

# DEVELOPMENTS IN VERMONT ENVIRONMENTAL LAW

## TRANSFERABLE DEVELOPMENT RIGHTS IN VERMONT: IS THERE A TAKING PROBLEM?

### INTRODUCTION

A Transferable Development Right (TDR) is a land use planning tool. The TDR concept was first discussed as a method of preserving landmarks in the Chicago area.<sup>1</sup> The concept has since been applied in many different situations to further many different goals.<sup>2</sup> This development note explains the concept of TDRs, examines how TDRs fit within Vermont's legal framework, and analyzes the taking implications of the use of TDRs.

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1. Costonis, *The Chicago Plan: Incentive Zoning and the Preservation of Urban Landmarks*, 85 HARV. L. REV. 574 (1972); Costonis, *Development Rights Transfer: An Exploratory Essay*, 83 YALE L.J. 75 (1973).

2. For example, TDRs are used: to preserve landmarks, to preserve farmland and open space, to preserve ecologically fragile areas, to serve as a primary method of land use regulation, and to encourage construction of low and moderate income housing. *See generally* J. ROSE, *TRANSFER OF DEVELOPMENT RIGHTS* (1975).

One of the earliest uses of TDRs occurred in the town of St. George, Vermont. The people of St. George wanted to achieve orderly growth in the face of encroaching development from nearby Burlington, Vermont's fastest growing urban area. The town purchased 48 acres of land to be the new village where future development would be focused. In order for a developer to build within the area, she had to buy development rights from property owners outside the village core, but within the town. The developer could then "transfer" these development rights, under a prescribed plan, for use within the village. *Id.* at 17. This system allowed St. George to control the location and rate of growth within the town while at the same time compensating property owners for the loss of development opportunity on their land. *Id.*

The St. George model is not relevant for the purposes of this development note because it is not practical for other areas in Vermont. The St. George model required the town to buy the land for the proposed village. Village and town areas are mostly owned by private individuals and already have some degree of development. Therefore, the St. George model would be too costly. For more detailed treatment of the St. George model, see Wilson, *Precedent-Setting Swap in Vermont*, 61 AM. INST. OF ARCHITECTS J. 51 (1974).

In addition, some TDR models allow only landowners in receiving areas to buy development rights. Receiving areas are those areas, as set out in a prescribed plan, where the townspeople want to allow development. Landowners in these areas receive development rights transferred from land in sending areas. Sending areas are those areas, as set out in a prescribed plan, where the townspeople do not want development. In other TDR models, third parties are allowed to buy and sell development rights, thereby creating a market for TDRs.

## I. TRANSFERABLE DEVELOPMENT RIGHTS: THE CONCEPT

The traditional TDR model is surprisingly simple. For example, if the people in a given planning area<sup>3</sup> decide that open agricultural land needs protection from development, all areas that fit the planners' definition of open agricultural land will be placed in conservation zones through the use of zoning ordinances.<sup>4</sup> No development will be allowed in conservation zones unless the development is consistent with the use of the land for open agricultural purposes.<sup>5</sup> In order to compensate owners of open agricultural land for the loss of development opportunity, conservation zones will be deemed sending areas and the development rights, one stick in a bundle of property rights, can be sold.

Buyers of the development rights may use them to increase the density of allowable development in receiving areas. Receiving areas are designated lands within the planning area where higher density development is desirable. Factors taken into account when designating a receiving area are: availability of public services, effect on the environment, and the potential for overcrowding.<sup>6</sup>

The planners must be careful to determine the desired amount of development in the receiving areas in relation to the number of TDRs acquired by a developer and the total number of development rights to be sold in the sending area. For example, if there are one thousand acres of land in a sending area, and one hundred acres of land in a receiving area, planners must be sure to state very clearly, from the inception of a TDR scheme, that a developer, or third party, must buy development rights from ten acres of land in a sending area in order to develop one acre of land in a receiving area. A ratio determination of this nature is essential for the successful operation of a TDR scheme.<sup>7</sup>

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3. A "planning area" could be as small as St. George, Vermont, *see supra* note 2, or as large as Montgomery County, Maryland, *see* Tustian, *Preserving Farming Through Transferable Development Rights*, AM. LAND F. MAG., Summer 1983, at 63. The only prerequisite for a planning area is that the people who make up the area have a common land use destiny.

