



## DANE COUNTY GUIDE TO INCORPORATING TDR INTO A TOWN COMPREHENSIVE PLAN

This guide covers three items: 1) places in the plan to add language about TDR, 2) TDR policy questions to answer; and 3) sample text for the TDR portion of a town Land Use Plan.

### **PLACES IN THE PLAN TO ADD LANGUAGE ABOUT TDR:**

1. Agricultural, natural and cultural resources element
  - Objectives, programs and policies
2. Land Use Element
  - Objectives, programs and policies
  - TDR heading for describing TDR policy
  - Planned Land Use District descriptions
  - Density Policy
  - Land Use Plan Map – *[optional]* if sending and receiving areas are mapped, please note them in the map legend.
3. Implementation Element
4. Intergovernmental Cooperation Element
5. Include OA#45, 09-10 as an appendix to the plan *[optional]*

### **CREATE A CLEAR TDR POLICY**

Overall the plan amendment needs to add a section with clear direction on the town's TDR policy, much like town plans should include for density policies. A well written section will basically go about answering various questions about how the policy will work. The town plan commission should run through the following questions, the answers to which, will provide the necessary information to complete the TDR section of the plan. Utilize the following questions as outlined in the Planning Division *Planner Notes (No. 7, 3-30-2010)*:

1. Will the plan allow development rights to be transferred from a sending area in the town to a receiving area in another town or community?
  - a) No, transferred development rights must stay within the town.
  - b) Yes, to a community with which the town has a specific cooperative plan and/or intergovernmental agreement.
  - c) Yes, to any community willing to accept them.

2. Will the plan allow development in a town receiving area if development rights are transferred in from a sending area in another town or community?
  - a) No, transferred development rights must come from within the town.
  - b) Yes, from a community with which the town has a specific cooperative plan and/or intergovernmental agreement.
  - c) Yes, from any community.
  
3. If development rights can be transferred across town lines, how will the plan(s) make sure that bonuses, sending and receiving area criteria and other policies are consistent across community lines?
  
4. How are sending areas (areas eligible for TDR-S zoning) determined in the plan?
  - a) Mapped as planning districts in the “Planned Land Use Map” for the town.
  - b) Text criteria (such as soil productivity, minimum parcel size, proximity to other protected lands, etc.) for types of lands that are eligible.
  - c) Both of the above.
  - d) No sending areas in the town.
  
5. How are receiving areas (areas eligible for TDR-R) zoning determined in the plan?
  - a) Mapped as planning districts in the “Planned Land Use Map” for the town.
  - b) Text criteria (such as soil productivity, proximity to other development, urban services, etc.) for types of lands that are eligible.
  - c) Both of the above.
  - d) No receiving areas in the town.
  
6. How will TDR-S and TDR-R overlay zoning be applied?
  - a) All at once, as a “blanket” rezone by the town and county.
  - b) Landowner by landowner, as individual TDR transactions and rezones occur.
  - c) Some of both.
  
7. Will the plan allow “bonuses” or special TDR ratios to encourage:
  - a) Protection of sending area lands with special environmental, recreational, scenic, historic or agricultural value (a.k.a. “Super Sending Areas”)?
  - b) Development in receiving areas that meets particular objectives for affordable housing, special needs housing, mixed-use, higher density or specific design standards?
  - c) A combination of both?
  - d) No special ratios or “bonuses”.

## SAMPLE TEXT FOR A TRANSFER OF DEVELOPMENT (TDR) PROGRAM:

### I. Background

#### **A. Definition**

A transfer of development rights program means that owners of land in one part of the town, “sending area”, can sell their development rights to owners of land in a different part of town, **and/or in a city or village** [*city or village language is optional*] “receiving area”.

#### **B. Objectives**

The town of [redacted] [*insert name of town*] uses to TDR program in effort to preserve farmland and rural character, to allow farmers reasonable compensation for their land, and to direct development to more suitable areas [*can also list where development is more efficiently served, to develop at higher densities, to encourage infill development, etc.*]

### II. Calculating Development Rights

#### **A. Density Policy**

Development rights are determined by the town density policy. Please see page [redacted] [*insert page in plan where density policy is described*] for density policy section. **IMPORTANT** – *if the density study portion of the land use plan needs editing this should be done at the same time as making changes to incorporate a TDR program. A good density policy should clearly define calculation of development rights including details on rounding, whether or not transfers between parcels under single ownership are allowed; a “buyer beware” section that describes how development rights run with the land and how purchasers of land should verify whether a sale includes development rights; and describe how development rights are distributed when more than one party owns portions of an original farm, and how deed restrictions and notices are required when more than one party owns portions of an original farm unit.*

Development rights are transferred from a specific sending area parcel to a specific receiving area parcel. Any development rights transferred to a parcel in a receiving area, but not immediately used for the development planned in that receiving area parcel, remain with that receiving area parcel (that is, the development rights run with the land), and are subject to all other requirements related to development rights as set forth in the Dane County TDR Ordinance and this Comprehensive Plan.

