

Transferable Development Rights (TDR)

*Using TDRs to Stretch Preservation Dollars and
Achieve Smart Growth*

*John Snook & John Theilacker
Brandywine Conservancy*

*Eric Jarrell, Montgomery County
Planning Commission*



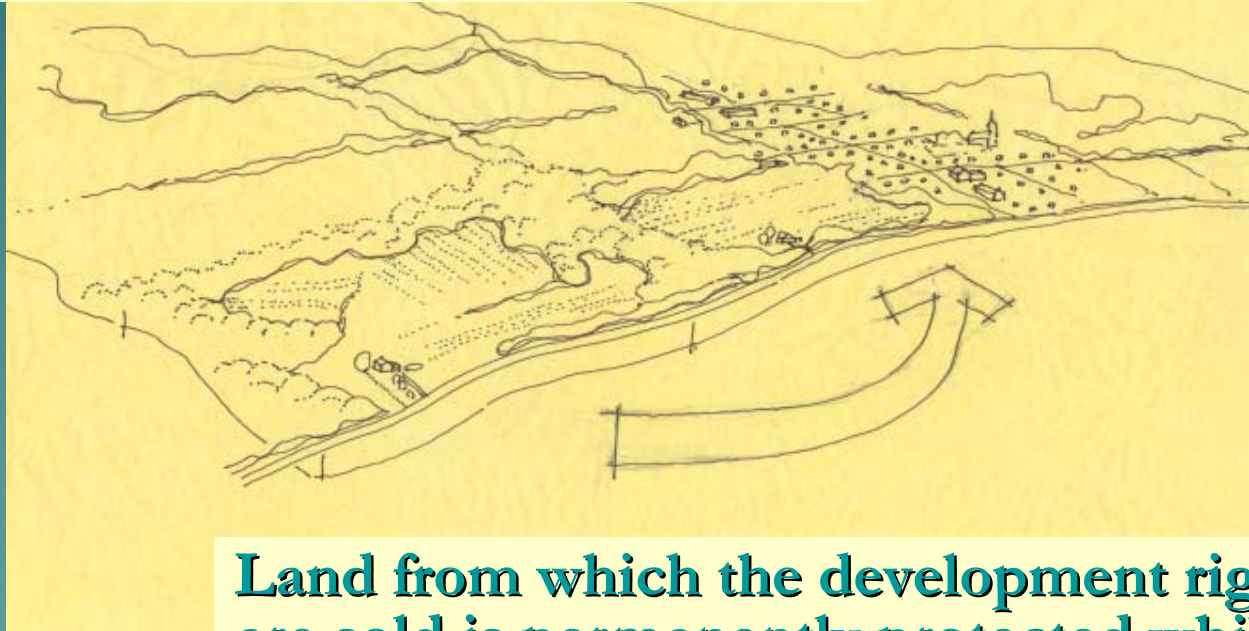
APA PA

October 5, 2009



Transferable Development Rights (TDR)

Landowners in one area (sending zone) may sever and sell their development rights to landowners or developers in another area (receiving zone).



Land from which the development rights are sold is permanently protected while land where the sold development rights are applied is enhanced in development value.

Why TDR?



Conventional zoning often seems to be a prescription for Sprawl!

Where development pressure may ultimately prevail, TDR can offer one more tool to achieve a preferred landscape . . .



Providing an option to “Selling Out”



Landowner keeps
the land;



Developer
enhances the
project.



TDR – A Unique Tool!



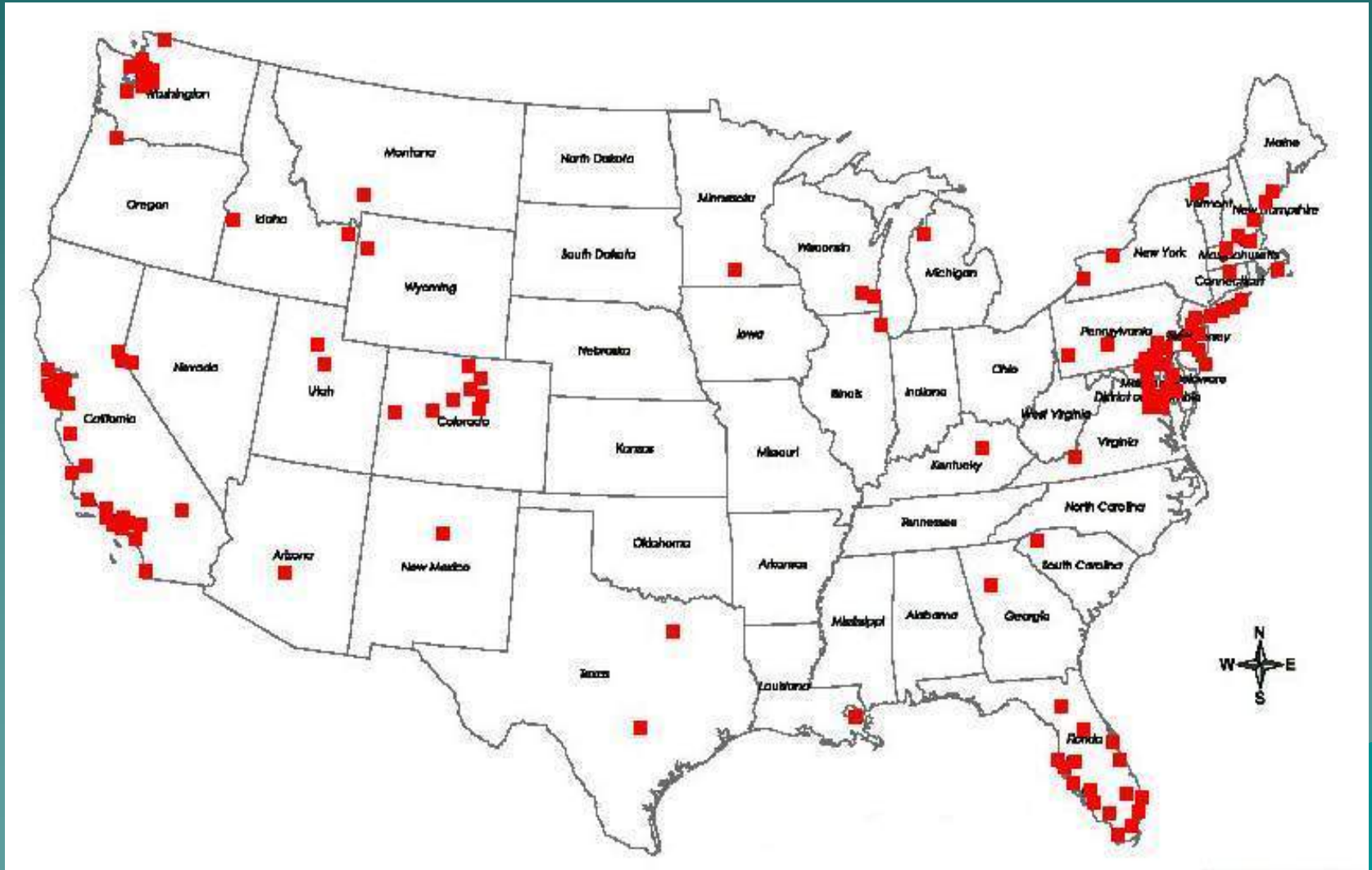
TDRs are established by regulation,
but are driven by the real estate market

Other TDR tool benefits

- ◆ TDRs can help stretch public dollars – private market finance
- ◆ TDRs are a “non-structural” BMP for watershed management
- ◆ Mix and match with other tools (Growing Greener, effective ag. zoning, conservation easements)
- ◆ Revenues generated through PA Act 153 (open space referendum) can be applied to TDR purchase

Who uses TDR?

At least 191 communities in 33 states



What can TDR protect?