4. *See, e.g.*, Miner & Schridman, *Transfer of Development Rights: An Introductory Statement*, URB. LAND, Jan. 1975, at 3.

5. Housing for farmhands, for example, would be development consistent with use of the land for open agricultural purposes.

6. For a discussion of the various hazards associated with designating areas as sending and receiving areas, *see* Williams, *Transfer of Development Rights—What Are They? Prerequisites for Success*, REFLECTIONS ON SPACE, Feb.- Mar. 1984, at 1.

7. *Id.*

The relevant parts of the TDR scheme—sending areas, receiving areas, and ratio allotments—should be embodied in a Master Plan. The Master Plan sets out, in detail, the guidelines for a TDR scheme and it represents the most significant administrative expense of developing a TDR scheme. Once the Master Plan is in effect, the private sector carries out most of the program.<sup>8</sup> The private sector determines the fair market value of the development rights in the sending area. The sale of development rights, for fair market value, in the private sector, compensates the landowner for loss of development opportunity on her property.

An additional requirement of a TDR scheme is recording the sale of development rights on the sending area landowner's deed.<sup>9</sup> This requirement provides notice to potential buyers of the land in the sending area of the status of development rights. The recording requirement also guarantees the preservation of the open agricultural land.<sup>10</sup>

Another aspect of the traditional TDR scheme is the absence of the need for state enabling legislation. Planners in Montgomery County, Maryland viewed the situation this way: "With state law already supportive generally of growth management at the local level, we felt it unnecessary and counter productive to seek any special state enabling legislation."<sup>11</sup> The development of the Master Plan and the initiation of the TDR program are often left to "stand on [their] own merits legally" with the instruments of the TDR program being added onto existing ordinances and practices.<sup>12</sup>

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8. For a detailed discussion of the organization and implementation of a TDR plan to preserve farmland, see Tustian, *supra* note 3.

9. In Montgomery County, Maryland, the TDR program required an "easement on the sending area parcel" in order to guarantee the preservation of the land. Tustian, *supra* note 3, at 72.

10. Another advantage of this system is that the tax treatment of open agricultural land can become more favorable to the landowner after the sale of development rights. Once the sale of development rights has taken place, the landowner can pay property taxes on the value of the land only for agricultural purposes. The additional tax burden follows the development rights, providing an incentive to use them quickly. The New Jersey proposal incorporated a tax scheme similar to the one mentioned above. See J. ROSE, *supra* note 2, at 4.

11. Tustian, *supra* note 3, at 67.

12. *Id.*

## II. TRANSFERABLE DEVELOPMENT RIGHTS: VERMONT

Vermont has gone one step further than most states and communities by specifically authorizing, at the state level, zoning regulations that contain provisions for TDRs<sup>13</sup> in its new growth bill, Act 200.<sup>14</sup> Authorization has the effect of giving a further legitimacy to TDR than would otherwise be possible. Legislation, passed specifically to sanction a certain program, can help the program withstand legal challenge. Police power regulations that do not have legislative authorization are much less likely to survive legal challenge.

A Vermont community may use a TDR scheme to further its goals concerning land use, but is under no obligation to do so.<sup>15</sup> One purpose of the legislation is to increase the awareness of tools with which planning areas can further their goals.<sup>16</sup>

Act 200 furthered the objectives of land use planning by broadening the purposes and goals of municipal and regional planning and development.<sup>17</sup> The purposes and goals include: giving communities more authority and resources to retain their character and to shape their future, strengthening the role of Regional Planning Commissions, and establishing programs to protect open land.<sup>18</sup> The legislation, by expressly authorizing certain tools to pursue defined objectives, gives communities an incentive, a strong legal base, to plan actively for their future. If challenged, whether

13. VT. STAT. ANN. tit. 24, § 4407 (Supp. 1988) provides that:

Any municipality may adopt zoning regulations including any of the following provisions

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(16) Transfer of development rights.

14. *Id.* §§ 4302-4495.

15. *Id.* § 4407(16).

16. In the early committee meetings discussing the legislation regarding historic and scenic resources, the following discourse took place:

Sen. Little: I think [legislation] is a good idea. This is not said critically, but if all the legislation is now in place in various spots in the statutes, other than expressing an idea, what will happen here to motivate towns to do this?