### III. TDR Program Procedures

#### A. Designation of Sending Areas

##### 1. For towns implementing TDR on a case-by-case basis:

###### a) Alternative one (entire town):

The entire town is considered a “Sending Area”. The town will consider petitions by landowners to rezone all or a portion of their property into the TDR-S overlay zoning district (s.10.158, Dane County Code), provided the following criteria are met:

1. The landowner provides a Density Study Report from the Dane County Department of Planning and Development that shows that the property has development potential remaining under the density policies described in section \_\_\_\_\_ [insert name of the associated section heading and or page number] of this plan.
2. \_\_\_\_\_ [insert any other criteria, optional]

###### b) Alternative two (by land use district):

The \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ [list the appropriate land use categories such agricultural preservation, open space, environmental corridor and or natural resource protection] planned land use districts are considered “Sending Areas”. Within these areas, the town will consider petitions by landowners to rezone all or a portion of their property into the TDR-S overlay zoning district (s.10.158, Dane County Code), provided the following criteria are met:

1. The landowner provides a Density Study Report from the Dane County Department of Planning and Development that shows that the property has development potential remaining under the density policies described in section \_\_\_\_\_ [insert name of the associated section heading and or page number] of this plan.
2. \_\_\_\_\_ [insert any other criteria, optional]

##### 2. For towns implementing TDR with a blanket rezone:

###### a) Alternative one (A-1EX Zoning):

All parcels of land in the A-1EX (exclusive agriculture) zoning district (regardless of comprehensive plan land use district) are considered “Sending Areas”. As part of the implementation of the comprehensive plan, the town will initiate a “blanket” rezone petition to rezone these parcels into the TDR-S overlay zoning district (s. 10.158, Dane County Code). TDR-S overlay zoning will:

- Allow, as a permitted use, landowners in sending areas to transfer development rights to designated receiving areas, by recording a TDR easement;
- Not restrict any of the uses currently permitted in the A-1EX zoning district;
- Continue to allow landowners to receive tax credits and other benefits associated with the state Farmland Preservation/Working Lands programs;
- Continue to allow landowners to petition to rezone property for development in accordance with density and other polices of the *Town of \_\_\_\_\_* [insert name of town] *Comprehensive Plan.*

**b) Alternative two (by identified planned land use districts):**

Parcels of land identified as TDR Sending Areas on the Planned Land Use Map are considered “Sending Areas.” As part of the implementation of the comprehensive plan, the town will initiate a “blanket” rezone petition to rezone these parcels into the TDR-S overlay zoning district (s. 10.158, Dane County Code). TDR-S overlay zoning will:

- Allow, as a permitted use, landowners in sending areas to transfer development rights to designated receiving areas, by recording a TDR easement;
- Not restrict any of the uses currently permitted in the A-1EX zoning district;
- Continue to allow landowners to receive tax credits and other benefits associated with the state Farmland Preservation/Working Lands programs;
- Continue to allow landowners to petition to rezone property for development in accordance with density and other polices of the *Town of \_\_\_\_\_* [insert name of town] *Comprehensive Plan.*

**B. Designation of Receiving Areas**

**1. Alternative one (case-by-case):**

All land in the \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ [list the appropriate land use categories such as single-family, multi-family and or mixed-use] land use districts are considered potential “receiving areas”. Within these areas, the town plan commission and board may consider petitions by landowners to rezone all or a portion of their property to the TDR-R overlay zoning district (s. 10.159, Dane County Code). The town

board will recommend approval of petitions to the TDR-R overlay district based on the following criteria:

1. Minimizes the amount of land taken out of agricultural production;
2. Avoids environmentally sensitive land such as steep slopes, important wildlife resources and floodplains;
3. Locates new development in areas with public facilities or in areas that represent a logical extension of those facilities;
4. Creates a logical development pattern to avoid sprawl and leap-frog development; and
5. Avoids or minimizes land use conflicts.

## **2. Alternative two (blanket rezone):**

All land in the \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_ [list the appropriate land use categories such as single-family, multi-family and or mixed-use] land use districts are considered potential “receiving areas.” As part of the implementation of the comprehensive plan, the town will initiate a “blanket” rezone petition to rezone these parcels into an appropriate Rural Homes or Residential Zoning District with a TDR-R overlay (s. 10.159, Dane County Code).

### ***C. For towns that wish to send development rights to neighboring Cities and/or Villages:***

To the extent allowed by the \_\_\_\_\_ [insert “Village” or “City”] of \_\_\_\_\_ [insert name of city or village], comprehensive plan, other lands within the \_\_\_\_\_ [insert “Village” or “City”] of \_\_\_\_\_ [insert name of city or village] could also be considered Receiving Areas.

### ***D. For towns that wish to send development rights to neighboring Towns:***

To the extent allowed by the town/s of \_\_\_\_\_ [insert town name/s], comprehensive plan, other lands within the town/s of \_\_\_\_\_ [insert town name/s], could also be considered Receiving Areas.