Of 191 TDR programs:

- ◆ 69 environmental
- ◆ 46 environment & farmland
- ◆ 41 farmland
- ◆ 15 historic preservation
- ◆ 20 other (housing, infrastructure, urban design, revitalization)



National Success Stories

King County, WA

138,000 acres

New Jersey Pinelands

56,000 acres

Montgomery County, MD

52,000 acres

Palm Beach County, FL

35,000 acres

Collier County, FL

31,000 acres

Calvert County, MD

13,000 acres

Queen Annes County, MD

11,000 acres

Sarasota County, FL

8,000 acres

Pitkin County, CO

6,500 acres

Boulder County, CO

6,000 acres

San Luis Obispo County, CA

5,500 acres

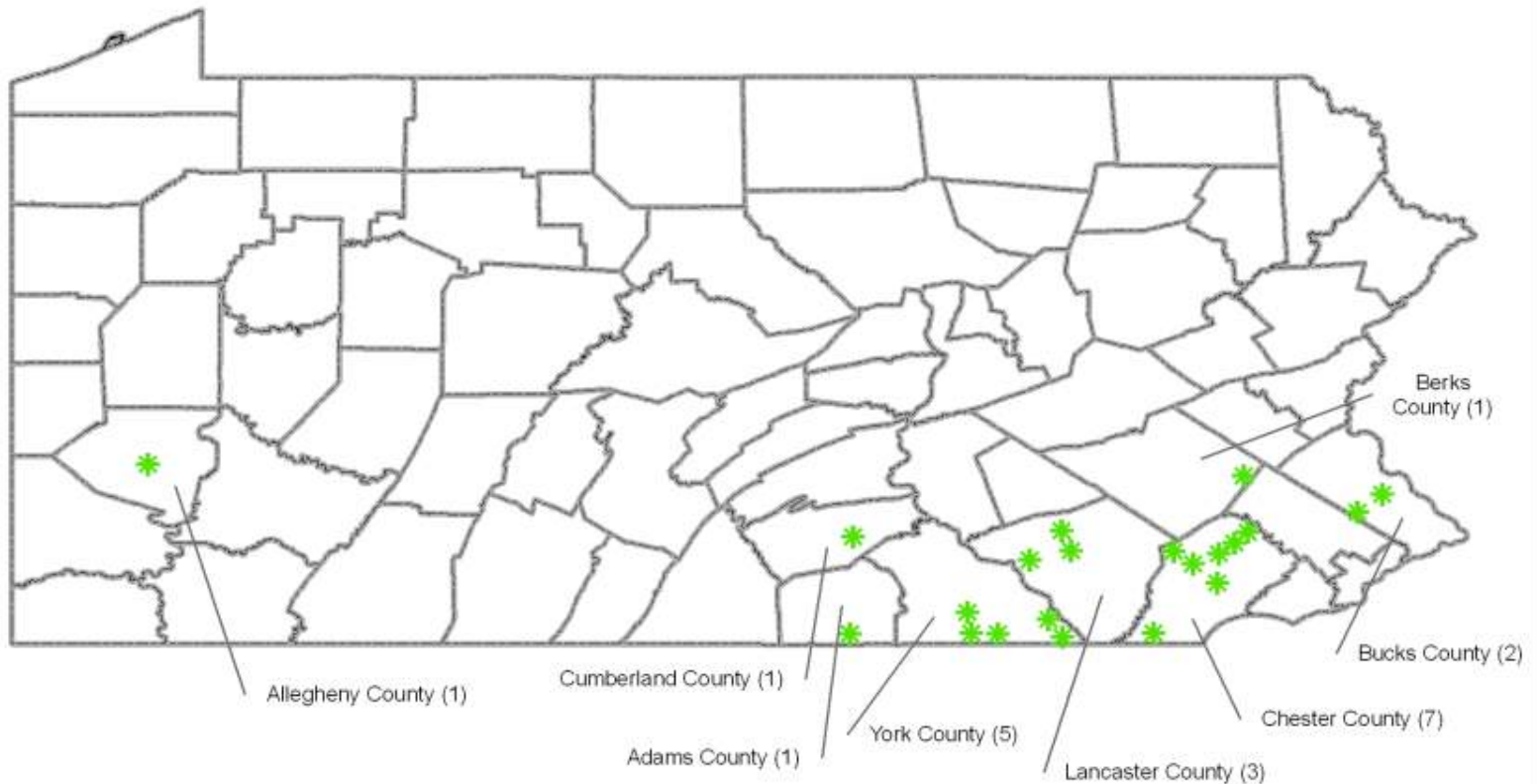
Blue Earth County, MN

5,400 acres



Transfer of Development Rights in Pennsylvania

Municipalities with Active TDR Programs



Brandywine Conservancy

Environmental Management Center
P. O. Box 343 Chadds Ford, Pennsylvania 19307 (302) 384-2100

Data Sources: Pennsylvania county boundaries from PASDA, 2008
TDR program location based on information provided in Brookings, 2004,
Pruett, 2003, Brandywine Conservancy, 2003, and Brandywine Conservancy
staff observations

Map Created: March 12, 2007 (KPA)

Projection: GCS_North_American_1983

Legend

- Active TDR Programs
- Pennsylvania Counties

The PA Municipalities Planning Code specifically authorizes the use of TDR

- ◆ Section 603(c)(2.2) - Ordinance Provisions:
 - Allows municipalities to include TDR provisions as a voluntary option
- ◆ Section 619.1 - Transferable Development Rights:
 - Creates severable and conveyable development rights
 - Requires municipal approval for development right transfer
 - Limits transfers to lands within a single municipal boundary unless through joint zoning or inter-municipal agreement
- ◆ Section 1105(b)(2) – Intergovernmental Cooperation:
 - Specifically enables inter-municipal transfer of development rights among municipalities participating in a county or multi-municipal comprehensive plan

Key TDR Implementation Issues

- ◆ *Enable TDR through Zoning Amendment*
- ◆ *Determine Sending Area Qualifications*
- ◆ *Determine Calculation of TDRs*
- ◆ *Establish procedure for Severance of TDRs*
- ◆ *Set requirement for Permanent Restriction of Sending parcel(s)*
- ◆ *Establish Receiving Area Qualifications*
- ◆ *Set up Provisions for Receipt of TDRs*