Sen. Hoff: People like you and I. Nobody is going to sit there and hit towns over the head to do it but in most towns, at least in my experience, there has been a growing concern about preserving the towns. If they now find that they have the tools in place to do it, hopefully they will but nobody is going to hit them over the head if they don't.

*Historic and Scenic Resources: Hearings on S. 69 Before the State Energy and Natural Resources Comm.*, Vt. Leg. Biennial Sess. 11 (Feb. 21, 1985).

17. VT. STAT. ANN. tit. 24, § 4302.

18. *Id.*

the challenge comes during a town meeting or in a court room, a community now has a broad base of specifically enumerated goals, and the tools to meet these goals, with which to justify zoning ordinances implementing various land use programs.

A TDR program fits well within the Act 200 framework. Communities now have specific authorization from the state to use zoning ordinances to downzone a sending area, to increase density in a receiving area, and to implement other requirements for a successful TDR scheme. For example, Vermont law requires communities to indicate in their regional plan, after July 1, 1989, areas which have the potential to sustain agriculture and to recommend a plan for maintenance of these areas.<sup>19</sup> A community may recommend the use of TDRs as a way of sustaining agriculture. Act 200 specifically authorizes the community to follow through with its recommendation.

At this point in time, no Regional Commissions in Vermont have TDR schemes in place, although some have expressed an interest in the idea.<sup>20</sup> The town of Warren, on the other hand, has implemented a TDR scheme. The Warren scheme follows the traditional TDR model<sup>21</sup> in most respects. Landowners in sending areas can sell development rights to developers who want to increase the density of allowable development on their receiving area land.<sup>22</sup> The scheme, although innovative and forward-looking, has not, as yet, been utilized by any developers.<sup>23</sup>

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19. *Id.* §§ 4347, 4348, 4348a.

20. There are 12 Regional Planning Commissions in Vermont. Each one was contacted, and although many expressed an interest in developing a TDR program, none is currently in place. Reasons given for not using TDRs included concerns about the applicability of TDRs to rural Vermont areas and concerns about a taking problem. Telephone interview with William Mitchell, Vermont Agency of Development and Community Affairs (Oct. 13, 1988); telephone interviews with planners at each Vermont Regional Commission (Oct. 3-12, 1988).

21. See *supra* notes 2-12 and accompanying text.

22. Sending area land has restrictions on it that only allow development if certain conditions are met. The goals of the scheme are to concentrate development in certain areas, such as Sugarbush Village and the commercial district, and to preserve the rural character of the rest of the town. Telephone interview with Barry Simpson, Chairman of the Warren Planning Commission (Oct. 14, 1988).

23. Development in the Sugarbush area has been relatively stable for a few years. The current market demand for development is mostly satisfied by the existing supply of land available for development. More development is planned to meet a projected increase in demand, but the TDR scheme has not been utilized to meet development needs. *Id.* In other words, there is currently no market for TDRs in the Warren area.

### III. IS THERE A TAKING PROBLEM?

The use of TDRs raises the issue of whether the governmental action of restricting development on land in a sending area is an unconstitutional taking under the Vermont or Federal Constitution. This section of the development note discusses existing Vermont law and then discusses how a Vermont court might address the taking issue.

Article II of the Vermont Constitution provides that "private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money."<sup>24</sup> Whether a zoning ordinance that restricts development but does not prohibit all land uses constitutes a taking under Vermont law is unclear. The Vermont Supreme Court has stated that "[a]ny injury to the property of an individual which deprives him of the ordinary use of it, is equivalent to a taking, and entitles him to compensation."<sup>25</sup> The application of this case law to a TDR scheme would most likely result in the Court holding that a taking has occurred because development would probably be considered "ordinary use" of property. This case law, however, dates back to 1884, and does not take into account many of the needs and goals of modern land use planning.<sup>26</sup>

The antiquity of Vermont case law on the taking issue could lead a Vermont court to look to the federal response for guidance.<sup>27</sup> A Vermont court could examine federal law on the taking issue from two perspectives. First, a Vermont court could consider federal law to be more protective of individual rights than Vermont law and therefore federal law would be controlling.<sup>28</sup> Second, and most likely, because Vermont law on the issue is so antiquated, a Vermont court could look to federal law to provide

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24. VT. CONST. art. II.