In order for development to occur in any Receiving Area, the Developer must meet all qualifications of that area and have the appropriate number of development rights, as described in the “Transfer Ratios” section below. Development rights may already be associated with a particular piece of property or may be transferred from Sending Areas to Receiving Areas as provided in the TDR Program.

## **E. Obtaining Zoning Permits**

Before obtaining zoning permits for development in the TDR-R overlay zoning district, developers must present all of the following to the Town of \_\_\_\_\_ [insert name of town] Plan Commission and to Dane County Zoning:

1. Recorded deed notice documents on both the sending and receiving parcels that:
  - a. Meet all of the requirements of ss. 10.01(41m) and 10.159(3)(c), Dane County Code;
  - b. Track the number of rights transferred from each sending parcel;
  - c. Identify each sending parcel by legal description and parcel number, and;
  - d. Reference a recorded TDR easement on an appropriate TDR-S-zoned parcel.
2. A letter from the Town of \_\_\_\_\_ [insert name of town] Plan Commission indicating that the TDR transaction is consistent with transfer ratios, siting criteria and all other applicable policies of the Town of \_\_\_\_\_ [insert name of town] Comprehensive Plan, and;
3. A letter from the Dane County Department of Planning and Development, Planning Division indicating that the TDR transaction is consistent with the Dane County Comprehensive Plan.

## **F. Bonus Transfer Ratios**

*For towns that want to allow “bonuses” or special TDR ratios:*

### **1. Alternative one “Bonus Sending Areas” (case by case determination):**

The town is particularly interested in encouraging permanent protection of:

- Highly productive farm soils;
- Large blocks of contiguous farmland, and;
- Significant or unusually sensitive natural resources.

For every development right transferred from lands meeting [any of the criteria below / a point total of 50 points based on the criteria below], developers may create [one and half / two] lots in an appropriate receiving area, as described in [insert section of plan describing Receiving Area designation]

1. At least [insert percentage] % of the property is on Group I or II Agricultural Soils, per Dane County Land Conservation Department’s Land Evaluation System [insert point total].
2. The Acreage contains or is within 1,320 feet of a Livestock Structure within an existing large livestock operation, an existing mineral extraction operation, or both [insert point total].

3. The Acreage is within 1,320 feet of property where an Agricultural Conservation Easement is already recorded [*insert point total*].
4. Two or fewer Dwelling Units have been built since [*insert baseline date for density policy*] on the contiguous single ownership parcel that includes the proposed Sending Area Acreage, as the parcel existed on [*insert baseline date for density policy*] [*insert point total*].
5. At least [*insert percentage*] % of the property is designated as “Open Space Corridor / Resource Protection Corridor” on Map 6: Planned Land Use of the Town’s Comprehensive Plan [*insert point total*].
6. The Acreage is adjacent to, or at least partially included within, a Dane County Parks and Open Space Plan conservation area (e.g., natural resource area, stream protection area, prairie and oak savanna site) [*insert point total*].
7. The sending area land owner elects to place all of his or her contiguously owned parcels zoned A-1 Exclusive Agriculture into a TDR Agricultural Conservation Easement [*insert point total*].

## **2. Alternative two “Bonus Sending Areas” (mapped and rezoned by blanket rezone):**

For every development right transferred from lands shown as [*High Priority Sending Areas / Voluntary Conservation Areas*] on the Planned Land use map, developers may create [*one and half / two*] lots in an appropriate receiving area, as described in [*insert section of plan describing Receiving Area designation*].

As part of the implementation of the comprehensive plan, the town will initiate a “blanket” rezone petition to rezone parcels identified as [*High Priority Sending Areas / Voluntary Conservation Areas*] into the TDR-S overlay zoning district (s. 10.158, Dane County Code). TDR-S overlay zoning will:

- Allow, as a permitted use, landowners in sending areas to transfer development rights to designated receiving areas, by recording a TDR easement;
- Not restrict any of the uses currently permitted in the A-1EX zoning district;
- Continue to allow landowners to receive tax credits and other benefits associated with the state Farmland Preservation/Working Lands programs;



- Continue to allow landowners to petition to rezone property for development in accordance with density and other policies of the *Town of [redacted] [insert name of town] Comprehensive Plan.*

### **3. Alternative three “Bonus Receiving Areas”**

For development in a receiving area meeting [*all of the criteria below / any of the criteria below / a point total of 50 points based on the criteria below*], developers may create [*one and half / two*] lots for every development right transferred from a designated sending area, as described in [*insert section of plan describing Sending Area designation*]

1. At least [redacted]% of proposed housing is priced at the median county home price or below.
2. Development complies with the Dane County Traditional Neighborhood Design Model Design Ordinance.
3. At least [redacted]% of all development occurs within a designated Urban Service Area.
4. Proposed development provides for limited multi-family senior housing, consistent with the goals, objectives and policies of the *Dane County Comprehensive Plan.*
5. At least [redacted]% of the development qualifies for USBG LEED-ND certification.