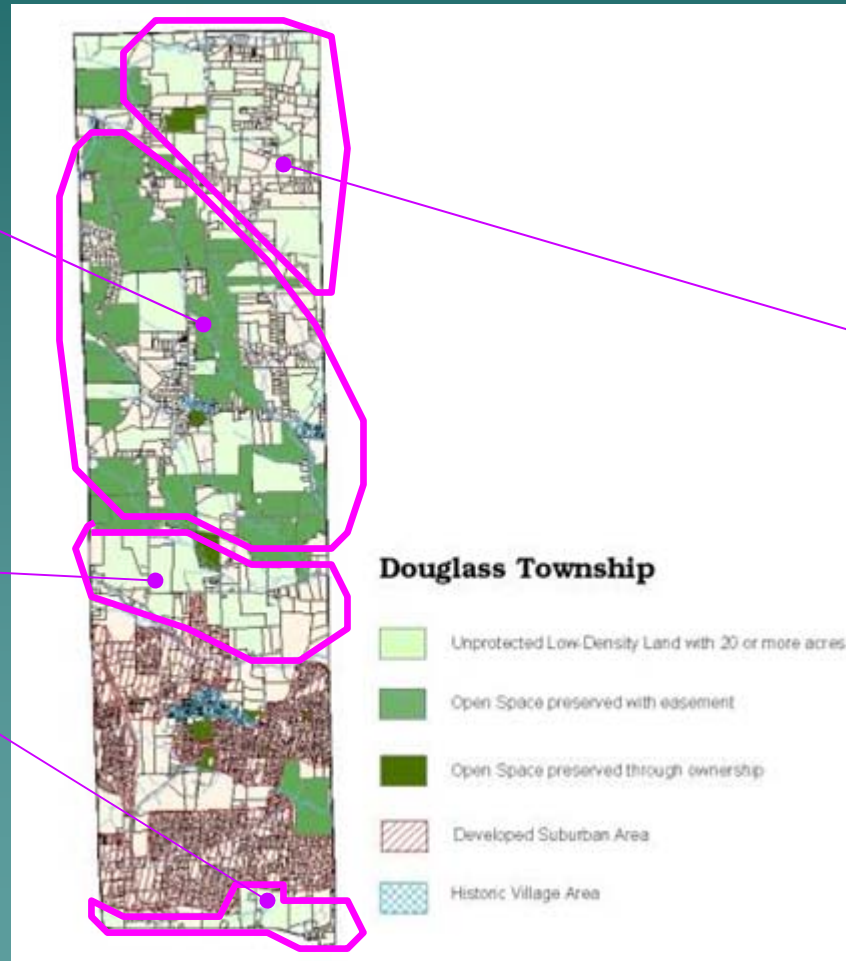
Douglass Township, Montgomery County

Sample Sending Area Definition

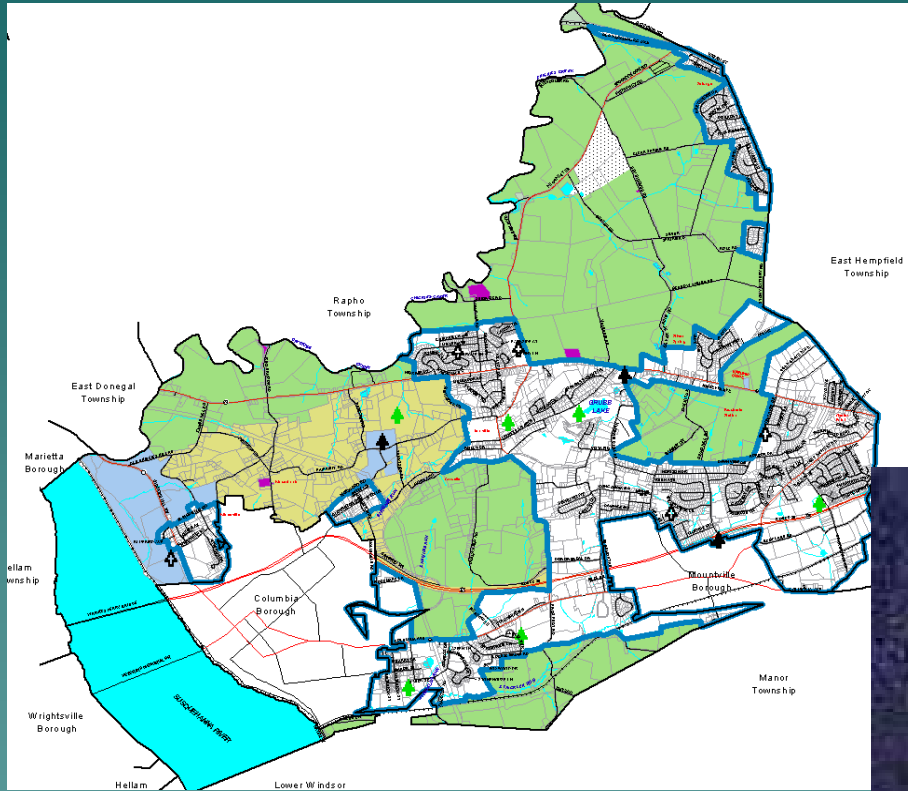
Core Farming Area

Gilbertsville Greenbelt

Wooded Highlands



Sending Zones may be defined by specific qualifications or by zoning district designation



West Hempfield Township assigns sending rights by zoning district

West Bradford Township assigns sending rights by landscape character



Can Community Vision focus on appropriate “Receiving” areas?

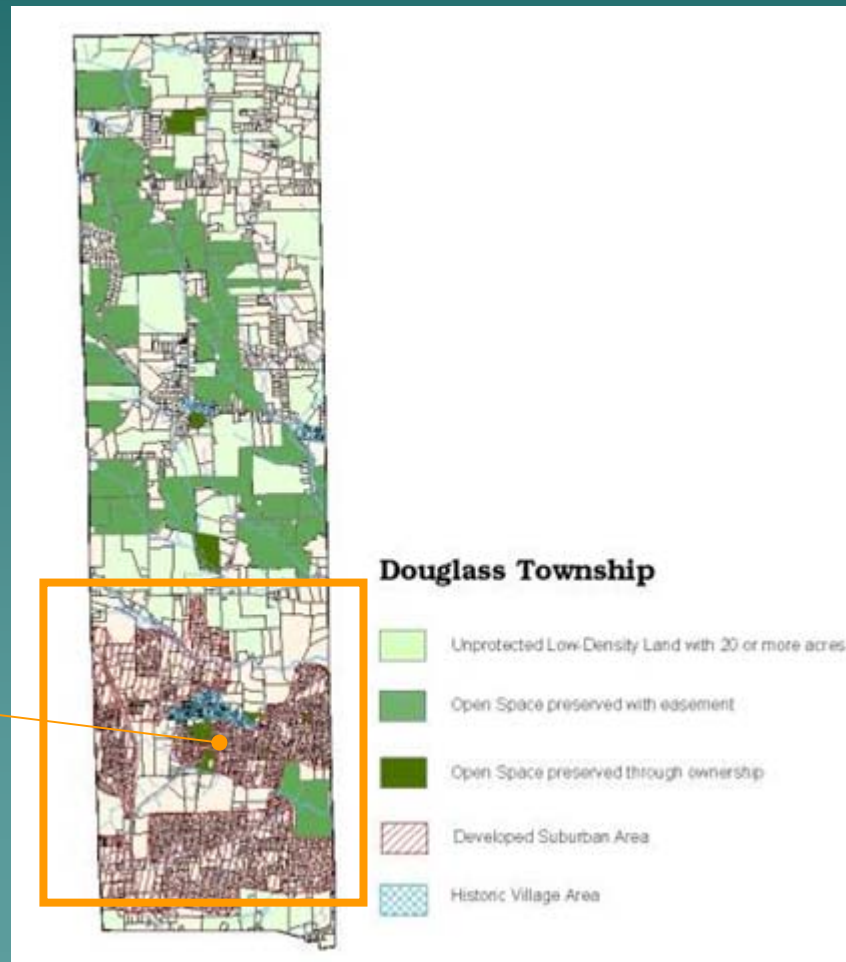


Receiving area development can include a variety of uses and forms

- *Suburban development at increased densities?*
- *“Neo-Traditional” development*
- *Special Uses such as retirement communities or life-care*
- *Non residential receiving uses*

Douglass Township, Montgomery County

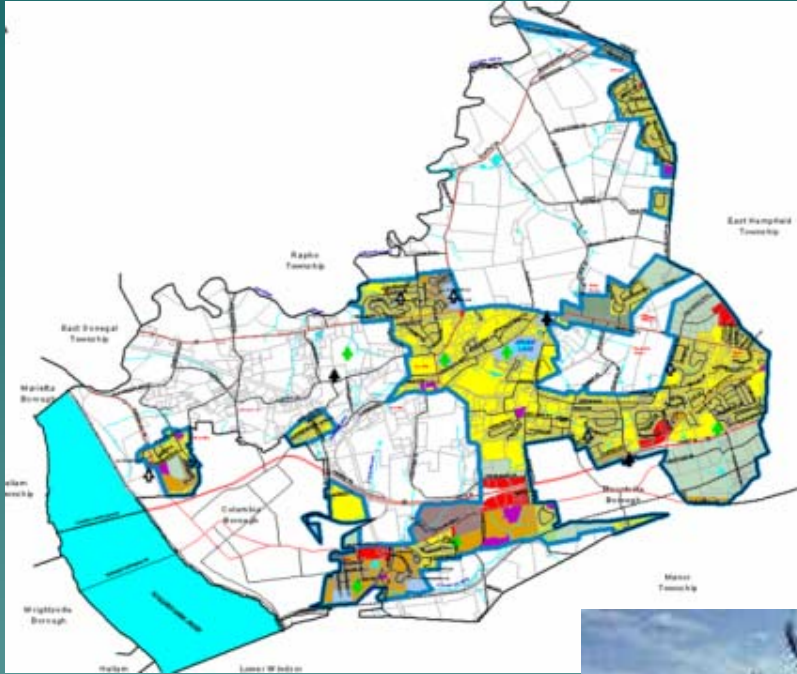
Sample Receiving Area Definition



Gilbertsville
Growth Area

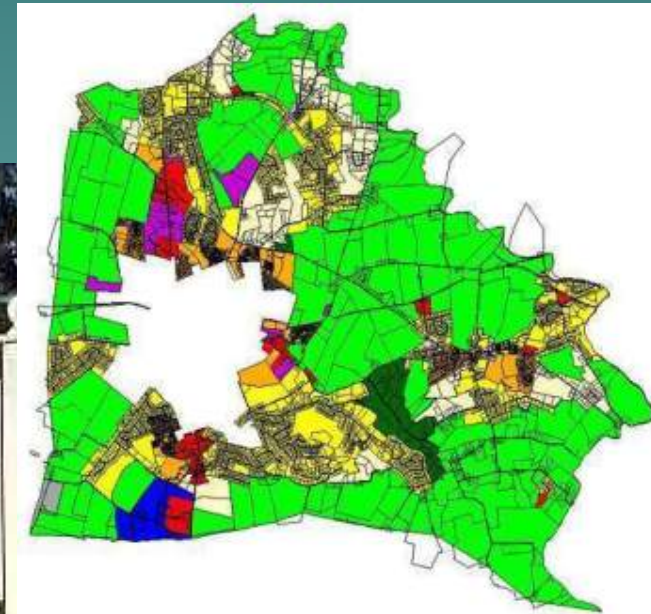
Township is
considering
additional growth
in the
Gilbertsville Area

Receiving Areas may be defined by specific qualifications, geography or zoning district



West Hempfield Township assigns receiving opportunities in residential zoning districts

Warwick Township created new office campus zoning district for TDR receipt



West Bradford Township assigned TDR receipt to tracts meeting certain planning qualifications



Warwick Township, Lancaster County

Program Highlights through 2008

- 597 TDRs severed
- 337 TDRs transferred
- Warwick cooperates with County Ag. Preserve Board & Lancaster Farmland Trust.



Preserved Farms since 1997

- 1,845 total acres have been preserved
- 961 acres preserved through TDRs
- 250 additional acres are pending



Warwick Township Development Receiving TDRs

Campus Industrial development



40 TDRs

141 TDRs



Additional Annual School Tax Revenues = \$544,000.00

The end result..... TDRs have preserved . . .