25. *Foster v. Stafford Nat'l Bank*, 57 Vt. 128, 133 (1884).

26. *Id.*

27. See Williams, *And Now We Are Here on a Darkling Plain*, 13 VT. L. REV. 635 (1989) for a commentary on the recent surge of activity in federal courts on the taking issue.

28. A general principle of American law is that a state constitution may be more protective of individual rights than the federal Constitution, but it may not be less protective. See, e.g., Brennan, *Foreword: Symposium on the Revolution in State Constitutional Law*, 13 VT. L. REV. 11 (1988). The United States Constitution reads, in the part relevant to taking: "nor shall private property be taken for public use, without just compensation." U.S. CONST. amend. V.

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The United States Supreme Court has recently examined the question of whether restrictive zoning of a particular property constitutes a taking in *Agins v. City of Tiburon*.<sup>29</sup> The appellants bought five acres of land in the city of Tiburon, California for residential development. Subsequently, the city prepared a land use plan, as required by law, governing land use and open-space development.<sup>30</sup> The city's plan restricted development on the appellants' land to a maximum of five single family residences.<sup>31</sup> The appellants claimed that the city had committed an unconstitutional taking of their land.

The Court considered whether "the mere enactment of the zoning ordinances constitutes a taking."<sup>32</sup> In making this determination, the Court established a two-prong test. First, a zoning ordinance constitutes a taking if the ordinance does not substantially advance legitimate state interests. Second, there is a taking if the ordinance denies an owner economically viable use of her land.<sup>33</sup> The Court stated that a determination of whether property has been taken "necessarily requires a weighing of private and public interests."<sup>34</sup>

In applying this test to the appellants' situation, the Court first considered whether the zoning ordinances substantially advanced legitimate governmental goals.<sup>35</sup> California law dictated that "the development of local open-space plans will discourage the 'premature and unnecessary conversion of open-space land to urban uses,'"<sup>36</sup> among other things. The Court recognized that the zoning ordinances, which restricted development of the appellants' land to a maximum of five homes, furthered the legitimate goal of preserving open-space.<sup>37</sup>

The Court went on to analyze whether the zoning ordinances denied the appellants economically viable use of their land. Here, the Court weighed the public and private interests to determine if

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29. 447 U.S. 255 (1980).

30. *Id.* at 257.

31. *Id.*

32. *Id.* at 260.

33. *Id.*

34. *Id.* at 261.

35. *Id.*

36. *Id.* (citing CAL. GOV'T CODE § 65561(b) (West 1983)).

37. *Id.*

a taking had occurred.<sup>38</sup> The Court recognized that the city's interest "in assuring careful and orderly development of residential property with provision for open-space areas" was a benefit to both the public and private interests involved.<sup>39</sup> In addition, the benefits and burdens of the zoning ordinances were shared by many people because the city's plan affected more landowners than just the appellants. The Court felt that "[i]n assessing the fairness of the zoning ordinances, these benefits must be considered along with any diminution in market value that the appellants might suffer."<sup>40</sup>

Furthermore, the Court examined the limitations placed on the land by the ordinances and considered whether the ordinances extinguished a fundamental attribute of ownership.<sup>41</sup> In the end, the Court held that no taking had occurred because "the impact of general land-use regulations" had not denied the appellants the "justice and fairness" guaranteed by the fifth and fourteenth amendments.<sup>42</sup>

The application of the Supreme Court's analysis in *Agins* to zoning ordinances that implement a TDR scheme would probably result in a finding that no taking has occurred. A TDR scheme would substantially advance legitimate state goals. Like the California law encouraging open-space conservation, Act 200<sup>43</sup> states, as a goal, preserving open land.<sup>44</sup> Like the zoning ordinances that restricted residential development in *Agins*, a TDR scheme to protect open land would probably be recognized as furthering the legitimate goal of preserving open land.

The issue then becomes whether zoning ordinances that implement a TDR scheme to preserve open land<sup>45</sup> deny the landowner economically viable use of her land. A balancing of public and private interests by the court is relevant in answering this question. A TDR scheme is established to promote orderly development and to preserve open spaces. Thus, the public interest in

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38. *Id.* at 262.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* at 262-63.

43. VT. STAT. ANN. tit. 24, §§ 4302-4495 (Supp. 1988).

44. *Id.* § 4302.

