

## Background Paper #3: Transfer of Density

### 1. What is Density Transfer?

Density transfer refers to transfer of development rights (TDR), transfer of development credits or transfer of density credits (TDC) from one property to another property. Principally, the concept of density transfer applies to residential or dwelling units.

The application of this concept in Canada is more generally referred to as transfer of density, or transfer of development or density credits (c.f., transfer of density rights in the USA)<sup>1</sup>. Properties that transfer density are identified frequently as ‘donor’ or ‘sending areas’ and properties that receive the transfer of density are identified as ‘receiving areas’. Density transfer has been described as one of the “few planning concepts in recent years (that has) evoked as much enthusiasm and debate” (Roddewig and Inghram, n.d., p.1). As noted by Pruetz (1999):

Transfer of density “is a market based technique that encourages the voluntary transfer of growth from places where a community would like to see *less* development (called sending areas) to places where a community would like to see *more* development (called receiving areas). The sending areas can be environmentally-sensitive properties, open space, agricultural land, wildlife habitat, historic landmarks or any other places that are important to a community. The receiving areas should be places that the general public has agreed are appropriate for extra development because they are close to jobs, shopping, schools, transportation and other urban services (p.1).

### 2. How does density transfer work?

Transferring dwelling unit density from one area to another provides flexibility in terms of managing development form, type and location. For instance, many municipalities apply density transfer in order to direct development away from sensitive ecological areas to areas where development capability is high, where existing development already occurs and more dwelling units are desired, or to areas where there is a desire to focus new development. In essence, transfer of density permits a local government to manage growth while supporting identified community goals and assisting property owners to benefit from those stated goals. For example, a property owner, who owns land that is identified as ecologically sensitive (such as a wetland or steep slope) and whose property is designated in an

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<sup>1</sup> In Canada, as per the British parliamentary model, property rights are not enshrined in the Charter of Rights or the Constitution. In the USA, there exists constitutional protection of property rights. Therefore, in Canada, use of the term transfer of development rights (TDR) has been replaced by other terms: transfer of density, density transfer or transfer of development/density credits. In this review, TDR will be used in cases that refer to the USA and density transfer or transfer of density will be used to reflect the BC context.

Official Community Plan (OCP) as having development potential, could ‘send’ that density to another part of the municipality (i.e., a receiving area) that has been identified in the OCP as a location where additional density is desired<sup>2</sup>. That transfer of density removes the ‘opportunity’ to locate development on the subject property and therefore protects the sensitive resources from development impacts. Such sending would occur in exchange for monetary benefit accrued to the ‘sender’ and derived from the ‘receiver’ who benefits from the additional density gained from the sender.

While designation in an OCP does not convey a ‘right’ to develop, it does denote potential community supported use, subject to specific assessments of property development potential and constraints. Such analysis determines development capability. In situations where development capability is low due to the application of community values (e.g., need to protect OCP endorsed ecological values, agriculture lands, open space and/or hazard lands), the actual potential for development, as noted in the OCP land use designation, may be limited but eligible for transfer to a more suitable area. In such a process, overall OCP goals are addressed by ‘sending’ the potential development to a more appropriate ‘receiving’ area. In such situations, “since TDR uses deed restrictions or conservation easements to sever or extinguish development (credits), public values such as open space and historic buildings are permanently protected” (Hanly-Forde *et al* 2010, p.4). Further, as Hanly-Forde *et al* note, “In contrast, zoning rules can change over time and with new administrations” (*Ibid*, p.4). Therefore, as part of the transfer process, the sending property has permanent restrictions placed on title, so that the values that caused the transfer to occur are protected in perpetuity.

Each community has special considerations for density transfer and needs to set out specific expectations and goals to address those considerations. For instance, some communities frame density transfer within a requirement that overall build-out after density transfer remains consistent with the objectives of the OCP. In that situation, the location of dwelling units can be directed away from sensitive ecological areas, agricultural lands, heritage areas or open space (i.e., sending areas) to locations where additional development is desired, such as villages or new development nodes, (i.e., receiving areas) without adding to the overall total number of dwelling units in the municipality at time of build-out. Through this process, density transfer

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<sup>2</sup> Note: The nature of OCP designations is such that detailed parcel by parcel ecological assessments or other pertinent detailed assessments (e.g., heritage considerations, agricultural sites, etc) are not undertaken generally on a parcel by parcel basis in an OCP. Instead, development review relies upon general mapping designations in the OCP and associated detailed individual lot assessments at time of re-zoning application. Therefore, transfer of density consideration occurs typically on a parcel by parcel basis within the context of broadly identified ‘sending’ and ‘receiving’ areas and overarching OCP expectations and requirements and subsequent detailed individual parcel assessment.

becomes an active tool in Council's 'tool kit' to manage and direct growth in ways that are consistent with the OCP build-out or total number of dwelling units and associated community endorsed goals.