Hereford Township, Berks County

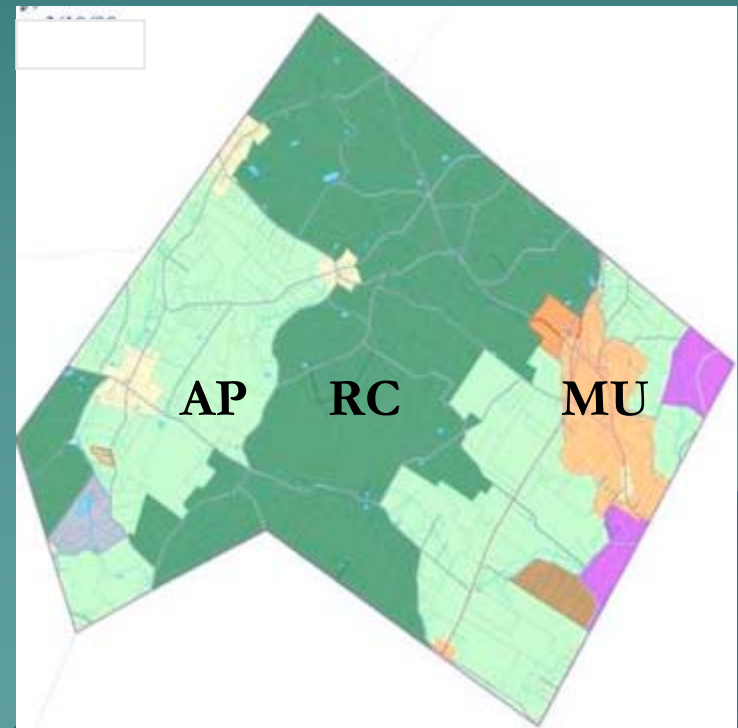
Multi-Faceted TDR Program

- ◆ Sending areas comprise AP and RC zoning districts
- ◆ One TDR per 2 ac. AP, 4 ac. RC
- ◆ Single-family residential receipt in RC
- ◆ Mixed-use receipt in MU district at highway junction



Program Objectives:

- 1) preserve farmland*
- 2) preserve watersheds*
- 3) Manage growth*



Hereford Township, Berks County

Mixed-Use Receipt of TDRs

- ◆ More than single principal use requires 1 TDR per use
- ◆ TDRs also allow increased floor area, impervious coverage and height; 1 TDR = 4,000 sf
- ◆ TDRs afford density increases for multi-family and CCRC



Sample Allocation of TDRs for Development Purposes

Charlestown Township, Chester County (as proposed)

*Receiving Area Density
Multipliers for use of TDRs:*

Receiving unit type

Single-Family Village lot

Townhomes

Multi-Family (apartments)

Age-Qualified units

Office Space

Retail Space

Development per sending unit

1.5 dwellings

2.0 dwellings

6.0 dwellings

8.0 dwellings

4,000 square feet

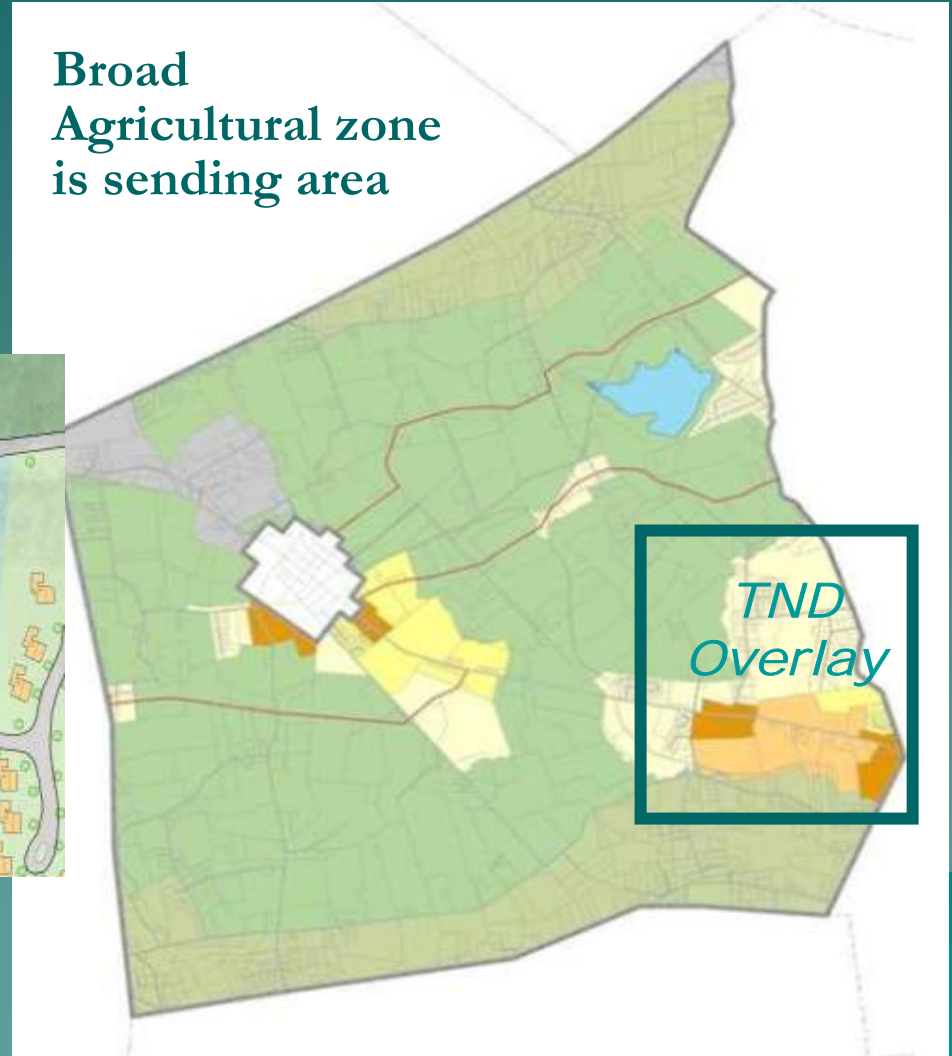
3,000 square feet



Honey Brook Township TDR Sample

TND overlay is key receiving area, with both residential and non-residential receipt promoted to effect community development objectives

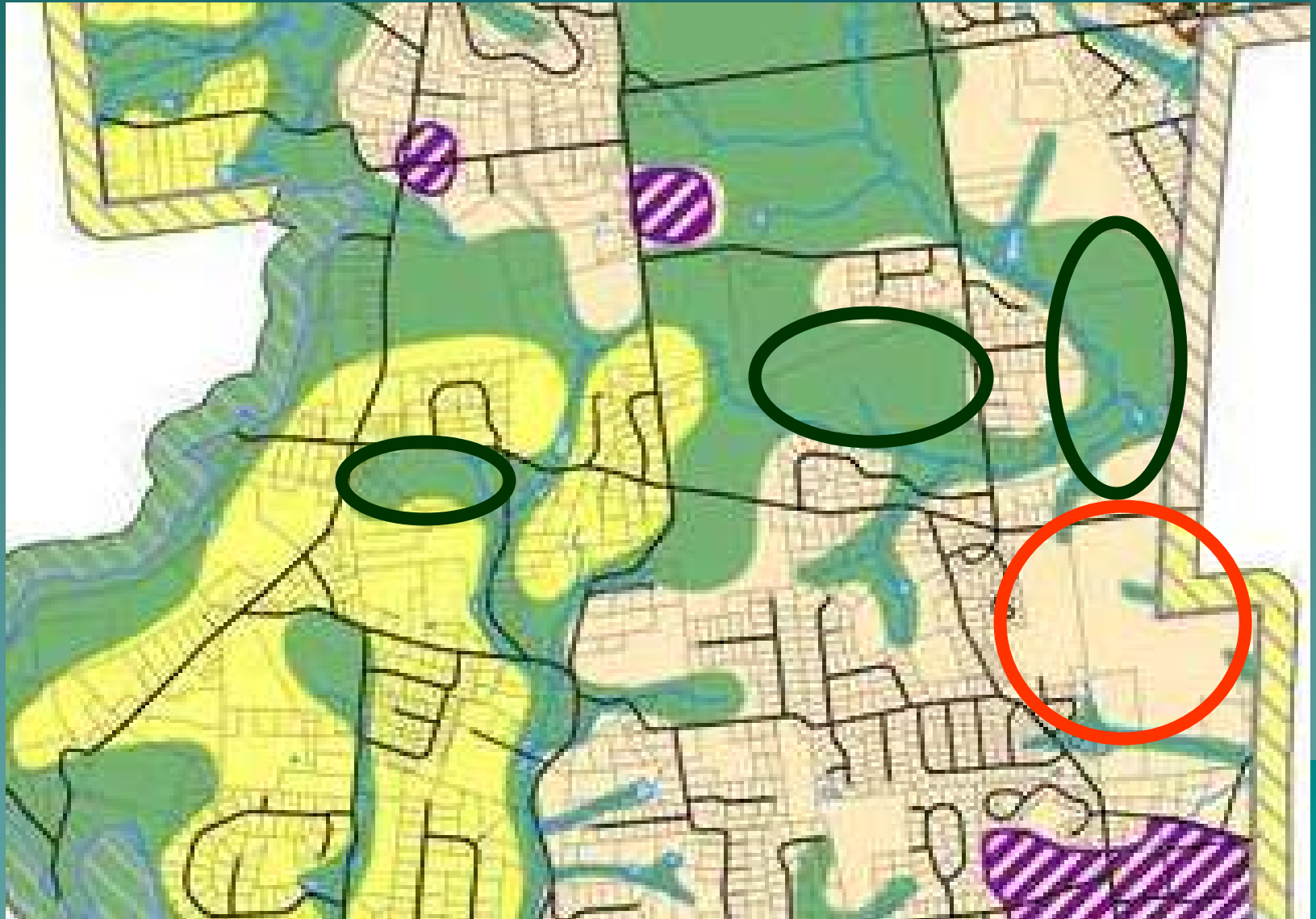
Broad Agricultural zone is sending area



TND master plan is site and form specific

West Brandywine Township, Chester County

Variation on the Theme!



