

## **MEMORANDUM**

**TO:** Marti Chumbler  
**RE:** Collier TDR Program  
Proposed Revisions  
**DATE:** November 30, 2004

### **PROPOSED CHANGES**

I have reviewed the proposed revisions to the Collier County Rural Fringe Area Transferable Development Rights Program. This proposal has four changes that are of interest to me:

1. Increase in development rights by one per five acres for environmental restoration and maintenance;
2. Increase in development rights by one per five acres for conveyance of fee simple title;
3. Increase in development rights by one per five acres for a period of five years as an encouragement to record and sever those rights – The Early Entry Bonus; and
4. Allowing land from which development rights have been transferred to be used for mitigation purposes.

The net result is the possibility of up to three bonus TDRs that are in addition to the one by right, for a total of four TDRs per five acres. Both the environmental restoration and conveyance bonuses have costs associated with them and they may not be applicable to all properties. However, all sending area property owners can take advantage of the early entry bonus, so all owners are offered at least a doubling of TDRs, albeit for a limited time. Additionally, those not wishing to avail themselves of the conveyance bonus now have the option of using the land for mitigation, which have proven itself to be profitable in some instances.

### **COMMENTARY**

When the TDR program was being created my highest priority was to direct the County towards a program that would protect the value of sending area land. This was done by limiting the supply of TDRs, as experience has shown that the creation

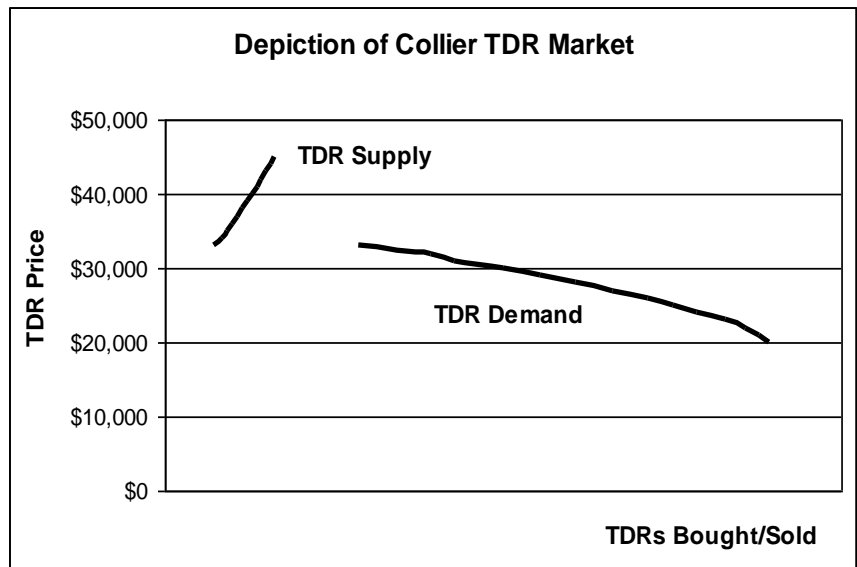
of massive numbers of development rights literally destroys their value. Therefore my recommendation was to be cautious in the creation of rights. Such caution would result in the possibility of TDRs not being available at economically feasible prices. In fact, I specifically addressed this issue in my report:

*What if TDRs are not available at economically feasible prices? This problem has not occurred in TDR programs, at least not yet. However, unavailability of TDRs has to be given as much concern as the value of TDRs to sending area property owners. If TDRs are not available at economically feasible prices, this should trigger a reconsideration of the program. Such reconsideration could include:*

- Adding more sending areas,
- Making TDRs worth more than one dwelling unit,
- Selling TDRs from a bank before rights are acquired from sending area properties (TDR futures), and
- Abandonment of the program.

Recent experience indicates that TDRs are not available at economically feasible prices. It would appear that the price of a TDR per acre of sending area fails to meet property owner expectations of the development value of that land and thus unwillingness to sell TDRs at prevailing prices. This reluctance undercuts the program in that potential TDR buyers will not be able to acquire development rights and this inability will eventually lead to an abandonment of the program. Such abandonment, no matter if it is a repeal or allowing the program to fall into neglect, will eventually result in no value to the TDRs and thus a failure to provide sending area property owners with enhancement to land value. Thus the eventuality worried about has become a reality.