As Lawrence (2010) notes, "what is actually occurring is a consensus to place conservation easements on property . . . while allowing for an increase in development densities or 'bonuses' in other areas" (p.1).

In many situations, sending areas are encouraged to send density credits by increasing the baseline density that is transferred from that which would occur in the absence of the transfer (Pruetz, 1999). For example, a property might be zoned with a residential density of 1 dwelling unit per ten acres and have an OCP designation potential of 5 units per ten acres (subject to detailed site assessment, and amenity bonusing or transfer of development credits or other requirements). In such a situation, it may be in the community's interest to protect sensitive ecological features that exist on the 'sending' property by encouraging the property owner to transfer the OCP designated density to an approved receiving area. The approved receiving area would have a special OCP designation that permitted the area to increase the number of units above the base OCP designation by accepting units from an approved receiving area. Such a process benefits the community by protecting valuable resources in the sending area and fulfilling OCP policies in the receiving area.

As Lawrence (2010) states:

it is essential that developers have an incentive to purchase development rights (i.e., a density bonus) . . . wherever the receiving/sending areas are, the use of TDRs should be consistent with a community's comprehensive plan, future land use map, zoning, and capital improvement program (p.1).

He continues by confirming that density transfer "takes time to work and must be mandatory, rather than voluntary for landowners in the sending area and for the higher density building in the receiving areas" (p.4). He also identified several features<sup>3</sup> that support effectiveness of density transfer, including:

- ease of understanding: " should be simple and easy for landowners and the public to understand . . . must be a commitment . . . by the political leadership of the community" (p.4);
- managed growth: "should be part of a growth management program . . . the ultimate purpose of TDR is to create more efficient growth patterns" (p.4);

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<sup>3</sup> Note: Lawrence is referring to US examples and therefore applies the term TDR and use of notion of 'rights'.

- adequate incentives: “(senders) need adequate incentives to sell their development rights just as developers need adequate incentives to purchase the development rights. Also, the density bonus in the receiving areas must be attractive enough for developers to want to purchase the development rights” (p.4);
- careful management: “a well trained planning staff must carefully manage the program” (p.4).

Emerging density transfer practice is now examining density transfer on a regional scale (e.g., Puget Sound, Washington). In Puget Sound, a Regional Transfer of Development Rights Program is being coordinated by the State of Washington Department of Commerce. Such an approach is seen to be a way to manage growth in the region, by focusing urban development in urban areas while protecting rural, open space, agriculture and sensitive lands (see: [www.commerce.wa.gov/site/1060](http://www.commerce.wa.gov/site/1060)). While Metro Vancouver’s Regional Growth Strategy does not refer to regional density transfer, future discussions on this subject could emerge as the region examines land use from a holistic perspective.

### **3. Existing OCP Transfer of Density Considerations**

The existing OCP (Section 3.1J) permits the transfer of density by stating that, “Council may support the concept of being able to transfer residential development within a property or between properties” (1996, p.13). The existing OCP identifies “donor area” and “receiver area.” The former is described as:

All areas within a community watershed, a development permit area . . . , slope area greater than 25 degrees . . . and any significant area (herein after collectively referred to as donor areas) are worthy of preservation and protection and that the preservation and protection of these areas warrants consideration by Council, on a case by case basis, of zoning measures designed to transfer permitted residential density from donor areas to other parts of the Plan area (p.13).

Receiver area is described as:

Any area not considered as a donor area (hereinafter referred to as the receiver area) may be capable of accommodating greater residential density than that permitted by the zoning bylaw and that the accommodation of such greater density may be in the interest of the Plan area generally provided that no net increase in density within the Plan area results (p.13).

