetary damages. The owner may be required to reimburse the grantees for their enforcement expenses. An easement can only be terminated or extinguished by court judicial proceedings.

**Dunn, Wisconsin Program Summary**

<b>Purpose</b>	Preserve farmland and support viable farm operations; protect open space and environmentally sensitive areas; maintain the town's rural character and quality of life; protect the town from encroachment of neighboring cities and villages.
<b>Administration</b>	Township Land Use Coordinator and seven-member Land Trust Commission
<b>Contact</b>	Town of Dunn, WI 608-255-4219

# **TDR SUCCESS FACTORS AND LEGAL CONSIDERATIONS**



## **4.1 TDR Success Factors and Legal Considerations**

### **4.1.1 Introduction**

Rick Pruetz (2003) presents an in-depth study of transfer of development rights through case studies of over 120 TDR programs throughout the United States. Pruetz identifies a set of nine success factors that are common to some of the most effective TDR programs, as well as a set of six general areas of legal consideration in designing and operating a TDR program. Consideration of these success factors and legal issues will be an important and valuable exercise in choosing how to design a TDR program for Maui.

### **4.1.2 TDR Success Factors**

#### **1. Support for preservation:**

Support for preservation of sending areas is critical for the initial adoption and ongoing operating success of a TDR program. Without the support of sending site owners, receiving site developers and the general public, a TDR program will not succeed. Sending site owners must be philosophically in support of land preservation and must also feel they are being adequately compensated for severing their development rights. Receiving site developers must be presented adequate incentives in order to purchase development rights, and must perceive a market for higher-density development in the receiving areas. Public support is crucial not just at the time of adoption, but throughout the life of the program, in order for it to remain effective and retain political support. Ongoing public education and outreach is an important component of maintaining support.

#### **2. Comprehensive Plans Designed for Implementation by TDR**

At a basic level, successful TDR programs are proactive about working within planning and policy goals. In order for a TDR program to be successful, there must be consistency between the program and overall goals set forth in the general plan. Ideally, a TDR program is built directly into the general plan. The general plan should identify sending and receiving areas, and establish maximum densities without the use of TDR and maximum densities with the use of TDR.

#### **3. Sending Area On-Site Development Disincentives**

Four types of development disincentives are most commonly present in TDR sending areas: physical constraints; density restrictions; development regulations; and off-site requirements.

Physical constraints simply refer to characteristics of a parcel of land that hinder development, such as rocks, cliffs, or other physical attributes. Such constraints increase development costs, placing a site at a disadvantage.

Density restrictions are the most popular sending-site development disincentive. For example, having large-lot zoning in effect prior to the creation of a TDR program is a distinct advantage.

Development regulations refer to all of the zoning and environmental requirements with which development must comply on sending sites. The more difficult the development regulations are, the greater the incentive to transfer development rights.

Off-site requirements refer to the payment of fees for water, sewer, roads, or other infrastructure. Placing the onus on developers to pay to provide their own utility infrastructure may be a sufficient incentive for them to consider a transfer of development rights instead.

**4. Affordable TDRs/Adequate TDR Allocations to Sending Areas.**

Finding the appropriate transfer ratios and allocation rates is critical to a TDR program's success. TDR programs will generate few transfers unless a market is created. The allocation of TDRs is also important because many of the other success factors are hard to control in the short term.

Finding the appropriate allocation ratio depends entirely on local conditions. Some programs set forth detailed formulas for calculating transfer ratios in their TDR ordinances. On the other hand, the TDR program in San Luis Obispo, CA relies on case-by-case appraisals of each sending property to determine transfer ratio.

Some communities that find they are weak in terms of other types of TDR success factors can effectively compensate with liberal TDR allocation ratios. For instance, where existing zoning may already limit sending area lots to 20 acres, the local jurisdiction may nonetheless choose to allow for the transfer of five development rights in order to provide sufficient value to the landowner and a sufficient supply of TDRs.

**5. Optimal Receiving Areas**

Receiving areas may be places the General Plan has already designated for prioritizing development, or they may be designated new development areas. In general, receiving areas need to be areas that are appropriate for development, with sufficient community support and developer interest, the proper location, sufficient infrastructure, and compatibility with surrounding development.

**6. Effective TDR Thresholds**

It is critical to have a maximum baseline density in receiving areas, in order to encourage developers to buy TDRs to increase density. However, it must also be a threshold that makes sense for the community. Increased density still needs to be appropriate to local communities and local markets.

**7. Extra Density only by TDR**

Competing incentives for density make TDR difficult. If developers can increase their development density in any other way, it diminishes incentives to participate in the TDR program.

**8. TDRs as a Commodity/TDR Banks**

TDR Banks are not a feature of all TDR programs, however many successful programs use them. TDR banks can mitigate legal and time costs for developers by providing a readily available supply of TDRs that have already been severed. They are also effective in smoothing out some of the challenges associated with fluctuations in the real estate market and can help jump-start demand for TDRs at the beginning of a program's implementation.

**9. Monitoring and Program Adjustment**

A formal mechanism for tracking the success of a TDR program is crucial to the program's continued operating success. A system for monitoring and program adjustment allows for ongoing fine-tuning of the program as well as information gathering for program promotion.

**4.1.3 TDR Legal Considerations**

**1. Legal Framework**

It is important to be cognizant of the specific local legal framework within which a TDR program will operate. Generally, the legal framework behind transfer of development rights is best understood as a combination of governmental regulation, property rights, and contracts.

In order for TDR to have any meaning, it must be understood within the context of zoning. That is, TDR takes on its meaning through government regulation of the sending site and the receiving site.

In terms of property rights, TDR is a newer concept. From the standpoint of legal precedent, the idea of severing one's right to develop from one's property may pose conceptual challenges to courts that have struggled with the more general relationship between governmental regulation and property rights. Property rights cases will likely continue to have an effect on how TDR programs are used and applied.

From the standpoint of contractual relationships, attention must be focused on the subtleties of properly documenting and administering the transfer of development rights.

**2. Local Authority to Implement TDR Regulations**

The authority of local governmental agencies to adopt TDR regulations derives from a State's police power – that is, the power to regulate the use and development of land so as to protect and promote the public health, safety and welfare. In some jurisdictions, TDR-specific enabling statutes merely provide for the adoption of TDR ordinances as part of local governmental entities' broad land use or zoning authority. In other jurisdictions the authority to adopt TDR regulations has been delegated in the context of imposing specified procedural or substantive limitations on the use and application of TDR. In establishing a TDR program for Maui, it will be critically important to consider a potential TDR ordinance within the context of state and local enabling laws that currently allow for land use regulation.

**3. TDR Consistency with Zoning and Land Use Laws**

TDR regulations must be consistent with broader legislative and policy objectives. First and foremost, consistency with comprehensive plan and zoning laws is necessary for a TDR program to function. Additionally, TDR will likely trigger a need for additional environmental review due to increased receiving area densities and related considerations. This review may be on a case-by-case basis, or may be part of the initial design process of the TDR program.

**4. TDR's Role in the Property Rights Debate**

One objective in implementing a TDR program is to help insulate the local government from takings claims. Because TDR regulations provide mechanisms for property owners to restore value potentially eroded by the adoption of regulatory restrictions, they can serve as a procedural buffer to regulatory takings challenges (see *Penn Central Transportation vs. City of New York* in: *Pruetz 2006* for some of the legal justification for TDR, differentiating it from a taking). Transfer of development rights is an evolving issue in the courts, and this consideration should be taken into account when designing and adopting a TDR program for Maui.