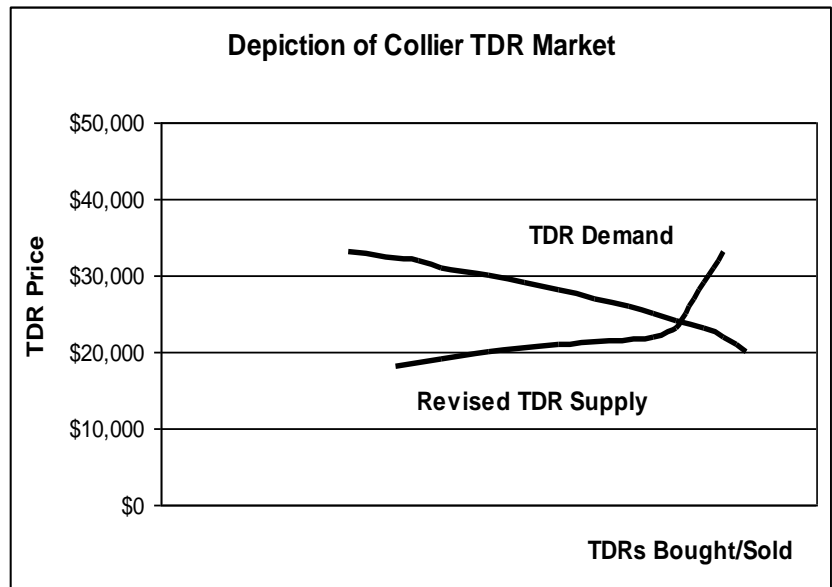
As I understand the matter, the desire is to increase the value of TDRs to sending area property owners while avoiding TDR prices that are economically infeasible to potential buyers. The following graphic reasonably depicts the Collier County Rural Fringe Area TDR market. Prevailing prices bring forward no offers to sell TDRs. It would appear that prevailing market conditions would require a price so high that the economic feasibility of TDR purchase is marginal if not non-existent. Supply and demand do not intersect and



thus there will be no exchanges. The goal is to cause an intersection of supply and demand at some economically feasible price while netting back a higher value per acre to sending area properties.

Increasing the supply of TDRs should result in an intersection of supply and demand. There are two ways to increase the supply of TDRs. The first would be to increase the number of sending areas and the second would be to increase the number of development rights attached to sending area property. Either would increase the supply of TDRs.

Adding additional sending areas would increase the supply of TDRs and most likely reduce prices. This would address the need for an economically feasible price, but it would be totally counter to the desires of sending area property owners. Alternatively, increasing the number of rights attached to property by the proposed bonuses would increase the supply, thereby reducing prices, and netting back higher value to donating land.



The number being worked with was a TDR price of \$25,000, which nets back \$5,000 per sending acre. This value has been rejected in the marketplace. Some higher price is needed in order to meet the expectations of property owners. However, higher TDR prices reduces the attractiveness of their acquisition and use in receiving areas. The Early Entry Bonus would increase the ratio of rights from one per 5 acres to 2 per five acres, thus doubling potential supply. This should reduce the necessary price. Let's assume that the new market price is \$25,000. This would net back \$10,000 per sending acre. Each of the proposed bonuses accomplishes this. Some properties may be able to attain three or even four rights per five acres. This should substantially increase the net back to land owners.

In most TDR programs that I am aware of, sending area property owners tended to have a wait and see approach. Few rights were severed early on, resulting in a lack of TDRs to potential users. This tendency has seemed to become more common as experience with TDRs has grown. In all cases that I am aware of, TDR prices begin low and then increase. It seems that TDR owners have learned this and now want others to test the dimensions of the market. An early entry bonus will encourage some to enter the market because the bonus is temporary. However, a five

year life for the Collier early entry bonus may be too long to achieve early results. Nevertheless, this wait and see is being observed elsewhere and an early entry bonus would tend to stimulate sellers, especially when the time for the bonus comes close to expiration.