Bowen Island has had the ability to use density transfer, but has failed to make use of that opportunity to date. Such failure can be attributed to several factors, including:

- the fact that in 1996 density transfer was an emerging concept and experience in its application was rare in BC and Canada and therefore ‘ahead of its time’;
- the detailed mechanisms, including a supporting bylaw, that identify how such a process could and should unfold, has been missing from the available municipal tools<sup>4</sup>;
- as in many land development concepts, there have been no ‘pioneers’ in this area on Bowen that have proven to others that it is a workable idea;
- the market has not been ripe for its application, as development has been approved because emphasis has been placed upon development applications that either comply with the Land Use Bylaw (LUB) or development of ecologically sensitive lands has addressed issues through delivery of community desired amenities, such as green space;
- there has not been a clear identification of sending and receiving areas, so there is a corresponding lack of direction for potential participants in a density transfer process; and
- there have not been clear and apparent incentives for density transfer, including the commonly applied notion of the sender and the receiver benefiting financially through density bonusing in both the sending and the receiving areas<sup>5</sup>.

#### 4. Lessons

The following summarises lessons learned from 20 years of transfer of density work in North America:

- 1.1 where applied, has proven successful in protecting community valued lands, such as agricultural lands, ecologically sensitive lands, hazard lands, wildlife areas and open space;

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<sup>4</sup> Note: experience in other jurisdictions points to the need to have the enabling legislation in place so that sender and receiver understand the ‘rules’, expectations and benefits of density transfer. Simply left as an identified opportunity in the OCP, transfer of density will remain an idea only.

<sup>5</sup> For instance, many rural jurisdictions have given a bonus to the sending landowner (when the land in question has community value [e.g., is a hazard area, ecologically sensitive area, agricultural area]) by transferring the number of dwelling units that might be developed (e.g., by transferring the difference between the LUB and the OCP designation [in this instance, the LUB density could still be built] or transferring all or part of the LUB density [in addition to any OCP designated density that might exist]) to the receiving area (which notionally pays for the sender’s transferred density in the sending property). The increased density in the sending area only occurs upon formal transfer to a designated receiving area. Such transfer occurs because the owner of the receiving property, which has designated community supported opportunity for increased density (as confirmed in the OCP), purchases the available density from the sender. At that point, notwithstanding the sending property’s zoning, an encumbrance is registered on the sending property restricting future development by the number of units transferred. In this way, overall community build-out is not compromised, community values are enhanced, sending properties receive value for their relinquishment of development opportunities, and market forces assist in achieving community objectives while benefiting from community inspired development goals.

- 1.2 has assisted local governments to manage growth and avoid haphazard development;
- 1.3 has set out market based options with clear expectations for property owners and developers, providing enhanced equity rather than simply applying restrictive regulations (that may be legally contentious);
- 1.4 creates opportunities for achieving community desires without need for public expenditure (beyond administration of process);
- 1.5 are voluntary in sense that landowners are not required to sell their development credits except when they wish to subdivide; and
- 1.6 integrates multiple objectives, such as growth management, environmental protection, infrastructure efficiency and focus upon development nodes by directing growth to appropriate community supported areas.

Over the past ten years, density transfer has become an accepted planning and growth management tool. But, transfer of density is a technically challenging process that requires investment of time and resources to administer. As noted by Roddewig and Inghram (n.d.), “the failure of the TDR concept to live up to expectations is a failure of design and implementation” (p.1). Further, transfer of density is dependent upon the active participation of landowners and a market that will support such activity. Yet, it offers proven benefits to those communities that have actively supported transfer of development through supporting tools, public education and recognition of market forces.

## **5. The Example of Salt Spring Island**

Following a Comprehensive OCP Review, Salt Spring Island has recently adopted a new OCP (2008). That OCP includes a detailed consideration for development transfer. Basically, areas are mapped as either “donor” or “receiving” areas. Reasons for density transfer are to protect and preserve (i.e., Environmentally Sensitive Areas, natural hazards, heritage). “Receiving areas” include Ganges, Fulford Village, and Channel Island Village (see: Addendum).

## **6. Implications for Bowen**

Given the fact that the existing OCP permits density transfer and that other BC communities, including Islands Trust communities, are adopting density transfer as a viable management tool, it seems logical and appropriate to identify detailed mechanisms, including sending and receiving maps, within the OCP Update to facilitate and encourage density transfer that is consistent with community desires and expectations. To that end, the OCP Update should identify:

- a. Sending and receiving areas that are determined by careful landscape modeling and are consistent with desired growth patterns; and

- b. Detailed guidelines for the application and implementation of density transfer that is consistent with build-out expectations.