**5. Taxation of TDR**

In considering what is the value of TDRs for taxation purposes, issues of income tax, real property tax and ad valorem tax have arisen repeatedly. Property owners in several instances have been held subject to capital gains liability on transfer of property interests, depending on a number of factors including a sending site owner's basis and the valuation of TDRs upon transfer.

In many jurisdictions the relationship between TDR and a State's real property tax system is not specifically addressed. Courts have arrived at differing opinions as to whether TDRs represent a transfer of real property. Taxation will be another critical item to explore when designing a TDR program for Maui.

**6. Documenting TDR Transfers**

An effective TDR program on Maui must incorporate an effective policy and system for legal documentation. In order to ensure that a true transfer of development rights from the sending area to the receiving site will actually occur, and that the sending site owner will not later be able to reassert development rights, the governmental entity administering the TDR program must require a form of covenant or easement to be recorded against the sending site reflecting the restrictions placed on it by the transfer. Parties to the transfer must also complete a reasonable due diligence inquiry, including a review of title and underlying zoning, and whether a site is eligible as a receiving area. Depending on the level of government agency review associated with the TDR transfer, parties to the transfer might need to execute some sort of purchase and sale agreement prior to agency approval of the transfer.

# MAUI ISLAND LAND USE ISSUES



## **5.1 Maui Island Land Use Issues**

### **5.1.1 Introduction**

Chris Hart and Partners and the Maui County Planning Department conducted a detailed scoping process to identify key land use issues to be addressed through a TDR program. The intent of the scoping was to:

- Identify priority environmental and land use issues to be addressed through the General Plan update;
- Review existing land use planning processes and regulatory controls that affect the timing, type, and location of growth;
- Review current and projected land use patterns;
- Identify key land parcels, or areas, of significant conservation interest;
- Identify key land parcels, or areas, suitable for greater density of rural and/or urban development; and
- Identify potential key partners including landowners and nonprofit land trusts.

### **5.1.2 Maui Island Plan Guiding Land Use Principles**

The Maui Island Plan identifies several guiding land use principles for environment and community development. These principles serve to shape decision making regarding environmental protection; resource preservation; and the character, form, and location of future urban and rural development. The guiding land use principles are framed in a way that recognizes the interconnectedness of the various elements of the natural, physical, and socio-economic environment so that strategies to achieve specific results have a mutually beneficial impact across the spectrum of General Plan objectives.

The Maui Island Plan's, Directed Growth Strategy, Guiding Principles, include:

- Protect Island Lifestyle and Culture;
- Promote Sustainable Land Use Planning and Livable Communities;
- Promote Open Space and Working Agricultural Landscapes;
- Protect Environmentally Sensitive Lands and Natural Wilderness Areas;
- Promote Equitable Development; and

- Plan for Adequate Public Facilities and Infrastructure.

### **5.1.3 Existing Planning Processes and Regulatory Controls**

Maui County's land use planning and regulatory program significantly influences the character, form, and location of urban and rural development. Prior to implementation of a TDR program, it is necessary to have a thorough understanding of existing land use controls to know how and where TDR can be most effectively used. Dominant State and County land use planning and regulatory controls include:

- State Land Use District Boundaries (HRS, Chapter 205);
- Maui County Zoning (MCC, Title 19);
- General Plan Urban and Rural Growth Areas (2.80B.030); and
- Community Plan Land Use Designations.

Each of these controls is summarized below:

#### **State Land Use District Boundaries (HRS, Chapter 205)**

All lands within the State are located within one of four State Land Use Districts. These districts include:

- Conservation;
- Agricultural;
- Rural; and
- Urban.

Approximately 42% of the County's land area is located in the Conservation District, 53% in the Agricultural District, 1% in the Rural District, and 5% in the Urban District.

Jurisdiction over urban designated lands is the responsibility of the Counties. The Counties also have the right to regulate lands within the Agricultural and Rural Districts provided County controls are at least as restrictive as State controls. Maui regulates lands in both the Rural and Agricultural Districts. Thus, the State's greatest regulatory oversight is over State Conservation District lands. Lands in the Conservation District are managed by the State Department of Land and Natural Resources. The Conservation District includes areas necessary for protecting critical watersheds, habitat, beach

reserves and other important environmental assets. All activities and land uses within the Conservation District require a Conservation District Use Permit. It is very rare for lands within the Conservation District to be redistricted to a less restrictive district.

State land use districting has helped contain urban development to urban designated areas. The process of redistricting lands from one district to another requires a State Land Use District Boundary Amendment and a public hearing before the State Land Use Commission or Maui Planning Commission for parcels less than 15 acres. This is a costly and time consuming process and has generally discouraged rampant reclassification of State Agricultural lands.

**Maui County Zoning (MCC, Title 19)**

Zoning is the primary land planning tool used on Maui to implement the desired pattern of future land uses as proposed in the nine (9) Community Plans.

Maui County zoning comprises several categories and sub-categories of land uses including commercial, hotel, residential, agricultural, rural, park, and industrial classifications. Maui County’s agricultural district zoning ordinance is the primary mechanism to protect agricultural lands. Agricultural lands may only be used for agricultural and accessory agricultural uses. Residences in the district are required to be “Farm Dwellings”, which must be supportive of agricultural operations on the property. The density of development allowed on agricultural lands is restricted by a “sliding scale”, which restricts the maximum number of agricultural lots that may be subdivided from a parcel. Table 1 illustrates the formula used to determine the maximum number of permitted lots within the Agricultural District pursuant to the sliding scale:

**Table #1: Agricultural District – Maximum Number of Permitted Lots**

Area of lot (acres)	Maximum number of permitted lots: 2-acre minimum lot size	Maximum number of permitted lots: 15-acre minimum lot size	Maximum number of permitted lots: 25-acre minimum lot size	Maximum number of permitted lots: 40-acre minimum lot size
At least 2, but less than 31	7			
At least 31 but less than 61	7, plus one additional lot for each 10 acres above 31 acres			
At least 61 but less than 92	10, plus one additional lot for each 15 acres above 61 acres	1		
92+	12, plus one additional lot for each 40 acres above 92 acres, not to exceed 14 lots	2, plus one additional lot for each 60 acres above 92 acres	1, plus one additional lot for each 100 acres above 92 acres	one for each 160 acres above 92 acres

Table 2 illustrates the number of lots that may be subdivided from parcels of varying sizes.

**Table #2: Maximum number of lots based on sliding scale**

Parcel Area In Acres	Minimum Lot Size of:				Total	Ave. Lot Size (acres)
	2-acres	15-acres	25-acres	40-acres		
14	7	0	0	0	7	2.0
25	7	0	0	0	7	3.6
100	12	2	1	0	15	6.6
200	14	3	2	0	19	10.5
600	14	10	6	3	33	18
1000	14	17	10	5	46	21.7

Lands within the Agricultural District meeting at least two of the following criteria are given a high priority for preservation:

1. Agricultural lands of Importance to the State of Hawaii (ALISH);
2. Lands not classified by the ALISH system whose agricultural land suitability nonetheless supports the production of agricultural commodities; and
3. Lands which have 75% or more of their boundaries contiguous to lands within the agricultural district.

The following are common criticisms of the agricultural zoning ordinance:

1. Too much density is allowed on smaller to mid-sized parcels;
2. Clustering of lots is not permitted;
3. Farm dwelling requirements are difficult to enforce; and
4. Provides only temporary protection of agricultural lands, since zoning may be changed at the discretion of elected officials.