West Brandywine Township

Variation on the Theme!

- NO specific TDR enabling provisions in Zoning Ordinance
- Provisions for common conservation design plan on discontinuous tracts
- Conditional Use approval afforded Township opportunity to request dedication
- NO possibility for severance and banking of TDRs
- Required developer to gain control over both sending and receiving parcels



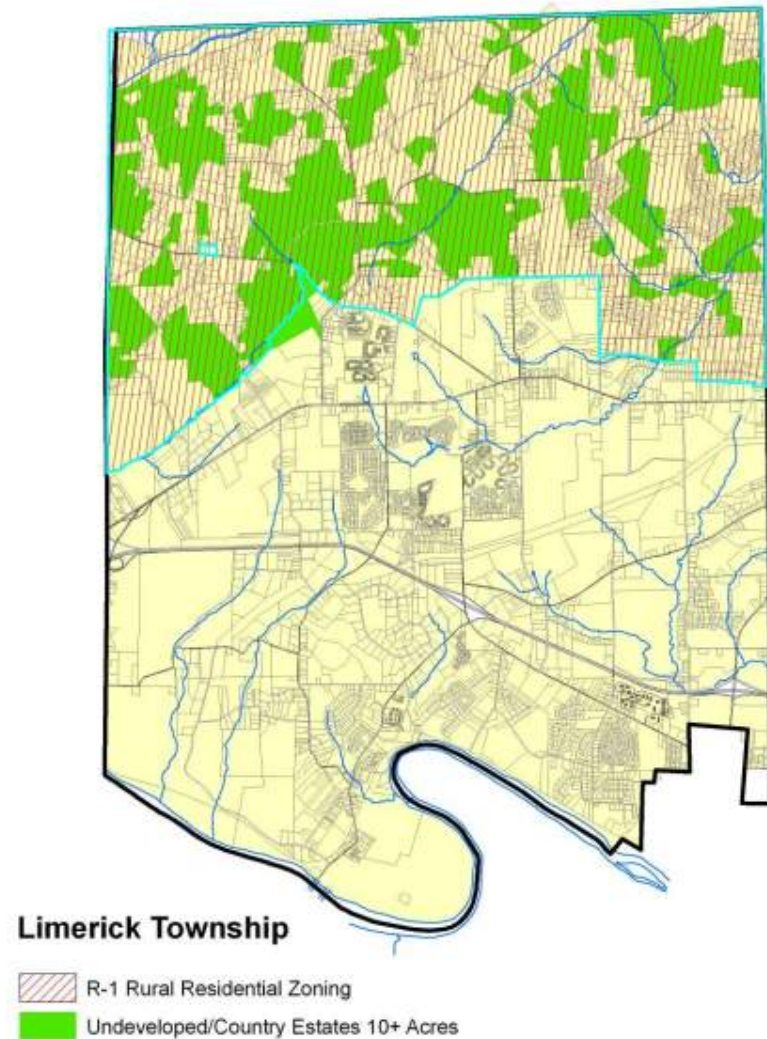
Limerick Township, Montgomery County

Alternative TDR Scenarios

- ◆ TDR can benefit an already suburbanizing municipality
- ◆ TDR can do more than transfer residential density
- ◆ TDR can offer a multi-faceted strategy with broad appeal
 - Residential to Residential transfer
 - Residential to Non-residential transfer
 - Residential to Age Qualified transfer

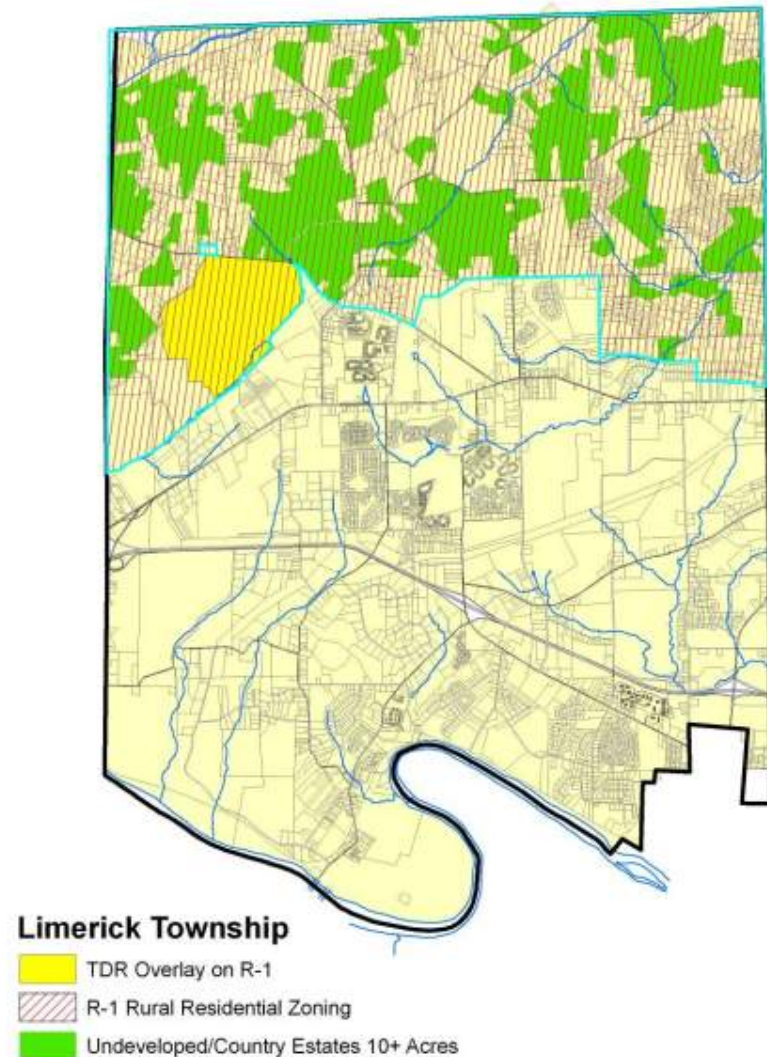
Sending Area Scenario

- ◆ Remaining developable land totaling 2,000 acres
- ◆ R-1 zoning permits .55 homes per acre
- ◆ Sending area contains up to 1,100 TDRs
- ◆ Based upon current R-1 land sales, one TDR might be valued at \$40,000



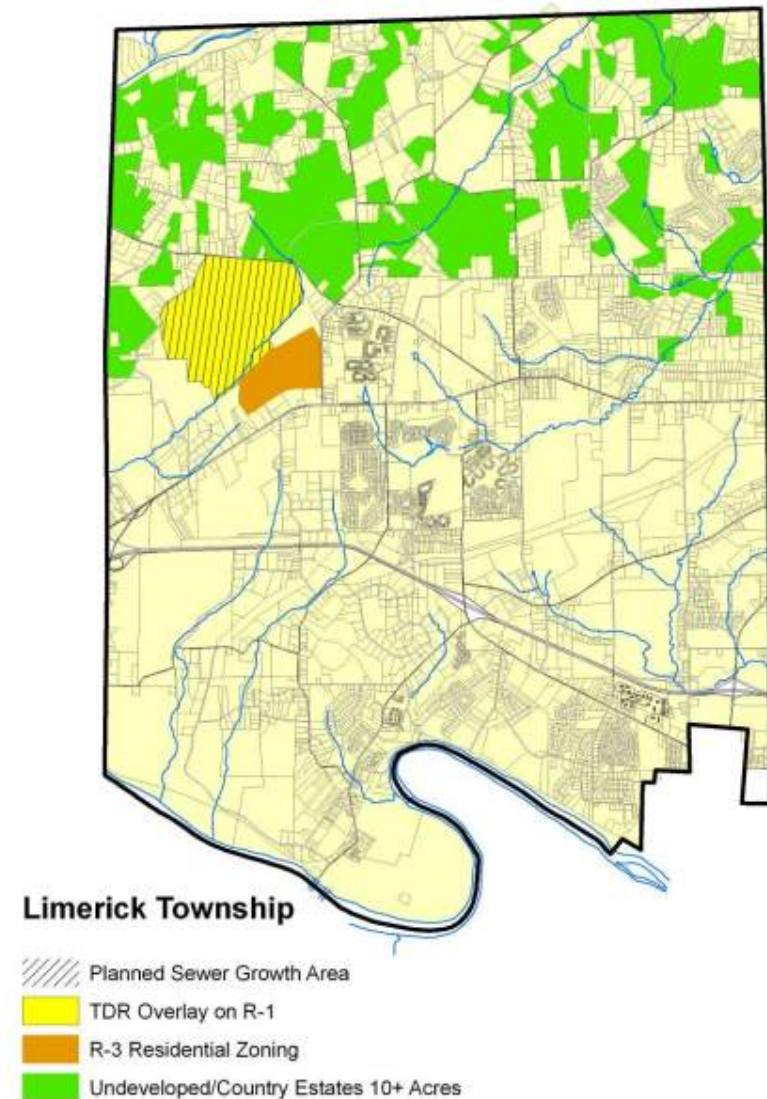
Conventional Residential Receiving Scenario