An early entry bonus will give everyone an opportunity to observe the Collier County TDR market. As the period of the bonus unfolds, everyone can see how the system is working and whether further adjustments are warranted.

A final thought. Some places have seen the sending area properties fall into various states of weed or trash infestation. Of course, if the sending properties are farmed or in similar economic use this is not a problem. But sending area properties that are not in economic use have tended to be a problem. The bonuses together with allowing the properties to be used for mitigation address this problem. Receipt of the restoration bonus requires a maintenance plan. Mitigation areas are also required to have maintenance plans. The proposed changes provide incentives to develop and implement long-term maintenance plans, and that is a good thing.

The first goal of Collier County's TDR program was that the rights valuable to sending area property owners. This goal appears to have been met. Now it is necessary to structure the program to yield economically feasible TDR prices. I believe that the proposed changes will move the Collier County's TDR program toward success. Now, will these bonuses be used?

When Collier County began this program caution was in order. The worst mistake would be to flood the market and provide little or no value to property owners. That mistake was avoided. Now changes are being proposed to encourage participation in the program. The changes themselves are still cautious. Given that no one is willing to record a conservation easement under the present situation, enhancing the incentives is the only thing to do.

- **Restoration Bonus.** Environmental restoration can be very expensive. There are most likely instances where the additional bonus would encourage that action. However, when the restored property also can be used for mitigation, the incentive will be that much greater. Properties suitable for mitigation are rather limited, especially of the type within the Rural Fringe Area. Powerful incentives will be in place to encourage this activity, but the extent of properties that can take advantage of it is unknown to me.
- **Conveyance Bonus.** Experience elsewhere has been that owners holding property for investment want to get rid of the remaining interest once the development rights no longer exist. There are tax benefits for such donations, but they are not strong. Adding an additional incentive should result in more lands being conveyed to entities that, hopefully, will manage those lands. Unfortunately, I do not have a very good handle on the extent of investment

ownership verses those that will have some use for the remaining fee. Investors would see the conveyance bonus as very positive, but first they would try to sell the land and see what it would get in the market place. It would appear that the conveyance bonus might be worth as much as \$5,000 per acre. Would someone pay \$5,000 per acre for land that has had its development rights severed? Perhaps, especially if the land had agricultural potential. The inducement to convey the land to some public entity is there. The extent to which it will be used cannot be known at this time. Nevertheless, this is a positive incentive and aids to the property owners' options so it is positive even if it is not used.

- **Early Entry Bonus.** The early entry bonus doubles TDR availability for the life of the bonus. If each right nets back \$5,000 per acre, then as much as \$15,000 per acre should be achievable through the base problem, early entry and conveyance bonuses. If the property had environmental value an additional bonus is available. Again, my concern is that the five year life of the bonus may be too long to achieve what is desired. Perhaps a shorter period, maybe three years, could be used. The early entry bonus, like the other bonuses, adds to the profit resulting from the severing of TDRs. That is a good thing to do.
- **Use of TDRs.** Montgomery County's and the New Jersey Pinelands' TDR programs are now approaching 25 years old. Both are considered to be successful programs because there have been active exchanges of rights through a marketplace. Their ages provide some insight. Perhaps most important, not everyone that has property eligible for TDRs will be interested in restricting their property and selling the rights. From what I have seen there are a number of reasons for this. One is a reluctance to restrict the property on a purely philosophic basis. Some see the value of the TDRs rising and view them as an investment. Another reason is an unwillingness to pay the taxes on the sale of the rights. For family farms there is always the problem of dividing the property among heirs and the sale of TDRs can complicate this division. Perhaps the most advanced TDR program is Montgomery County's. It would appear at this time that no more than 60% of possible TDRs have been severed. In the New Jersey Pinelands, less than 50% have been created by recordation of the conservation easement. It is not possible to know how many more of these rights will be offered by owners. Certainly not all will be offered. I would hazard a guess at 80% of potential TDRs will ever be created by the sending area property owners.