**Urban Growth Areas (Bill 84, 2.80B.020)**

Bill 84, 2.80B.020, Section D.1.b, states that the General Plan shall delineate urban and rural growth areas for the island of Maui consistent with, and illustrative of, the general plan’s vision, principles, goals and policies. Delineation of future urban and rural development is a key component of the County’s managed and directed growth plan.

An urban growth boundary, or UGB, is a regional boundary, set in an attempt to control urbanization by designating the area inside the boundary for higher density urban

development and prohibiting urban development outside the boundary. On Maui, urban growth boundaries can be an effective tool for containing sprawl, protecting the character of the existing small towns, preserving prime agricultural lands, and focusing infrastructure investment to designated growth areas. The use of urban and rural growth boundaries can help to guide the designation of receiving areas, and provide further incentives for sending and receiving area landowners to utilize the TDR program.

### **Impact of Existing Planning and Regulatory Controls**

Maui County's system of land use controls provides considerable protection of agricultural lands. However, despite the application of urban and rural growth boundaries and agricultural zoning, prime urban fringe agricultural lands will continue to face considerable development pressure. Much of the island's prime urban fringe agricultural land in Central and West Maui has been purchased by speculators, and the prior agricultural uses have since been abandoned. Although agricultural land further removed from urban areas faces less development pressure, this land is threatened by the proliferation of agricultural subdivisions, which often have no relationship to agriculture. The construction of residential dwellings, under the pretext of "farm dwellings", has placed upward pressure on agricultural land values, making agriculture less attractive as an economic use.

### **Implications for TDR/PDR**

The combination of urban growth boundaries and agricultural zoning provides sufficiently strong protection of agricultural lands that many agricultural land owners will be economically motivated to participate in a TDR program.

Likewise, urban growth boundaries provide a significant opportunity to establish receiving areas. The expansion of these boundaries will incorporate lands that are presently zoned agriculture. The increased development potential associated with the transition from agriculture to urban provides significant potential capacity to absorb sending area credits.

A Maui Island TDR/PDR program can be designed to achieve a variety of conservation objectives. These objectives may range from preservation of urban fringe agricultural lands, agricultural lands more removed from development pressure, shoreline lands, or sensitive environmental and cultural sites.

Protecting urban fringe agricultural lands offers several key advantages. First, these lands comprise some of the most productive agricultural lands in the State of Hawaii. Second, the preservation of urban fringe agricultural lands is essential for controlling sprawl and providing open space between existing communities. Third, urban fringe agricultural lands are more accessible to urban consumers making it possible for consumers to have direct access to the farmers that grow their food. However, protecting these resources will be more costly than protecting lands further removed from

development pressure. Much of the County's urban fringe agricultural lands are owned by development companies who have factored into the value of their property the perceived appreciation that urbanization provides. Despite the application of urban growth boundaries, owners of these lands will require greater incentives to participate in a TDR program. Likewise, using TDR or PDR to permanently protect shoreline lands may require significantly greater incentives given the high value associated with shoreline development.

#### **5.1.4 Key Landowners**

Maui has a limited number of large landowners, presenting both potential benefits and challenges to the establishment of a TDR/PDR program. Major landowners with holdings that may be affected by a TDR program include:

- Alexander & Baldwin Inc. (A&B)

A&B is the largest landowner on Maui with over 68,000 acres of land holdings on Maui. According to the Company's website, A&B lands comprise the following:

- 459 acres of fully entitled urban designated lands;
- 52,278 acres of agricultural and pastoral lands; and
- 15,944 acres of conservation lands.

The vast majority of A&B's Maui properties are in sugar production under the management of Hawaiian Commercial & Sugar Company (HC&S), a subsidiary of A&B. A&B Properties, Inc., a subsidiary of A&B, is a land development and property management company. Its development activities encompass resort, residential, retail, office, and industrial projects. A&B owns considerable land holdings in Central Maui in and around Kahului.

- Maui Land & Pineapple Company

Maui Land & Pineapple (ML&P) owns approximately 28,600 acres of land on Maui, including the 1,650-acre Kapalua Resort community and approximately 6,000 acres of pineapple. ML&P also owns and manages the 8,661-acre Pu'u Kukui Watershed Preserve, the largest private nature preserve in the state of Hawai'i.

In addition, ML&P has three currently planned major projects:

- Pulelehua: 882-unit, 300-acre mixed-use village in West Maui;

- Kapalua Mauka: 925 acres and 690 single- and multi-family homes in West Maui; and
- A proposed master planned community in Haili'imaile.
- AMFAC

At its peak, AMFAC owned 60,000 acres of land and was a dominant sugar company in Hawaii. AMFAC has steadily been selling off its assets since 1989 and is now known as Kaanapali Land, LLC. Kaanapali Land owns 5,000 acres of land in Kaanapali and has four major projects in West Maui, including:

- Ka'anapali 2020: The Ka'anapali 2020 Master Plan is proposed to be implemented in phases over an approximately 20-30 year build-out period and will cover roughly 4,000 acres;
- Ka'anapali Coffee Farms: 336 acres upslope from Ka'anapali Resort;
- Pu'ukoli'i Mauka: 200 acre master planned community; and
- Waine'e: 200-acre development directly mauka of Lahaina Town.
- Several smaller individual developers, notably:
  - Peter Martin and Jim Riley (West Maui Land Company)

Most of the land along Honoapiilani Highway from the Pali tunnel to Lahaina town is split up among several different investor groups and companies, the common thread of which is Peter Martin and Jim Riley. West Maui Land Company, owned by Peter Martin and Jim Riley, manages the land but does not actually own any of it.

- Steve Kikuchi

Steve Kikuchi has assembled over 2,000 acres in Maui's central isthmus from Waikapu to Malaea, including the 260 acres designated as the Maalaea Mauka project district, where Kikuchi proposes to develop housing.

### **5.1.5 Sending Area Priorities**

The Maui Island Plan provides several guiding land use principles, objectives and policies that form the basis for defining sending area priorities, including:

**Directed Growth Strategy, Guiding Principles:**

- GP-SGS.3     Promote Open Space and Working Agricultural Landscapes.
  - DG-3.1.a     Preserve prime agricultural lands.
  - DG-3.2.b     Preserve lands of scenic and recreational value.
  - DG-3.3.c     Use open space to define urban communities.
  
- GP-DGS.4     Protect Environmentally Sensitive Lands and Natural Wilderness Areas.
  - DG.4.4.d     Protect undeveloped shoreline areas, particularly areas fronting sandy shoreline.

**Agricultural Lands, Objectives and Policies:**

- AL-1.1        Establishment of a stronger planning and regulatory program that provides greater protection of agricultural resource lands.
  - AL-1.1.a     Focus urban growth, to the extent practicable, away from Prime and Other Agricultural Resource Lands.
  
  - AL-1.1.d     Strengthen existing land use controls and develop new programs such as Transfer of Development Rights (TDR) and Purchase of Development Rights (PDR) to provide greater protection of Prime and Other Agricultural Resource Lands.

**Urban Areas, Objectives and Policies:**

- UA-1.1        Facilitate a more compact and efficient urban settlement pattern.
  - UA-1.1.e     Protect agricultural lands and open space abutting urban areas.
  
  - UA-1.1.k     Require the establishment of Transfer of Development Right receiving areas on lands rezoned from agriculture to urban use when such change in zonings support major urban expansion projects.

**Priority Sending Areas:**

**A. Urban Fringe Prime Agricultural Resource Lands**

Much of Maui’s prime agricultural lands are located at the fringe of existing urban communities. Protecting these resources is not only important for Maui agriculture, but also for shaping urban form by containing sprawl. Once in preservation, these lands can be dedicated to agricultural production and will serve as permanently protected open space buffers along major roadways and between communities.