45. The preservation of open land is used as an example throughout this development note. Other uses for a TDR scheme also exist. See *supra* note 2.

establishing a TDR scheme is very similar to the public interest in *Agins* where the zoning ordinances were established to assure "careful and orderly development" and to preserve open lands.<sup>46</sup>

In addition, zoning ordinances implementing a TDR scheme affect people in the whole region included in the Master Plan. Therefore, as in *Agins*, the benefits and burdens of the zoning ordinances would be shared by many people. These factors must be "considered along with any diminution in market value"<sup>47</sup> that the challengers of a TDR scheme might suffer.

The private interest burden side of the balance includes analysis of factors such as the limitations placed on the land by the ordinances and whether a fundamental attribute of ownership would be extinguished. In *Agins*, development was allowed on the five acre property in question, but it was restricted to a maximum of five single-family residences.<sup>48</sup>

A TDR scheme to preserve open agricultural land does not preclude all development on land in the sending area, just development inconsistent with the use of the land for open agricultural purposes.<sup>49</sup> It would appear, therefore, that the limitations placed on land by zoning ordinances implementing a TDR scheme would not be so unreasonable as to create too great a burden on the private interests involved and, therefore, to tip the balance in favor of a taking.

Determining whether a fundamental attribute of ownership is extinguished depends upon whether loss of development opportunity, as restricted by zoning ordinances, is fundamental to ownership. If loss of development opportunity is considered to extinguish a fundamental attribute of ownership, then the burden on the private interest may outweigh any benefits to the public. Therefore, a taking would be effected. If, however, loss of development opportunity is not considered to extinguish a fundamental attribute of ownership, then the public interest would most likely outweigh the private interest and no taking would be effected.

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46. *Agins*, 447 U.S. at 262.

47. *Id.*

48. *Id.* at 258.

49. Similarly, a TDR scheme to preserve landmarks would restrict development that would interfere with preservation of a landmark. A TDR scheme to preserve ecologically fragile areas would restrict development that would harm the environment. See *supra* note 5.

The argument that loss of development opportunity would not extinguish a fundamental attribute of ownership would rest on factors such as: remaining allowable development opportunities (those not restricted by the zoning ordinances implementing a TDR scheme), traditional use of the land (whether its main use been for open agricultural purposes), expectations of the owner, and the participation of the landowner in the initial TDR enactment proceedings. If the analysis of these factors leads a court to state that a fundamental attribute of ownership was not extinguished by zoning ordinances implementing a TDR scheme, no taking will, in all likelihood, have been effected.

The Supreme Court has stated, however, that "if the government physically invades only an easement in property, it must nonetheless pay just compensation."<sup>50</sup> Therefore, if the restrictions placed on sending area land by a TDR scheme constitute an easement, a fundamental attribute of ownership is extinguished, a taking is effected, and compensation must be paid. A TDR scheme, however, does not place an easement on property until the development rights have been sold.<sup>51</sup> Consequently, if the factors mentioned above are seen to favor the conclusion that a fundamental attribute of ownership has not been extinguished, a taking will not, most likely, be effected by the implementation of a TDR scheme.

A court may, however, declare that a taking has been effected. A variety of factors could lead a court to this conclusion. The court could hold that Vermont law should apply, regardless of its antiquity, and, therefore, under *Foster*,<sup>52</sup> a taking would be effected. Alternatively, the court could hold that even under a federal law analysis, a taking is effected.<sup>53</sup> When a court declares that there has been a taking, the analysis proceeds to the question of compensation.

#### IV. THE ISSUE OF COMPENSATION

The Vermont Constitution states that "whenever any person's

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50. *Kaiser Aetna v. United States*, 444 U.S. 164, 180 (1979).

51. See *supra* note 9 and accompanying text.

52. *Foster v. Stafford Nat'l Bank*, 57 Vt. 128 (1884). See *supra* note 25 and accompanying text.