- ◆ Use existing R-1 low-density district
- ◆ Significant vacant land available
- ◆ Permit higher density with TDR



Conventional Residential Receiving Scenario

- ◆ A logical area for development
 - Access to primary arterial
 - Area is part of planned sewer growth area
 - Good proximity to community facilities
- ◆ “Borrow” existing density and design standards
 - Adjacent to existing medium density R-3 residential district

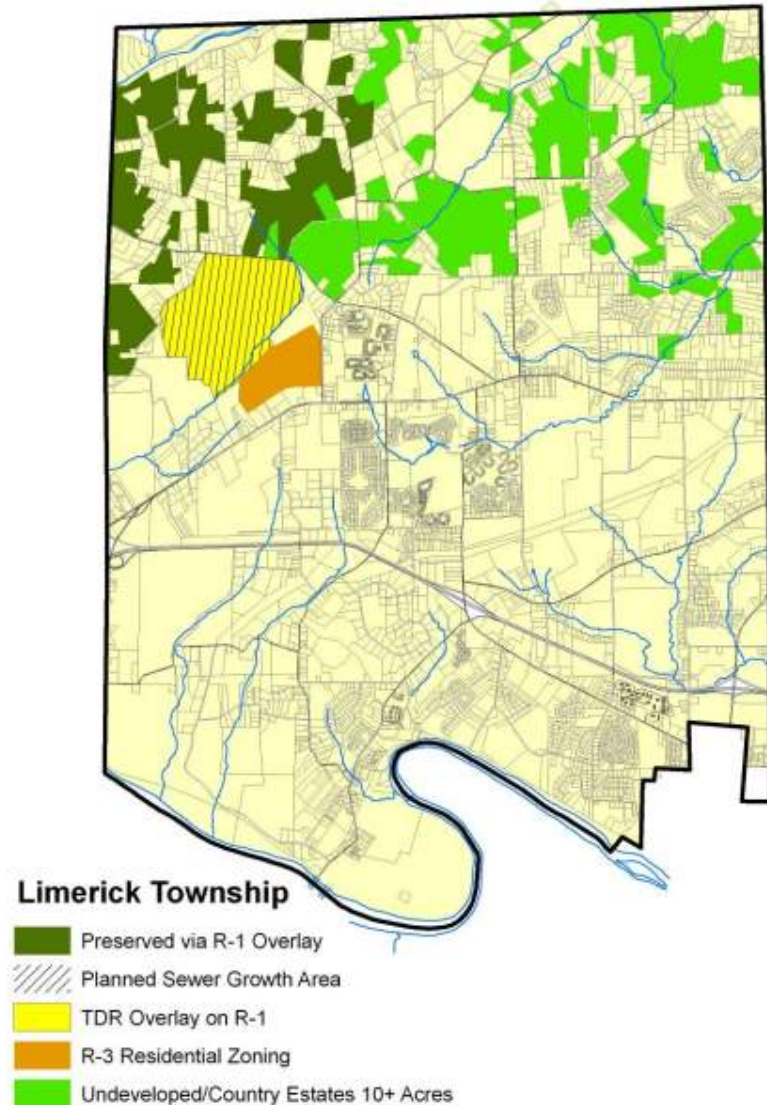


Sample TDR Valuation

- ◆ Density neutral “Buy One – Get One” approach
- ◆ Potential Purchase Processes
 - Developer negotiates with land owners
 - Purchase from Municipal Bank
 - Contribute to Municipal Bank

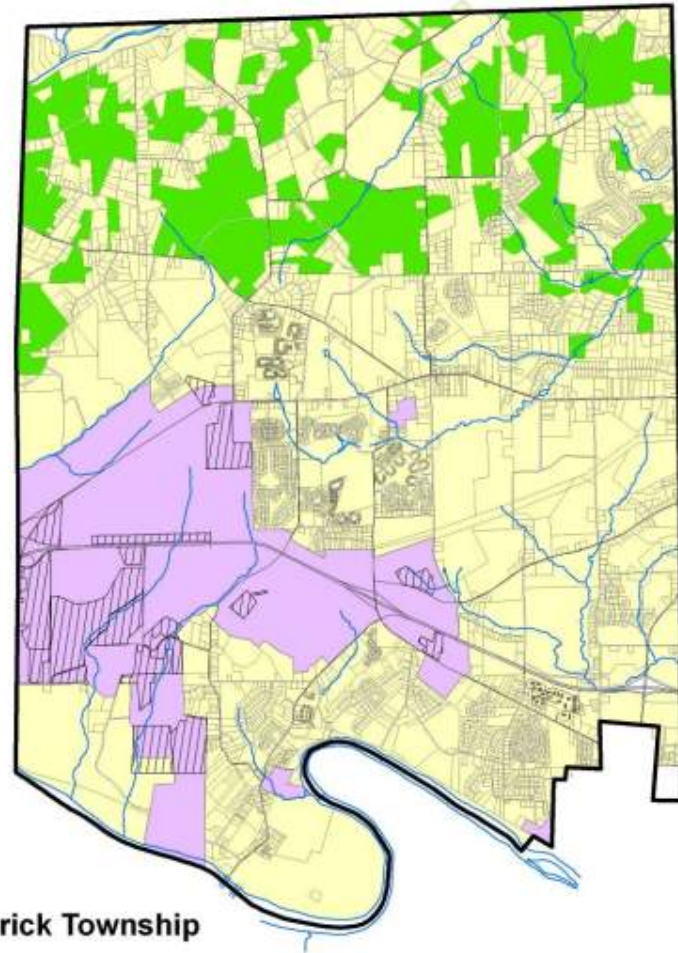
Sample Conservation in Sending Area

- ◆ TDR receipt, using R-3 standards, provides for 540 cluster units (377 more than R-1)
- ◆ Preserves nearly 700 acres in conservation area
- ◆ Value of land preserved is > \$15 Million



Non-Residential Receiving Scenario

- ◆ Existing non-residential zoning
- ◆ 600 acres vacant or underutilized
- ◆ Reduce allowable impervious from 70% to 55%
- ◆ Allow up to 75% impervious with TDR



Limerick Township

- Undeveloped/Underutilized 10+ Acres
- TDR Overlay on LLI and O/LI
- Undeveloped/Country Estates 10+ Acres

Non-Residential Receiving Scenario

- ◆ Existing sewer and water service
- ◆ Existing center of commercial development



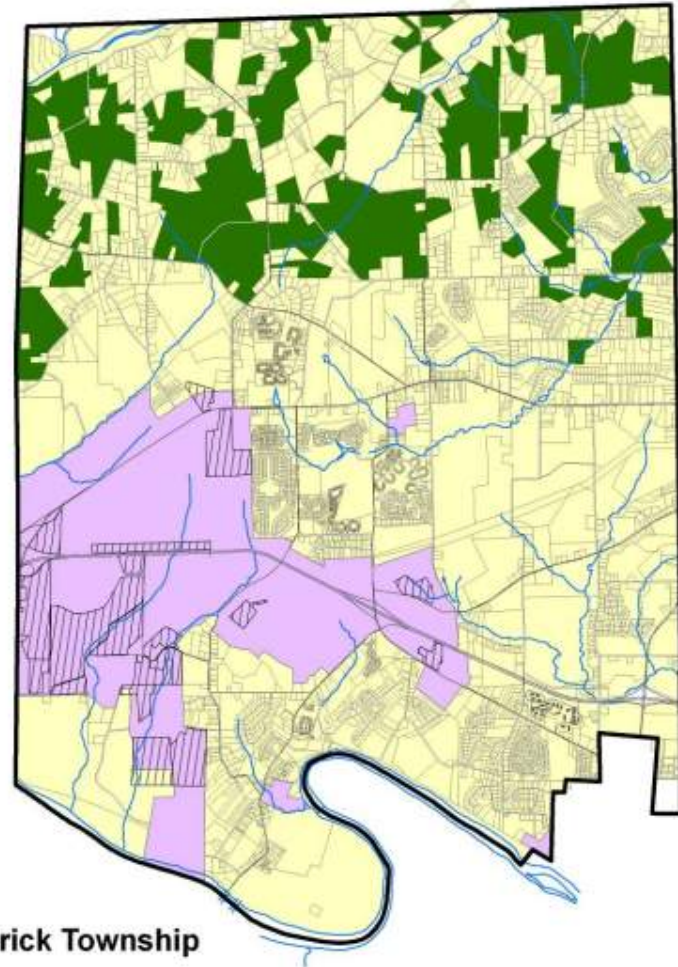
Sample TDR Valuation

- ◆ Establish value of TDR
 - Equate to the additional land that would need to be purchased for the same amount of impervious
- ◆ One TDR permits an additional 5,000 sq. ft. impervious (up to max of 75%)