Appropriate sending area sites should meet the following three (3) criteria:

1. Designated Prime or Other Agricultural Resource Lands pursuant to the Maui Island Plan;
2. Located within close proximity to existing urban areas; and
3. Has value as an open space resource by creating a separation or buffer between existing communities and protecting scenic views.

Table 3 identifies the ownership, parcels, and acreage of prime urban fringe agricultural lands in Central, South, North, and West Maui. Combined these lands comprise approximately 20,000 acres and have a current subdivision potential of approximately 1,039 agricultural lots.

**Table #3: Prime Urban Fringe Agricultural Resource Lands**

<i>Land Owners</i>	<i>TMK's</i>	<i>Acres</i>	<i>Permitted Ag Lots</i>
<b>CENTRAL MAUI</b>			
A&B Hawaii, Inc.	(2) 3-8-006:002	751.3	37
	(2) 3-8-005:001	780.3	38
	(2) 3-8-006:003	4,996.4	177
A&B Hawaii/Wailuku Agribusiness	(2) 3-6-002:003	1098.9	49
Hawaii Land and Farming Company	(2) 3-5-001:064	10.5	5
Wailuku Sugar Company	(2) 3-5-004:023	108.9	15
Wailuku Agribusiness	(2) 3-6-004:003	749.3	37
Towne Development of Hawaii	(2) 3-5-002:002	169.2	17
	(2) 3-5-002:003	43	8
Maui Tropical Plantation	(2) 3-6-004:006	61.3	11
Emmanuel Lutheran School	(2) 3-5-002:001	17.9	7
Other	Waihee	58.4	9
<b>TOTAL</b>		<b>8844.5</b>	<b>410</b>
<b>SOUTH MAUI</b>			
A&B Hawaii, Inc.	(2) 3-8-005:003	310	23
Maalaea Partners	(2) 3-6-001:018	257.3	31
<b>TOTAL</b>		<b>567.3</b>	<b>44</b>
<b>NORTH MAUI</b>			

<i>Land Owners</i>	<i>TMK's</i>	<i>Acres</i>	<i>Permitted Ag Lots</i>
A&B Hawaii, Inc.	(2) 3-8-001:007	1902.6	76
A&B Hawaii, Inc.	(2) 3-8-001:006	565.2	30
<b>TOTAL</b>		<b>2467.8</b>	<b>106</b>
<b>WEST MAUI</b>			
Kamehameha Schools	(2) 4-6-018:003	268.2	21
	(2) 4-6-018:003	40.1	7
	(2) 4-6-018:003	61.4	11
Kaanapali Land Mgmt Corp	(2) 4-6-016:004	196.1	19
	(2) 4-4-006:001	185	18
	(2) 4-4-006:001	255.6	21
	(2) 4-4-006:070	233.2	20
	(2) 4-4-002:002	444.8	27
	(2) 4-4-002:002	284.4	22
Kauaula Land Co. LLC	(2) 4-7-002:004	64.2	11
Makila Land Co. LLC.	(2) 4-7-001:026	54.4	9
KipaMartinGoodfellow	(2) 4-5-021:024	402.2	26
Maui Land & Pineapple Co.	(2) 4-3-001:031	867.8	40
	(2) 4-3-001:031	301.5	23
	(2) 4-3-001:031	126.6	15
	(2) 4-3-001:031	44.3	8
	(2) 4-3-001:031	47.8	8
	(2) 4-3-001:031	75.5	11
<b>TOTAL</b>		<b>3,953.1</b>	<b>317</b>
<b>UPCOUNTRY</b>			
A&B Hawaii, Inc.	Keokea Waiohuli	3960.5	143
Maalaea Partners	Pukalani	209.5	19
<b>TOTAL</b>		<b>4170</b>	<b>162</b>
<b>GRAND TOTAL</b>		<b>20,002</b>	<b>1,039</b>

**B. Other Prime Agricultural Resource Lands – Phase I**

Maui’s agricultural economy depends upon the long-term availability of prime agricultural resource lands. Since agriculture is highly dynamic, influenced by such variables as international macro-economic conditions, technology change, and climate change, it is difficult to predict how much agricultural land may be needed in the future. This study recommends a conservative approach, i.e. that it is the community’s responsibility to protect more, rather than less, agricultural land for future generations.

However, creating a sending area to capture all Prime Agricultural Resource Lands would create an oversupply of sending area TDR’s relative to receiving area demand, which could compromise the viability of the program. There are approximately 62,000 acres of Prime Agricultural Resource Lands that are identified in the *Agricultural Policy Paper*, (September 2007). Of these lands, approximately 20,000 acres are located at the fringe of urban development and were discussed previously. The remaining 42,000 acres are more removed from development pressure. A phased

approach to the protection of these resources should be pursued. Phase I would comprise Prime Agricultural Resource Lands that meet the following criteria:

1. Lands currently being used for diversified agriculture; and
2. Lands used for mono-crop agriculture or ranching and located along major roadways.

Within the Kula, Upcountry region, there are approximately 886 acres currently in diversified agricultural production and 258 acres that are projected to be in production. In Paia-Haiku, there are approximately .... acres of Phase I, Other Prime Agricultural Resource Lands that are either in production or have a history of production. Within East Maui, there are approximately ..... acres of Phase I, Other Prime Agricultural Resource Lands. Within Northwest Maui, there are approximately .... acres.

**C. Undeveloped Shoreline Lands**

Maui’s shoreline is among its primary attractions and is a major component of livability for Maui residents. However, with the projected growth of the island’s resident and defacto population it is necessary to protect undeveloped shoreline lands for future recreation needs. Many of the existing undeveloped shoreline parcels on Maui are privately owned and entitled for development. Many of these properties also have a history of public use for shoreline access and recreation.

Designating key shoreline parcels as sending area sites can protect coastal habitat, preserve shoreline access, and provide necessary land area for future recreation needs. The majority of shoreline lands recommended for preservation are identified in the following three reports:

1. *Pali to Puamana Master Plan* (February, 2005) prepared for the County of Maui by R.M. Towill Corporation;
2. *Shoreline Access Inventory Update Report* (March, 2005) prepared for the County of Maui by Oceanit; and
3. *Northshore Heritage Report* (...), prepared by the Maui Coastal Land Trust.

Table 5 identifies the ownership, parcels, acreage, and entitlements of shoreline lands identified in the above referenced documents. Combined these lands comprise approximately ... acres and have a current subdivision potential of approximately .... agricultural lots.

**Table #5: Undeveloped Shoreline Lands – Sending Areas**

<i>Landowner(s)</i>	<i>TMK's</i>	<i>Community</i>	<i>Zoning</i>	<i>Acres</i>	<i>Permitt</i>
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		<i>Plan</i>		<i>ed Lots</i>	
Makila Land Co. LLC	Laniupoko	AG	AG	128.6	26
Olowalu Elua Assoc. LLC	<i>Olowalu</i>	AG	AG	32.1	14
County of Maui	<i>Ukumehame</i>	AG	AG	79.2	26

*Sending Area Maps*

**5.1.6 Receiving Area Priorities**

Just as the thoughtful choice of sending areas is fundamental to creating the most appropriate system of protected lands, identifying appropriate receiving areas is necessary to maintain a market for development rights.

Receiving area sites should be designated through the General and Community Plan update process. Receiving areas will comprise major urban expansion projects and infill and redevelopment of existing underutilized urban areas. The vast majority of receiving area TDR credits will be created from lands that will be rezoned from Agriculture to Urban to accommodate future development needs.