The existing OCP provides the opportunity to identify all of the mechanisms necessary to implement density transfer. In order to fulfill the objectives set out in the existing OCP, the Update should make use of that opportunity and detail the tools necessary to achieve density transfer.

## **Addendum**

The following provides details from the Salt Spring OCP and illustrates how an OCP might be worded to encourage density transfer:

### *A.5.2.2 – ESAs / High Biodiversity Areas*

The Local Trust Committee should consider rezoning applications from property owners who wish to transfer their development potential from areas identified as Environmentally Sensitive Areas or High Biodiversity Areas on Maps 9 through 12. Additional Environmentally Sensitive Areas or High Biodiversity Areas could be identified by further study. Such specific areas should be considered "Development Potential Donor Areas", even if they are in a Designation that is identified as a Development Potential Receiving Area. Applications should meet the guidelines in Appendix 4.

### *A.7.2.3 – Natural Hazards*

The Local Trust Committee should consider rezoning applications from property owners who wish to transfer their development potential from areas identified on Maps 13 and 14 as subject to natural hazards. Specific areas should be considered "Development Potential Donor Areas", even if they are in a Designation that is a Development Potential Receiving Area. Applications should meet the guidelines in Appendix 4. The LTC should consider preparing new mapping of areas subject to natural hazards and refine "Development Potential Donor Areas."

### *A.8.2.5 – Heritage*

The Local Trust Committee should consider rezoning applications from property owners who wish to transfer their development potential from land that contains heritage buildings or other heritage features. Such specific land should be considered a Development Potential Donor Area even if it is in a Designation that is a Development Potential Receiving Area. Such applications should meet the guidelines in Appendix 4.

### *B.2.3.1.7 – Settlement Patterns*

To identify a variety of ways in which settlement pattern changes may be encouraged and enabled (for example through the transfer of development potential), instead of the regulatory removal of the development potential that exists at the time of this Plan's adoption. To ensure that any higher density areas that are created through the transfer

of development potential do not have a negative impact on the rural character or natural environment of the island

*B.2.3.2.1 – Reference to Map 26*

The Local Trust Committee should consider rezoning applications from property owners who wish to effectively transfer their existing development potential from one property to another in a way that would achieve one or more of the above objectives. Rezoning applications that would transfer development potential should be consistent with the guidelines in Appendix 4. *Land Use Designations that are designated in this Plan as Development Potential Donor Areas and Development Potential Receiving Areas are shown on Map 26.*

*B.2.3.2.2 – Hamlets / Villages*

The Local Trust Committee could consider rezoning applications that would effectively transfer existing development potential from Development Potential Donor Areas into new hamlets or villages in the Rural Neighbourhoods Designation. Proposals for new hamlet or village sites should follow the guidelines in Appendix 4.

*B.5.2.2.4 – Ganges is a Development Potential Receiving Area*

The Local Trust Committee could consider rezoning applications to allow a slightly higher density of residential development than permitted by current zoning as part of a proposal that provided an eligible community amenity (see Appendix 3) or as part of a proposal to transfer development potential (see Section B.2.3.2 and Appendix 4). The Ganges Village Designation is a Development Potential Receiving Area. However, development potential should only be transferred to the North Salt Spring Waterworks District if the District can establish that any incremental demand can be met through water conservation

*B.5.3.2.9 – Fulford is a Development Potential Receiving Area*

The Fulford Village Designation is a Development Potential Receiving Area; however, applications to transfer development potential should not be considered until further studies are able to demonstrate the ability of Fulford Village to act as a Receiving Area.

*B.5.4.2.4 – Channel Ridge Village is a Development Potential Receiving Area*

The Local Trust Committee could consider rezoning applications to allow a slightly higher density of residential development than allowed by current zoning as part of a proposal that provided an eligible community amenity (see Appendix 3) or as part of a proposal to transfer development potential (see Policy B.2.3.2.1 and Appendix 4). The Channel Ridge Village Designation is a Development Potential Receiving Area. Development potential should only be transferred into the Channel Ridge Village Designation from the Channel Ridge Residential Designation.

The preceding example from Salt Spring offers some guidance for Bowen Island.

Bibliography

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