Sample Conservation in Sending Area

- ◆ Increase from 55% impervious to 75% with TDR receipt provides for 116 additional acres of impervious
- ◆ At one TDR/5,000 sq. ft., requires 1,011 TDRs
- ◆ Preserves nearly entire sending area

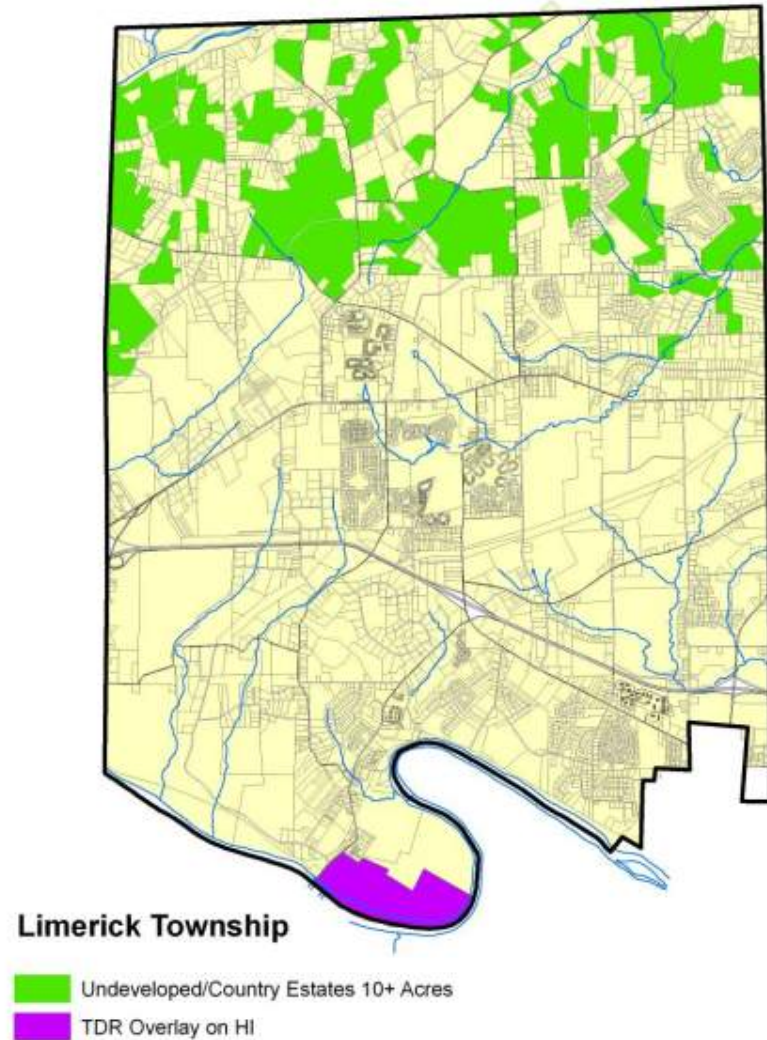


Limerick Township

- Preserved via LLI and O/LI Overlay
- ▨ Undeveloped/Underutilized 10+ Acres
- TDR Overlay on LLI and O/LI

Age-Qualified Receiving Scenario

- ◆ Existing HI District
- ◆ Currently one 200-acre parcel
- ◆ Provide for age-qualified residential development with TDR



Sample Receiving Area

- ◆ Provide a logical area
 - Adjacent to residential Village
 - Age-qualified complemented by preserved open space and river access
 - Encourage activity on unutilized site
 - Provide impetus for needed infrastructure improvements



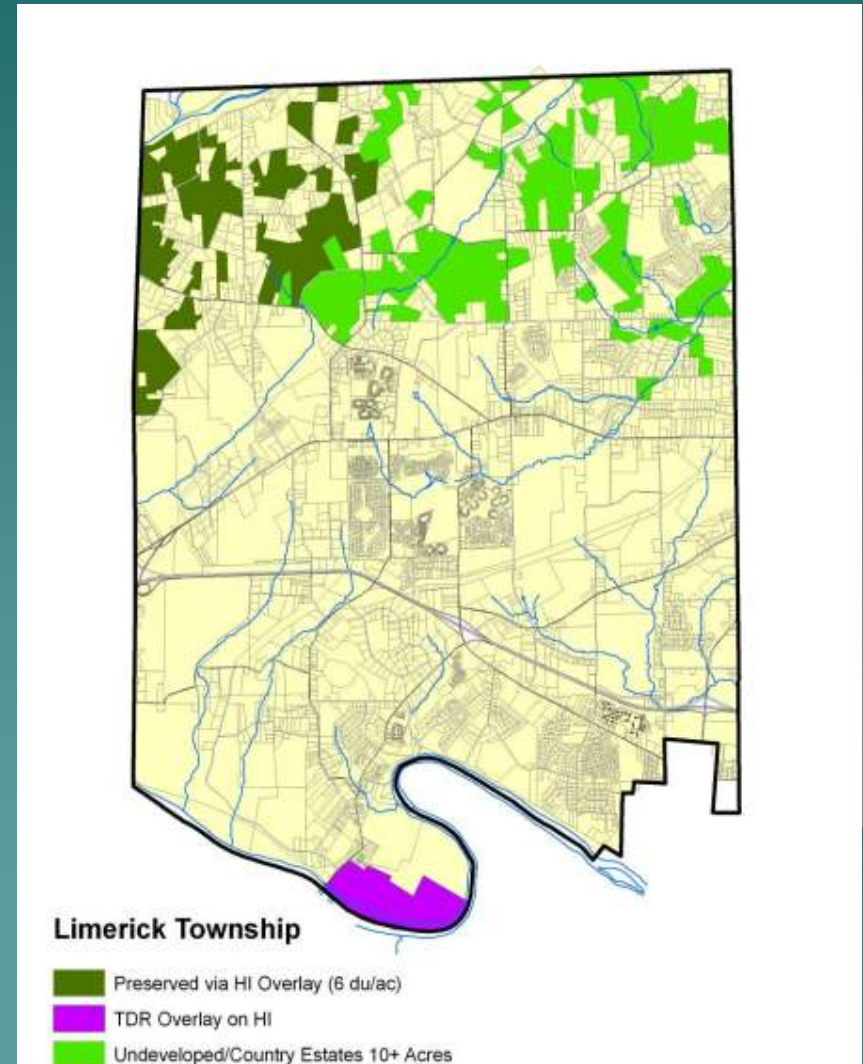
Sample TDR Valuation

- ◆ Provide density bonus as developer incentive
- ◆ Permit 3 age-qualified units per TDR
- ◆ At 3 du/ac density, preserves 370 acres
- ◆ At 6 du/ac, preserves 740 acres



Sample Conservation in Sending Area

- ◆ Preserves 700 acres at 6 du/acre
- ◆ Net gain in school district revenue equation
 - Eliminates 400 units in R-1
 - Allows 1,200 in age-qualified
- ◆ Fosters “brownfield” redevelopment and infrastructure improvement



The Bottom Line:

TDRs are established by local ordinance but, ultimately, are a market-driven Tool!

- ◆ TDRs only function when:
 1. Buyers want what developers can build with a TDR
 2. Developers want to purchase TDRs & transfer them
 3. TDR owners want to sell them
- ◆ A successful ordinance cannot ignore how value can be created across the spectrum of the real estate market

TDRs don't create demand for development!

Key to TDR Success:

Attractive development opportunities available only through receipt of TDRs



TDR often fails if developers can exceed base density:

- ◆ By using non-TDR procedures like clustering
- ◆ By providing on-site amenities
- ◆ By requesting and receiving re-zonings without TDR



In contrast:

- ◆ Some TDR Ordinances only allow extra density with TDR
- ◆ Some offer significantly more density via TDR than with other development options
- ◆ Adjustments to base zoning (downward) are often necessary

TDR Banking Options

Manheim & Warwick examples, Lancaster County

- ◆ Township Board of Supervisors jump-started TDR Program by buying TDRs from farmers
- ◆ Purchased TDRs either banked or auctioned off via the open market;
- ◆ Warwick Township markets its TDR Receiving Zone and provided supporting infrastructure.
- ◆ Proceeds from sale of TDRs recycled into further land conservation!