Table 6, and the attached Receiving Area Maps in Appendix 2, identifies proposed receiving area sites in Central, South, North, and West Maui. The proposed receiving areas comprise approximately 2,975 acres, with a planned capacity to accommodate approximately 15,266 residential units and 3,237,737 square feet of commercial and industrial space.

**Table #6: Proposed Receiving Area Sites in Central, South, North, and West Maui**

<i>Land Owners</i>	<i>Project</i>	<i>TMK's</i>	<i>Acres</i>	<i>Permitted Ag Lots</i>	<i>Planned Residential</i>	<i>Planned Commercial</i>
<b>CENTRAL MAUI</b>						
	Waiale		433.3		3563	754508
	Waikapu		44.1		341	72144
	Waihee		36.1		179	37848
<b>TOTAL</b>			<b>513.5</b>		<b>4,083</b>	<b>864,500</b>
<b>SOUTH MAUI</b>						
	Maalaea		20.6		174	32610
	Waikapu		1003		4262	800651
<b>TOTAL</b>			<b>1,023.6</b>		<b>4,436</b>	<b>833,261</b>
<b>WEST MAUI</b>						
Maui Land & Pineapple	Pulelehua		310		1149	236307
Kaanapali Land Development	Wainee		358.8		846	164451
Kaanapali Land Development	Kaanapali 2020 PD3		289.9		1200	246708
Kamehameha Schools	Kuia		197		867	178205
<b>TOTAL</b>			<b>1,155.7</b>		<b>4,062</b>	<b>825,671</b>
<b>NORTH MAUI</b>						

<i>Land Owners</i>	<i>Project</i>	<i>TMK's</i>	<i>Acres</i>	<i>Permitted Ag Lots</i>	<i>Planned Residential</i>	<i>Planned Commercial</i>
	Paia		30.1		350	76269
<b>TOTAL</b>					<b>350</b>	<b>76269</b>
	Haliimaile		164.8		1859	379227
	Pukalani		41.5		165	195000
	Pukalani		75.6		311	63419
<b>TOTAL</b>			<b>281.9</b>		<b>2,335</b>	<b>637,646</b>
<b>GRAND TOTAL</b>			<b>2,975</b>		<b>15,266</b>	<b>3,237,347</b>

### **5.1.7 Potential Partners**

Partnerships can be an important tool for meeting open space and land preservation needs. In Maui County there are opportunities for cooperation with non-profit land trusts that can enhance the County’s ability to meet the goals of a TDR program in areas such as acquisition, stewardship and maintenance, infrastructure development, and management.

The County should take the primary role in the preservation and management of critical resource lands and the provision of regionally important parks, open space and conservation programs. However, in a situation where sensitive lands are plentiful and financial resources are scarce, it can be advantageous to form partnerships that involve the sharing of acquisition, development, maintenance or operations costs; facilities; lands; or volunteer resources. In such instances where land and other resources can be provided by outside agencies, the County may only need to serve as a coordinator or facilitator of local interests.

### **Maui Coastal Land Trust**

Loss of views and shoreline access routes, beach loss, reef damage, and coastal degradation are all critical issues for Maui’s future. Maui's coastlines are one of its principal attractions and a key to continued prosperity, yet the County government’s resources can only go so far toward purchasing coastal land for public use. Citizens concerned about the future of Maui’s coastal lands came together to resolve this dilemma by forming the Maui Coastal Land Trust (MCLT) in late 2000. The mission of the MCLT is to acquire, preserve, and protect coastal lands on the islands of Maui County for the integrity of the natural environment and the enjoyment of current and future generations.

Maui Coastal Land Trust has already successfully collaborated with the County in at least one instance. Maui County provided some of the funds to aid MCLT in the acquisition of the 277-acre Waihe'e Dairy property between Waihe'e Beach Park and Waihe'e Point. The Waihee Coastal Preserve site, once slated for development as a destination golf resort, is now forever protected for recreation, archaeological preservation and education,

as well as habitat for native plants and animals. The public will always have access to the reserve's 7000-plus feet of shoreline. Maui Coastal Land Trust holds title to the properties and oversees management of the land for perpetual stewardship. Maui County and the State of Hawaii hold conservation easements on the properties to assure perpetual protection of the land. The State and County thereby have an ownership interest but no management responsibility.

Maui Coastal Land Trust:  
2371 Vineyard St. (Endo Hall)  
Wailuku, HI 96793  
Telephone: (808) 244-5263

### **Trust for Public Land**

The Trust for Public Land (TPL) is a national, non-profit land conservation organization founded in 1972 that “conserves land for people to enjoy as parks, community gardens, historic sites, rural lands, and other natural places, ensuring livable communities for generations to come.” TPL has conservation projects currently underway on O'ahu, Kauai, Maui and the Big Island, and supports conservation efforts throughout the State of Hawaii in a number of ways, including:

- Interim site protection;
- Assistance with real estate transactions and financing;
- Information and technical support on public finance campaigns;
- Independent negotiations with landowners;
- Bridge financing through revolving funds, loans, and lease-purchase agreements;
- Planning assistance and help identifying opportunities for parks and land protection;
- Public education campaigns to mobilize support for parks and open space;
- Swift action to take desirable land off the market until funds can be found for public purchase;
- Working with community groups to offer technical assistance; and
- Partnering with, and providing ongoing support to local land trusts.

The primary focus of TPL is to preserve land for people – for public access and recreation. TPL typically does not administer the lands it helps to purchase, but rather serves as a facilitator for land conservation acquisitions. They provide micro-grants, seed money and other types of financial capital assistance to smaller local trusts. TPL has also worked extensively with state parks, county parks and National parks across the country to help acquire land, which is then deeded over and placed under the administration of the respective parks agency. As a general rule, TPL defers to local land trusts and steps in only when capital is not available locally for land acquisition.

## **MAUI ISLAND TDR PROGRAM: SUMMARY DESCRIPTION**



## **6.1 Maui Island TDR Program**

### **6.1.1 Introduction**

A primary objective of the General Plan 2030 update is to develop a directed growth strategy to accommodate population growth in a manner that is fiscally prudent, safeguards the island's natural and cultural resources, enhances the built environment, and preserves land use opportunities for future generations. A key feature of the directed growth strategy is the establishment of a TDR and PDR program for Maui Island. TDR's and PDR's have been in use for many years nationally to preserve agricultural lands, open space, and sensitive environmental resources. The proposed TDR / PDR program is designed to operate within the context of existing regulatory controls, and the General Plan's land use guidance system, which includes the establishment of urban and rural growth boundaries.

### **6.1.2 Purpose**

The General Plan sets forth detailed policies for resource protection, environmental stewardship, and community growth and development. A key implementing action of the General Plan is to establish a TDR/PDR program to help achieve the Plan's conservation and land use objectives. In order to accomplish the Plan's directive, the purpose of the TDR/PDR program is two-fold:

1. Create strong landowner incentives to preserve important resource lands pursuant to the General Plan's conservation and land use objectives; and
2. Provide strong incentives to develop in designated areas that are suitable for increased density.

In this context, the program will serve as a voluntary means whereby landowners who choose to participate in land preservation will share in the economic benefits created through development of planned growth areas. In this way, the program will serve to distribute the windfalls and wipeouts associated with development and preservation.

