

**USING
DEVELOPMENT
RIGHTS**



AS A



**TOOL FOR
CONSERVATION**

Maria Trabka,
Executive Director
Saratoga P.L.A.N.
112 Spring Street, Room 202
Saratoga Springs, NY 12866
(518) 587-5554
www.saratogaplan.org



Using Development Rights as a Tool for Conservation

Conservation values of land, whether agricultural, historic, scenic or environmental, can be protected in a variety of ways. This fact sheet will describe ways that land with conservation value can be protected using development rights as a tool.



To protect land, development rights can be:

- a. donated,
- b. sold,
- c. bargain sold, which is a combined sale and donation, or
- d. transferred to another property, if the local community has established a system for transferring development rights between properties.

Development rights are a particularly useful tool for conserving land when a landowner wishes to protect their land but wants to continue owning, using, and managing it. When development rights are donated, sold, bargain sold, or transferred from a property, a conservation easement is placed on that property that prevents or limits development from taking place there in the future.

Conservation Easements

A conservation easement is a voluntary, legally binding, and perpetual agreement between a private landowner and a municipal agency or qualified land trust like Saratoga P.L.A.N. It gets recorded in the county clerk's office and remains a part of the title to the property like a deed, even when the property ownership changes. The conservation easement will specify the conservation values of the property that are being protected and the restrictions and limits to development, management, or use of the land that are put in place to protect those conservation values. The land trust or municipality holds the conservation interest and accepts the responsibility to see that its terms are upheld over time by current and subsequent landowners. The development rights are extinguished, allowing no one to re-use them. Since conservation easements are placed on properties when their development rights are conveyed, and development

rights are extinguished when conservation easements are placed on properties, the two terms are often used interchangeably.

The landowner retains the rights to sell, transfer and use the property, as long as the use is consistent with the conservation easement and protects the conservation values of the land. Tax incentives are offered for lands protected by conservation easements because conservation values such as water and air quality, climate moderation, food and timber production, wildlife habitat, and scenic views benefit the public. Public access to lands with conservation easements is not required but can be accommodated, if the owner wishes.

Each conservation easement is tailored for the landowner, the property, and the land trust or municipality accepting responsibility to enforce its terms. Conservation easements generally allow for current residential and commercial uses or future development within specified areas of the property.



Agricultural conservation easements generally permit adequate development of farm-related structures, typical farming practices, wood harvests, and hunting, horseback riding, fishing, and other recreational uses.

If natural resources such as native plants or animals and their habitats are the conservation values being protected by a conservation easement, then the terms of an easement will allow the types of management that might be needed such as streamside buffers, invasive species control or prescribed burning. Mining is prohibited by conservation easements.

A "preservation easement" protects a significant historic, archaeological, or cultural resource. Historic preservation easements can be used to protect historic structures, an historic landscape, a battlefield, or archaeological site.

Donation of Development Rights

Landowners can donate development rights on all or some of their property in order to ensure that, in the future, their land is never developed or only developed to the extent they specify. Easements can also be donated as a bequest or by heirs receiving the land through someone's will.



A qualified appraiser determines the value of the donation of development rights by comparing the "highest and best use" from recent sales of similar properties with and without development rights removed. The value of the donation can be claimed as a charitable deduction on the donor's federal and state income tax returns. In 2009, the donation can be claimed for up to 50% of

Adjusted Gross Income (or 100%, if a bona fide farmer) and can be carried over for up to 15 years, or until the value is used up. In addition, local assessors *might* lower property assessments. Easement donations also make the property owner eligible for a NYS income tax credit (rebate) for 25% of the county, town and school taxes that they pay on the land (not including improvements), for a maximum of \$5,000 per year. For some easement donors, estate taxes are also lowered.

Purchase of Development Rights (PDR)

Many landowners want to conserve their land but have a need to extract some equity from their property. Land trusts and municipalities are able to fully or partially compensate a landowner for the financial value of a conservation easement through "purchase of development rights" (PDR) programs.



Private grants, public funds from federal, state, county, or local sources, a partial donation of the value by the landowner (a “bargain sale”), or some combination of these can be used to reach the appraised value of the development rights. Funding sources have varying conservation objectives, award criteria, match requirements, and easement restrictions.

It often takes cooperative partnerships to gather enough resources for PDR projects. PDR funding programs are administered by the New York State Department of Agriculture and Markets, Department of Environmental Conservation, Office of Parks, Recreation and Historic Preservation, USDA’s Natural Resource Conservation Service, and the counties of Saratoga, Washington and Rensselaer. Many local towns contribute toward PDR projects, too. A land trust can help landowners find the right funding match for a property owner and, as a nonprofit organization, can apply for grants directly or in partnership with a municipality.



Transfer of Development Rights

New York State law defines transfer of development rights (TDR) as “the process by which development rights are transferred from one lot, parcel or area of land in a sending district to another lot, parcel or area of land in one or more receiving districts.”

The purpose of a TDR program is to enable and encourage flexibility of design and careful management of land while protecting the natural, scenic, historic or agricultural qualities of a community. Municipalities are given much flexibility in designing TDR programs to achieve their goals. TDR programs seek to provide a mechanism for a voluntary exchange to steer development toward more suitable areas and away from areas that a community wants to conserve, without taking away property rights or reducing property values. Landowners in “sending” districts sell the development rights on their land either directly to landowners wishing to develop more intensely in “receiving” areas or to development rights banks established by the municipality.

In its traditional form, as part of a zoning regulation or local law, municipalities require, through zoning, the transfer of development rights from identified sending districts, where conservation is desired, to receiving districts where denser development is desired. In mandatory TDR, development in sending districts is decreased by “sending”

it, through the use of credits developers purchase, to receiving districts deemed more appropriate for development. Districts are parcel-based, creating a definable, geographic districts and often include reductions in allowable densities in sending districts.

However, because of the flexibility allowed by State law, the “traditional” form of TDR can be dramatically altered to suit a municipality’s unique circumstances and to respond to citizen concerns. For example, a TDR program can offer incentives such as increased density, faster permit processing, less stringent design review, or tax breaks to encourage developers and landowners to take advantage of the program.

Instead of creating geographic sending and receiving districts that can differentially affect property values, sending districts can be defined by resources such as stream buffers or productive agricultural soils. In this way, no one area is burdened unduly with either the loss or the increase in development, but resources, wherever they occur within the municipality, can be protected. Additionally, some development rights can be retained in sending districts, perhaps with clustering or conservation subdivision regulations in place to sensitively site development while protecting natural resources.

Incentive or Average Density Zoning

Incentive zoning attempts to address some of the limitations of traditional zoning. The purpose of incentive zoning is to advance the municipality’s goals and objectives, by having land developers provide specific amenities in exchange for zoning incentives. The incentives can include adjustments to the density limitations, building height, open space, use or other requirements of the underlying zoning ordinance. These incentives are given in exchange for the developer providing one or more community benefits, including conservation of open space or parks, or cash payments to the locality in lieu of such amenities.

In setting a system of incentives, the municipality leaves existing zoning code in place, but permits more intensive development of the land in exchange for certain community benefits. Incentives can be provided to developers who propose the expansion of existing structures, the adaptive reuse of older buildings, or the redevelopment of brownfield sites and other distressed parcels in older, developed areas.