Multi-Municipal TDR

Key Issues



- ◆ Receiving municipality must recognize benefits of conservation in sending municipality
- ◆ Receipt of TDRs must achieve mutual goals for community resource protection, e.g., greenbelts, farmland, water resources
- ◆ Receiving municipality must be willing to place TDR “hurdle” in front of local development



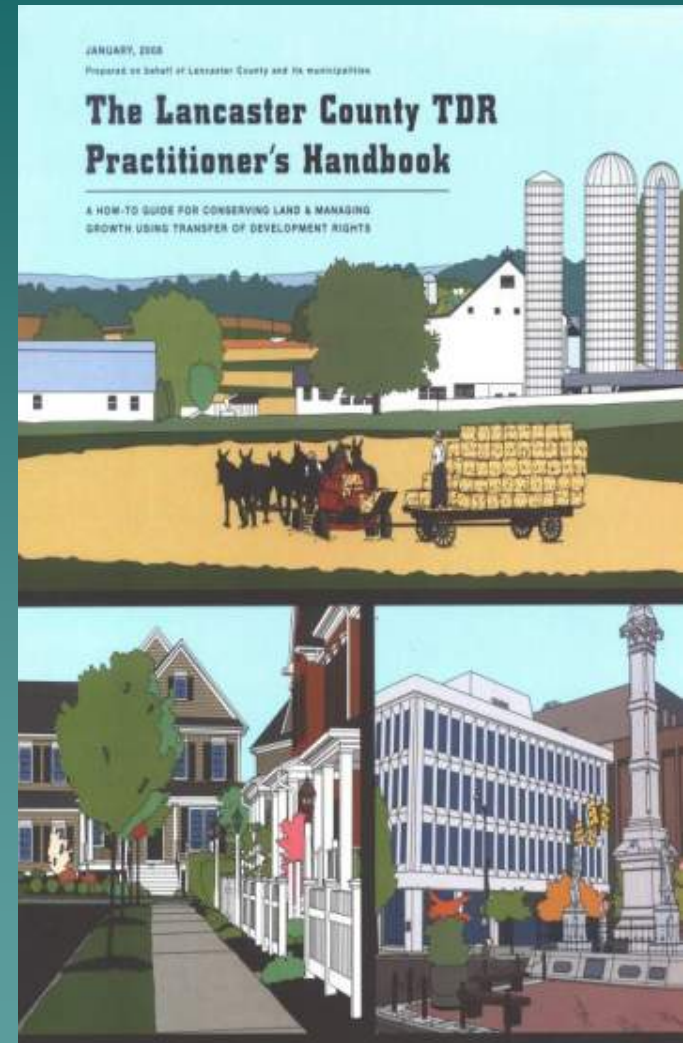
Multi-Municipal TDR

Implementation Ramifications

- ◆ Similar Internal Ordinance Set-Up
- ◆ Inter-Municipal Agreement for TDR Transfer
- ◆ Provision for Receipt of TDRs severed in other municipalities
- ◆ Potential special or favored Sending & Receiving Area Qualifications
- ◆ Potential Density Multipliers to Adjust for varying TDR values
- ◆ Zoning Adjustments to reduce competition with TDR receiving development
- ◆ Compatible Plan Submittal Procedures

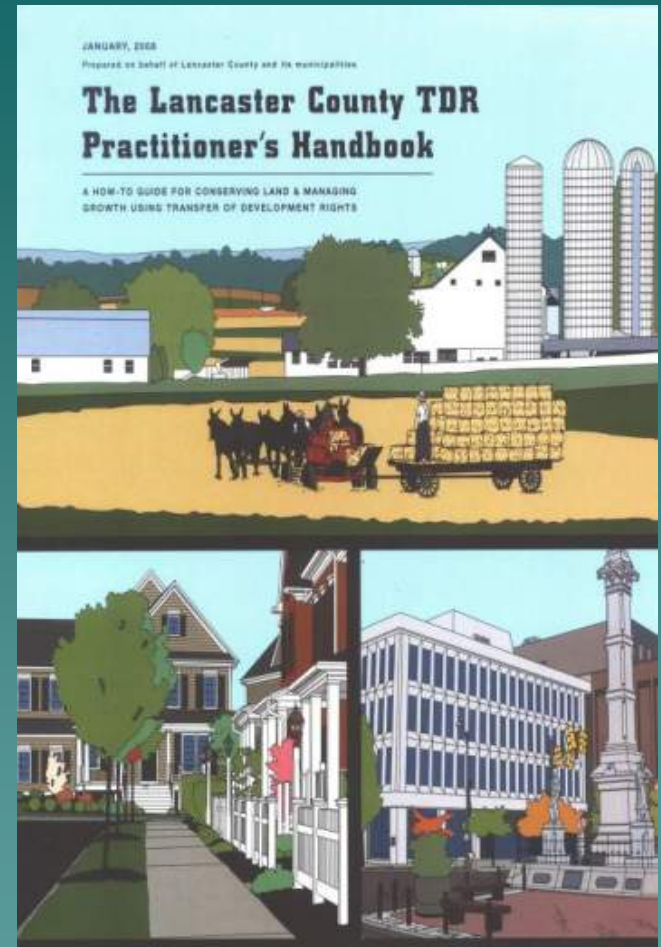
TDR – A Tool for Lancaster County?

- ◆ TDR puts an additional growth management and conservation tool in the “planning toolbox;”
- ◆ The County’s Plan, *Balance*, recommends the use of TDRs for both UGA and Rural Strategies implementation;
- ◆ Regional plans such as LIMC’s *Growing Together* recommend using TDRs; and
- ◆ Why not build on TDR success stories already underway in Lancaster County?



TDR Handbook Objectives

- ◆ Share the knowledge with all Lancaster municipalities:
 - Basic steps for setting up a TDR program;
 - Local TDR practices that have worked;
 - Sample ordinances and other legal documents needed to establish a TDR program.
- ◆ Focus on farmland resources.
- ◆ Reduce the fear of “complexity” in setting up a TDR program.



TDR is not new, nor a panacea. . . but its potential benefits are significant:

- ◆ *Saves farmland and other open spaces*
- ◆ *Provides cash to sending landowners*
- ◆ *Can provide estate planning advantages*
- ◆ *Prevents sprawl by redirecting new development*
- ◆ *Increases the conservation value of land*
- ◆ *Land preservation or public space financed by the private market*
- ◆ *Option of retiring purchased TDRs, or selling them for use elsewhere*

For further review:

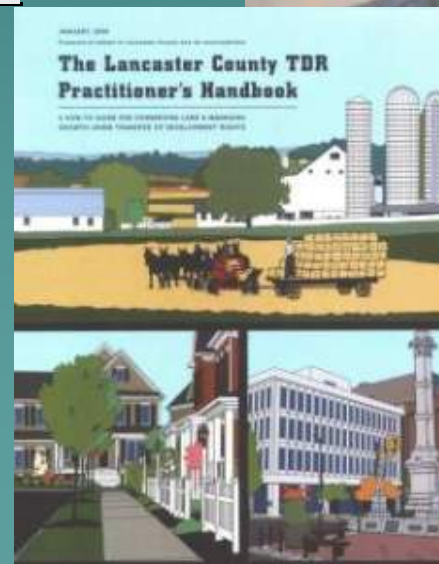
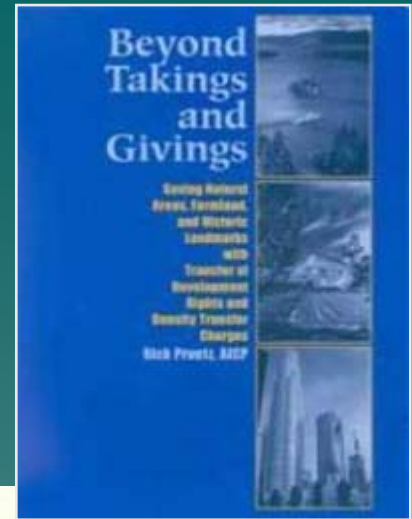
Rick Pruetz, FAICP: Beyond Takings and Givings 2003, Arje Press; and

Saved By Development 1997, Arje Press

Brandywine Conservancy: Transfer of Development Rights, 2003

Lancaster County TDR Practitioners Handbook, 2008

PA Land Trust Association website: conserveland.org; click on “library,” then “tools”



A painting of a large, leafless tree in a rural landscape. The tree is the central focus, with its intricate, bare branches reaching across the frame. In the background, a small white house with a dark roof is visible on the left, and a wide, open field extends to the horizon. The sky is a pale, hazy blue. The overall mood is quiet and contemplative.

Thank You !