### **6.1.3 Objectives**

The program is designed to accomplish the following three General Plan conservation objectives:

**1. *Preserve prime agricultural lands that function as greenways and open space buffers.***

Much of Maui Island's most productive and highly rated agricultural lands are located within the Central Maui isthmus. This area is also experiencing the greatest pressure for urbanization. In particular, lands located along Honoapiilani Highway, between Waihee and Maalaea, face significant development pressure because of their proximity to existing urban centers and major roadways. In addition to being highly productive for agriculture, these lands provide important views along the highway, and serve to protect the character of our existing towns by containing sprawl. The preservation of these prime urban-fringe agricultural lands is important for both the long-term viability of the agricultural industry and protecting open space and community character. A key objective of the TDR program is therefore to preserve these lands for their agricultural and open space importance.

**2. *Preserve prime agricultural resource lands.***

Maui agriculture is important for its contribution to the Maui economy in the form of jobs and economic diversification. In 2005, Maui agriculture created 1,600 wage and salary jobs. In the future, this industry will continue to supply local, national, and international markets with products that may range from organically grown fruits and vegetables, to sugar and pineapple, and energy crops.

Due to the critical importance of agriculture to Maui's economy and quality of life, it is necessary that its primary resources - land and water - be preserved for present and future generations. For the purpose of establishing a TDR program, Maui's most productive agricultural lands have been identified and mapped. These mapped lands are referred to as *Prime Agricultural Resource Lands*. A primary objective of the program is to preserve as much of these lands as possible.

**3. *Preserve shoreline lands.***

Maui's economy and quality of life is directly tied to the quality of its shoreline resources. Maui residents depend upon the shoreline for recreation, sustenance, peace and relaxation. The majority of Maui Island's jobs are also directly or indirectly tied to the shoreline. Maui's primary industry - tourism - relies heavily upon the quality of its shoreline resources to attract visitors. If Maui is to remain a competitive tourist destination, Maui's shoreline and beaches must be preserved.

However, with Maui's growing population of residents and visitors there is an increasing demand to develop along the shoreline. Many privately owned undeveloped shoreline parcels, which have historically been used by the public for recreational and cultural activities, are now being developed. Development of

these parcels forecloses the opportunity to utilize these coastal lands for future recreation. Population growth has also resulted in greater use of existing beaches. During heavy use periods, such as weekends and holidays, parking can be difficult to find and the quality of the beach experience is compromised by the perception of crowding. In planning for population growth, it is necessary that the existing inventory of publicly owned shoreline lands be expanded for both passive and active recreation. It is therefore a key objective of the TDR program to preserve shoreline lands for future ocean recreation needs.

#### **6.1.4 Administration**

It is recommended that the TDR program be administered jointly by the Department of Planning and a TDR Bank.

##### **Department of Planning:**

The Department of Planning would be primarily responsible for planning related activities associated with the program, including:

- Proposing sending and receiving area boundaries;
- Periodically adjusting sending and receiving area boundaries to insure equilibrium between supply and demand for TDR Credits;
- Periodically adjusting TDR Allocation Rates and Transfer Ratios to insure equilibrium between supply and demand for TDR Credits;
- Insuring that receiving area projects using TDR Credits conform to Maui Island Plan goals, objectives, and policies; and
- Promoting the TDR program to landowners and interested community organization.

The establishment of sending and receiving area boundaries, amendments to those boundaries, and changes to the TDR Allocation Rate and Transfer Ratio may occur during the regular updates of the General Plan or Community Plans, or during bi-annual updates to these plans pursuant to Chapter 2.80B of the Maui County Code.

##### **TDR Bank:**

A TDR Bank can be an important component of a successful program. The Bank can handle day-to-day administrative tasks and serve as a means to bring buyers and sellers together. A Bank may also serve as a clearinghouse and revolving fund that keeps money available for future development right purchases. It is recommended that a TDR Bank be

established to administer the day-to-day activities of the program, facilitate transfers between sending and receiving area landowners, and to buy and sell TDR's.

Specific activities that a TDR Bank would be responsible for would include, but not be limited to:

- Issuing TDR Credit Certificates;
- Certifying that sending area landowners receive the proper number of TDR Credits based on the applicable TDR Allocation Rate;
- Maintaining an up-to-date and accurate record of all TDR transactions;
- Maintaining a GIS database of sending and receiving area properties;
- Providing program information and assistance to the public;
- Facilitating private TDR negotiations/transactions by providing lists and maps identifying sending and receiving area landowners, developers, and TDR brokers;
- Accepting Density Transfer Charges from developers. A Density Transfer Charge is a cash-in-lieu payment by receiving area developers in lieu of purchasing development rights directly from sending area landowners. The funds collected from these charges would provide funding for the Bank to purchase TDR Credits; and
- Buying and selling TDR's in accordance with the program's objectives.

The TDR Bank may charge fees for processing TDR transactions. The Bank may also charge fees for issuing TDR certificates and accepting Density Transfer Charges.

### **6.1.5 Administration without TDR Bank**

Without a TDR Bank, the Planning Department will assume greater administrative responsibilities and the program will need to be restricted to private party transactions only. Under this scenario, in addition to the responsibilities previously listed, the Department would be responsible for:

- Issuing TDR Credit Certificates;
- Certifying that sending area landowners receive the proper number of TDR Credits based on the applicable TDR Allocation Rate;
- Maintaining an up-to-date and accurate record of all TDR transactions;

- Maintaining a GIS database of sending and receiving area properties;
- Providing program information and assistance to the public; and
- Facilitating private TDR negotiations/transactions by providing lists and maps identifying sending and receiving area landowners, developers, and TDR brokers.

### **6.1.6 Sending Areas**

Sending area sites will be designated through the General Plan update process and must therefore conform to the Maui Island Plan's conservation and land use objectives. Because each objective is unique, the TDR Allocation Rate differs by sending area to compensate for the vastly different land values associated with each category. Each of the program's sending areas is summarized below:

#### **1. Urban Fringe Prime Agricultural Preservation Area**

**Description:** This sending area consists of Prime Agricultural Resource Lands that are located within close proximity to existing and/or proposed urban areas. Protecting these resources is not only important for Maui agriculture, but also for shaping urban form by containing sprawl. Once in preservation, these lands can be dedicated to agricultural production and will serve as permanently protected open space buffers along major roadways and between communities. The Maui Island Plan identifies approximately 20,000 acres within the Urban Fringe Prime Agricultural Preservation Area.

**Criteria for Designation:**

1. Designated Prime or Other Agricultural Resource Lands pursuant to the Maui Island Plan;
2. Located within close proximity to existing urban areas; and
3. Has value as an open space resource by creating a separation or buffer between existing communities and protecting scenic views.

**TDR Allocation Rate:** The TDR Allocation rate for the Urban Fringe Prime Agricultural Protection Area is calculated as follows:

- ❖ *The number of permitted lots by zoning multiplied by 1.75; or 1 lot per 5 acres; whichever is greater.*
- ❖ *Any existing and/or proposed permanent dwelling units and/or buildable lots on the property shall be subtracted from the total number of TDR credits*

*allocated to the property at the rate of the number of existing and/or proposed buildable lots on the property multiplied by 1.75; or the average permitted lot size multiplied by the number of existing and/or proposed permanent dwellings and/or buildable lots on the property subtracted from the total acreage of the property divided by 5; whichever is greater.*

**Example 1:** An agricultural landowner owns various properties comprising 1,650 acres within the Urban Fringe Prime Agricultural Preservation Area. This property owner desires to participate in the TDR program by severing the development potential on the property in exchange for TDR Credits, which could then be sold to receiving area developers. There are no existing permanent dwelling units on the property and no further units or buildable lots are proposed. The following table identifies the number of TDR credits allocated to these properties:

Parcel	Lot Size (acres)	Permitted Lots (MCC Chapter 19.30A)	TDR Credits
A	50	8	14 (8*1.75=14)
B	200	19	40 (200/5=40)
C	400	26	80 (400/5=80)
D	1,000	46	200 (1,000/5=200)
TOTAL	1,650	99	334

The total number of TDR credits allocated to the four parcels, comprising 1,650 acres, is 334 TDR credits.