53. For example, a court could hold that restrictions placed on land by zoning ordinances implementing a TDR scheme are the equivalent of placing an easement on the land. Therefore, a fundamental attribute of ownership would be extinguished and the balance would tip in favor of a taking. See *supra* note 50 and accompanying text.

property is taken for the use of the public, the owner ought to receive an equivalent in money."<sup>54</sup> This language appears more restrictive than the taking language in the United States Constitution: "nor shall private property be taken for public use, without just compensation."<sup>55</sup> Therefore, the Vermont Constitution would apply.<sup>56</sup>

The Vermont Constitution raises the question of whether "an equivalent in money" requires compensation to be paid in money alone for a taking to be constitutional. Although there is an Attorney General opinion stating that "the State cannot satisfy its obligation to compensate a property owner for a taking under eminent domain in any way other than by money damages,"<sup>57</sup> it is not determinative of the issue. A well thought out, drafted, and implemented TDR scheme would side-step this problem. The creation of a market where the demand for development rights would allow land owners in sending areas to sell development rights for money would prevent this issue from arising.<sup>58</sup>

The compensation problem would most likely result from a situation where the TDR scheme is not working as planned. If a landowner in a sending area cannot sell her development rights for a fair value, then no compensation will have been received. If the zoning ordinance implementing a TDR scheme is found to be a taking, and no compensation is received, then the courts will be forced to declare the zoning ordinance unconstitutional and invalid.

The most effective way to combat this problem would be through the use of preventive measures. These measures should include effective planning during the early stages of a TDR scheme,<sup>59</sup> so that the ratio allotment of development rights bought from a sending area to increased development in a receiving area is in rough balance.<sup>60</sup> This would insure a market for development

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54. VT. CONST. art. II.

55. U.S. CONST. amend. V.

56. See *supra* note 28 and accompanying text.

57. 1962-1964 Op. Vt. Att'y Gen. 209.

58. Another way to side-step this problem is discussed later in this developmental note. See *infra* notes 62-63 and accompanying text.

59. See *supra* note 8 and accompanying text.

60. A more detailed discussion of "the prerequisites for success" for a TDR scheme is beyond the scope of this development note, but can be found in Williams, *supra* note 6, at 2-4. The balance between sending and receiving areas is just one "prerequisite for success." *Id.* Other prerequisites include: rapid growth potential, remaining uses of land in a sending

rights for all landowners in a sending area and insure availability of development rights for those who desire them.

In addition, backup provisions can be added to the plan to insure that landowners are compensated for loss of development opportunity. A municipal fund could be established to cover costs associated with compensating a landowner who could not sell her development rights on the open market. A similar, if not identical solution, would be for "the risk of the non-marketability of development rights [to] fall on public authorities, not on the owner of [land in the sending area]. The latter, it is envisaged, will be compensated under traditional eminent domain procedures."<sup>61</sup>

Another possibility is that a land trust could buy the development rights from a landowner who could not sell them on the open market. Land trusts in Vermont are currently buying land in Vermont and reselling it with a conservation easement attached to the deed.<sup>62</sup> This is the functional equivalent of buying development rights. In addition, a region and a land trust can combine resources to buy the development rights from affected landowners.<sup>63</sup> Extending this idea for use as a back-up compensation mechanism in a TDR scheme benefits the land trust because more land is conserved, and the community because compensation is provided to landowners for the loss of development opportunity and because land is conserved.

## CONCLUSION

The implementation of a TDR scheme would benefit Vermont communities interested in preserving a way of life that many believe is unique to Vermont. With these benefits, however, come problems that must be addressed promptly in order for the TDR scheme to effectively meet town goals.

One problem is whether a TDR scheme will be invalidated because it involves an unconstitutional taking under the Vermont

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area, and the persistence to carry the scheme to its fruition. *Id.*

61. Costonis, *Development Rights Transfer: Description and Perspectives for a Critique*, URB. LAND, Jan. 1975, at 5, 7 n.4.

62. This is the principle means used by the Vermont Land Trust to conserve land. Telephone interview with William Schmidt, Vermont Land Trust (Oct. 13, 1988).

63. This notion has been put to use by the town of Warren. The town of Warren and the Ottauquechee Land Trust combined resources to buy development rights from a farmer in Warren. Telephone interview with Barry Simpson, *supra* note 22.

Constitution. It is the position of this development note that the taking issue can be resolved, in favor of TDR use, through proper education, precise drafting, consistent application of the TDR program, and possibly the use of back-up provisions. TDR may not be appropriate for all communities in Vermont, but for those communities where it is suitable, TDR can be a useful and effective land use planning tool.

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