**Example 2:** A developer recently purchased an agricultural zoned property comprising 220 acres located within the Urban Fringe Prime Agricultural Preservation Area. The property currently has one existing permanent dwelling unit on the property that the owner desires to live in. The property owner desires to subdivide the property into nine (9) 5-acre lots and one (1) remnant 175-acre lot. The developer will retain the existing dwelling, which is situated on one of the five acre lots, and will sell the remaining lots. The developer would like to sever the remaining development potential in exchange for TDR credits that could be sold to a receiving area developer. The following steps are required to determine the number of TDR credits allocated to these properties:

**Step 1:** Determine total number of permitted lots pursuant to MCC Chapter 19.30A

Parcel	Lot Size (acres)	Permitted Lots (MCC Chapter 19.30A)
A	220	20

**Step 2:** Determine total number of TDR credits allocated to the property if the property were not to be further subdivided.

Parcel	Lot Size (acres)	Permitted Lots (MCC Chapter 19.30A)	TDR Credits
A	220	20	44 (220/5=44)

**Step 3:** Determine the total number of TDR credits associated with the proposed lots that must be subtracted from the total allocation.

Parcel	Lot Size (acres)	Proposed Buildable Lots	TDR Credits Subtracted
A	220	10	22  Take the larger of the two:  (10*1.75) = 18 Where: 10 = proposed buildable lots 1.75 = Type 1 TDR Transfer Ratio  <b>Or</b>  [220 - (220/20) * 10]/5 = 22 Where: 220 = Lot size 20 = permitted lots 10 = proposed buildable lots 5 = Type 2 TDR Transfer Ratio

**Step 4:** Subtract total number of TDR credits used from subdivision (Step 3) from total TDR credits allocated to property (Step 2).

$$\begin{array}{r}
 1. \quad 44 \\
 \quad - 22 \\
 \hline
 \quad 22
 \end{array}$$

**Answer:** The total number of TDR credits allocated to the property after subdivision is 22.

**2. Other Prime Agricultural Preservation Area – Phase I**

**Description:** The Other Prime Agricultural Land Preservation Area comprises Prime Agricultural Resource Lands not located within the Urban Fringe Prime Agricultural Protection Area. Other Prime Agricultural Resource Lands are vital to the agricultural economy, but may not be as immediately threatened by urbanization. The protection of these lands will need to occur in phases. Phase I comprises Prime Agricultural Resource Lands that meet the following criteria:

**Criteria for Designation:**

1. Not located within the Urban Fringe Prime Agricultural Protection Area;
2. Currently used to produce diversified crops; and/or
3. Currently used for sugar, pineapple, or ranching and located along a major State or County roadway.

**TDR Allocation Rate:** The TDR Allocation rate for the Other Prime Agricultural Resource Lands Preservation Area – Phase I is calculated as follows:

- ❖ *The number of permitted lots by zoning multiplied by 1.50r.*
- ❖ *Any existing and/or proposed permanent dwelling units and/or buildable lots on the property shall be subtracted from the total number of TDR credits allocated to the property at the rate of the number of existing and/or proposed buildable lots and/or dwelling units on the property multiplied by 1.50.*

**Example 1:** An agricultural landowner owns a 150 acre parcel within the Other Prime Agricultural Resource Lands Preservation Area – Phase I. The property owner desires to participate in the TDR program by severing the development potential on the property in exchange for TDR Credits, which could then be sold to receiving area developers. There is one (1) existing permanent dwelling units on the property but no additional buildable lots are proposed. The following table identifies the number of TDR credits allocated to these properties:

**Step 1:** Determine total number of permitted lots pursuant to MCC Chapter 19.30A

Parcel	Lot Size (acres)	Permitted Lots (MCC Chapter 19.30A)
A	150	16

**Step 2:** Determine total number of TDR credits allocated to the property if the property were not to be further subdivided.

Parcel	Lot Size (acres)	Permitted Lots (MCC Chapter 19.30A)	TDR Credits
A	150	16	24

**Step 3:** Determine the total number of TDR credits associated with the existing dwelling that must be subtracted from the total allocation.

Parcel	Lot Size (acres)	Existing Dwelling (s)	TDR Credits Subtracted
A	150	1	1.50

			(1*1.50) = 1.50 Where: 1 = Existing Dwelling 1.50 = Type 1 TDR Transfer Ratio
--	--	--	--

**Step 4:** Subtract total number of TDR credits used the existing dwelling (Step 3) from total TDR credits allocated to property (Step 2).

$$\begin{array}{r}
 1. \quad 24 \\
 \quad -1.5 \\
 \hline
 \quad 22.5
 \end{array}$$

**Answer:** The total number of TDR credits allocated to the property after subdivision is **22.5**.

**3. Shoreline Lands Preservation Area**

**Description:** This sending area is comprised of shoreline lands that provide the opportunity for future recreation or shoreline access. It may also comprise shoreline lands that when left undeveloped protect important scenic resources.

The majority of shoreline lands in this preservation area are identified in the following three reports:

1. *Pali to Puamana Master Plan* (February, 2005) prepared for the County of Maui by R.M. Towill Corporation;
2. *Shoreline Access Inventory Update Report* (March, 2005) prepared for the County of Maui by Oceanit; and
3. *Northshore Heritage Report (2006)*, prepared by the Maui Coastal Land Trust.

Because of the high cost required to acquire shoreline properties, it is encouraged that landowners cluster all or a portion of their development potential. The value of the remnant shoreline parcel could then be transferred to Receiving Area Land Owners in the form of TDR credits and the County could assume ownership of the property.

***Criteria for Designation:***

1. Shoreline lands that provide the opportunity for one or more of the following:
  - a) shoreline access, b) passive or active recreation, c) preservation of important coastal views from public roadways;
2. Shoreline lands that provide important cultural or historic resources; or

3. Shoreline lands that contain important ecological resources such as wetlands and endangered species.

**TDR Allocation Rate:** The TDR Allocation rate for the Shoreline Lands Preservation Area is calculated as follows:

- ❖ *Valuation of property based on current permitted development potential divided by the current appraised value of Agricultural TDR credits plus 15%.*
- ❖ *If a current appraised value of Agricultural TDR credits cannot be reasonably obtained, then the base value of the Agricultural TDR shall be \$50,000.00. This value shall be adjusted annually at the rate of increase of median home prices on Maui.*

**Example:** An owner of a 30-acre shoreline property zoned for agricultural use desires to sever all the development rights and transfer ownership of the property in exchange for TDR credits that could be sold to a receiving area developer. The permitted number of lots on the property is seven (7) pursuant to MCC Chapter 19.30A. The following table identifies the number of TDR credits allocated to this property:

Parcel	Lot Size (acres)	Hypothetical Appraised Value of Sending Area Property	Hypothetical Appraised Value of Ag TDR Credits	TDR Credits
A	30	\$3,950,000	\$50,000	91 Credits [(3950000/50000) * 1.15]

**Example:** An owner of a 30-acre shoreline property zoned for agricultural use desires to cluster the permitted density on the property onto 2-acre agricultural lots and transfer ownership of the remnant parcel in exchange for TDR credits that could be sold to a receiving area developer. The permitted number of lots on the property is seven (7) pursuant to MCC Chapter 19.30A. The remnant parcel to be transferred to the County, or Maui Coastal Land Trust, is 16 acres. No additional dwelling units are permitted on the remnant parcel.

Parcel	Remnant Lot Size (acres)	Hypothetical Appraised Value of Sending Area Property	Hypothetical Appraised Value of Ag TDR Credits	TDR Credits
A	16	\$450,000	\$50,000	10 Credits [(3950000/50000) * 1.15]

### **6.1.7 Receiving Areas**

Receiving area sites are designated through the General and Community Plan update process. Receiving areas comprise major urban expansion projects and infill and redevelopment areas as depicted on the Maui Island Plan's Land Use Policy Maps. The Receiving Areas designated in the Maui Island Plan comprise approximately 2,975 acres of land in Central, West, North, and South Maui with roughly 15,266 residential units and 3,237,737 square feet of commercial and industrial space planned to 2030. Receiving area landowners are not obligated to build at urban densities and may choose to retain the land in agriculture. However, if additional density is desired pursuant to the Maui Island Plan's goals, policies, and objectives, then the acquisition of TDR credits from sending area landowners is required to implement the development.

***Criteria for designation:***

1. County zoned agriculture; and
2. Identified in the Maui Island Plan as a Planned Growth Area or Urban Infill / Redevelopment site.

***Density allocation – Planned Growth Area:*** Thirty (30) percent of the total residential units and fifty (50) percent of the total commercial units in the development must be acquired through acquisition of TDR credits from designated sending areas.

- ❖ For commercial space, one thousand (1000) square feet is equivalent to one commercial unit.

***Density allocation – Urban Infill / Redevelopment Area:*** Twenty (20) percent density bonus for residential and commercial development.

### ***Balancing TDR Demand and Supply***

It is the programs goal to maintain a balance, or equilibrium, between the supply and demand for TDR's. Overtime, it may be necessary to adjust the size of sending and receiving areas and/or adjust the TDR allocation rate in order to maintain a proper equilibrium. Since the build-out of receiving areas will occur over a period of 20-years or more, sending area supply should be sufficient to accommodate short-to medium term demand. In addition, due to the concentrated ownership of land on Maui there are relatively few Sending and Receiving Area landowners, and most large landowners own considerable tracts of land in both sending and receiving areas. Thus, it is likely that numerous TDR transfers will occur between a single landowner.

Table 7 identifies the proposed supply and demand for TDR’s based on the proposed Sending Area Type, Sending and Receiving Area boundaries, and TDR allocation rates.

**Table #7: Sending Area Supply versus Receiving Area Demand**

<b>TDR SUPPLY – URBAN FRINGE PRIME AGRICULTURAL PROTECTION AREA</b>						
Acres	Permitted Ag Lots	Acres Preserved per TDR	<i>Total TDR Supply</i>			
20,002	1,039	9.8	<b>4,074</b>			
<b>TDR DEMAND – RECEIVING ZONES</b>						
Acres	Permitted Ag Lots	Residential Units	Required Res. TDR’s	Commercial Sq. Ft.	Required Comm. TDR’s	<i>Total CDR Demand</i>
2,975		15,266	4,580	3,237,347	1,619	<b>6,198</b>

**Program Procedures**

**1. Transfer process.**

- **Private Party Transaction.** Sending area landowner and receiving area landowner negotiate an agreement whereby developer agrees to purchase sending landowners TDR’s. Formal processing and recordation of the agreement occurs at the TDR Bank.

In some cases transactions will occur between a single sending and receiving area property owner. Formal processing and recordation of these transactions will also occur at the TDR Bank.

- **Request for TDR Certificates.** Sending area landowners may separate development rights from their property in exchange for TDR Certificates. These TDR Certificates may then be sold to receiving area developers. Formal processing and recordation of TDR Certificates will occur at the TDR Bank.
- **Request for Density Transfer Charge.** Receiving area landowners may pay cash-in-lieu to the TDR Bank rather than negotiating directly with sending area landowners to buy TDR credits. The cash-in-lieu fee paid by sending area landowners will be based upon the appraised value of Agricultural TDR Credits. If a current appraised value of Agricultural TDR credits cannot be reasonably established, then the base value of the Agricultural TDR credits will be \$50,000.00. This value shall be adjusted annually at the rate of increase of median home prices on Maui.

**2. Application Requirements**

A sending area landowner must apply to the TDR Bank to initiate the transfer process. The applicant completes an application form that includes

documentation of the sending area property. The TDR Bank then determines the number of TDR credits that the property is eligible to receive. The sending area property owner then records an easement severing the property's development rights. Once the easement has been recorded, the TDR Bank will issue the TDR Credits.

Receiving area developers must redeem the TDR credits with the TDR Bank prior to obtaining building permits for additional density. TDR Credits may be purchased and redeemed for each phase of a development. At the beginning of the application process, the use and number of TDR's are indicated in the development applications. Development applications must be submitted to the Planning Department to show conformance with receiving area policies. Prior to issuance of building permits, the required number of TDR credits must be redeemed through the TDR Bank.

General submittal requirements necessary to complete a transfer through the TDR Bank include:

- Application Form;
- Documents which identify the owner of the subject parcel of land;
- Legal metes and bounds description of the subject property;
- Property metes and bounds survey;
- Title Report and 20-year report on liens and judgements;
- Copy of proposed deed restriction;
- Copy of recorded deed restriction; and
- Filing Fee.

#### **6.1.9 Easement Provisions**

- Grantee is the Maui Coastal Land Trust, County of Maui, Department of Parks and Recreation, or other non-profit land trust.
- Must provide access for easement monitoring;
- No public access and grantor retains all rights of access and use of the land;
- All agricultural uses are permitted pursuant to MCC Section 19.30A, except additional dwelling units.

**Figure 1: Matrix of Common Attributes across TDR Programs**

Program	Urban Service / Utility Incentives	Expedited Review Process	TDR Bank	Farm or Forest Land	Affordable Housing	Historic or Civic Landmarks	Urban Open Space	Planned Community	Form-based Code	Variance for Commercial or Mixed-Use in Non-Commercial Zoning	Mandatory/Voluntary Program
Chattahoochee Hill Country, GA	Yes	No	Yes	Yes	Yes	No	No	Yes	Yes*	Yes	Voluntary
Chesterfield Township, NJ	Yes	No	Yes	Yes	No	No	No	Yes	Yes	No**	Mandatory
Montgomery County, MD	Yes	No	No	Yes	No	No	No	No	No	Yes	Mandatory
Pinelands, NJ	Yes	No	Yes	Yes	No	No	No	No	Yes	Yes	Mandatory
St. Lucie County, FL	Yes	Yes	No	Yes	No	No	No	Yes†	Yes		Voluntary
Seattle, WA	No	No	Yes	Yes††	Yes	Yes	Yes	No	No	Yes	Voluntary

\* The Chattahoochee Hill Country TDR program has a flexible, quasi-form-based zoning code for the village portion of its program.

\*\* The Chesterfield Township TDR program created mixed-use zones that incorporate residential and commercial uses at the time of the program's creation, precluding any need to

† St Lucie County TDR program is designed to help enable growth in development of planned, mixed-use village communities, but its TDR program is not exclusive to that type of development.

†† Seattle's TDR program has incorporated individual pilot projects in partnership with King County which transfer development rights from rural lands to increase urban density. Generally, the program only transfers density within downtown Seattle.

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