Transfer of Development Rights as an Option for Land Preservation in a Historic New Mexico Community: La Cienega Valley, Santa Fe County, New Mexico

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Transfer of Development Rights as an Option for Land Preservation in a Historic New Mexico Community: La Cienega Valley, Santa Fe County, New Mexico

ABSTRACT

Transfer of development rights (TDR) is an option for preserving agricultural land and open space in the villages of La Cienega Valley, New Mexico, an area with an estimated population of approximately 3,000 people. Although no development rights have yet been transferred in New Mexico, the village residents and Santa Fe county officials consider the procedure to be a viable method to preserve traditional values and landscapes. The villages invited the Community and Regional Planning Program at the University of New Mexico to outline a TDR program as part of a larger planning effort to address development pressures in the community. The project, carried out in the fall of 2000, was a collaborative effort with village residents, Santa Fe County, and the La Cienega Valley Association.

A TDR program makes it possible for landowners to voluntarily separate their development rights from their land and to sell them. It allows development to be moved from properties where development would be detrimental (sending areas) to other properties where development could be beneficial (receiving areas). While most development pressures originate outside of Santa Fe in the form of subdivisions, La Cienega area residents are concerned about local small-scale development in the form of manufactured homes, rapid development, and unregulated growth. Community surveys indicated that while irrigated land and acequias are important to preserve, residents responded that they also value a rural landscape that includes trees, streams, hillsides, wildlife, and open areas. There is a strong desire within the community to...
preserve open space and agricultural lands through mechanisms such as TDRs, which encourage planned development. Residents support the concept of selling development rights to protect land and want to preserve landscape and cultural characteristics including streams, trees and wooded areas, acequias, irrigated farmlands, and archeological sites. Of 986 properties evaluated in the planning area, 15 percent are potentially irrigable and are considered priority TDR sending sites. This article reports the project and its results.

I. INTRODUCTION

With the state's population growing and land values increasing, rural communities of northern New Mexico are under increasing pressure to develop lands that have functioned traditionally as agricultural land, wetlands, or open space. The problem is exacerbated when smaller communities, such as La Cienega and La Cieneguilla in the La Cienega Valley, are located next to larger, fast-growing cities such as Santa Fe, which sprawl to accommodate an ever-growing population (see figure 1). Santa Fe County and the La Cienega Valley Association (LCVA) recognize this trend and are seeking ways to relieve the development pressure and preserve what is important to rural community life while still allowing for the growth that the rural and urban economies need to sustain themselves. A transfer of development rights (TDR) program is a planning option that can help meet those goals by capitalizing on increasing land values while preserving community values and family traditions. A TDR program allows a landowner to sell development rights for the market value of the land while retaining property ownership and traditional agricultural and open space values.

The LCVA is a community planning organization representing the interests of the residents of the valley of La Cienega. According to its vision statement, the LCVA's goals are to "encourage sensible growth with planning." This includes "protect[ing] our natural environment and unique..."
character by honoring our traditional culture and the area's historical, agricultural, livestock and low density residential traditions." The community also wishes "to maintain its self sufficiency and protect its community from urban sprawl." An additional concern is the threat of damage to the community acequia or irrigation system from regional growth and the sale of irrigation water rights. "With increasing development pressures, transfers of water use from agricultural to municipal and industrial uses in New Mexico threaten to dry up the farmlands of the state, as has occurred elsewhere in the West, most notably in Arizona and Colorado." To acequia communities such as those in the La Cienega Valley, water is essential to continued economic subsistence. To sever water rights from the land and to allow 300-year-old irrigation systems to decay is tantamount to extinguishing essential cultural and riparian functions in this unique ecosystem.

![Diagram of New Mexico with locations marked: Santa Fe, La Cienega, Albuquerque]

**Figure 1: Location of La Cienega, New Mexico**

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7. *Id.*
8. *Id.*
10. *Id.*
Although the La Cienega community maintains its acequia system, irrigates farmland to grow vegetables and alfalfa, and grazes cattle, these activities no longer supply a livelihood to a majority of residents. These residents cannot earn a living through agricultural activities and those who continue to farm small plots must have other sources of income. During the summer of 2000, Robert Romero, president of the LCVA, met with the Community and Regional Planning Program at the University of New Mexico to discuss how land use controls could help the LCVA meet its stated objectives. Students and faculty worked with LCVA in the fall of 1999 and developed a Land Evaluation and Site Assessment (LESA) to identify important agricultural lands. LCVA invited members of the planning class to continue this work by investigating TDRs as a way of protecting important farmland and other natural and cultural resources, such as open space and archeological landmarks. This document is the result of a collaborative effort between Santa Fe County, Rick Pruetz (a TDR consultant working with the county), residents of the La Cienega and La Cieneguilla Planning Area, and the University of New Mexico's Community and Regional Planning program.

**TDR HISTORY**

TDRs describe a sending area as a group of properties needing to be preserved that can send their development rights elsewhere (see figure 2). A receiving area, determined to be more appropriate for development, is a group of properties that can receive development rights from sites in the sending area. A TDR program includes a market where landowners in sending areas sell development rights to landowners in receiving areas. In some cases this transfer is a direct "owner to owner" financial exchange, while in other instances a non-profit land trust organization or a development rights bank, brokers the sale of development rights. Each community designs a TDR program uniquely to suit its individual objectives and needs.

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11. Telephone interview with Robert Romero, President, La Cienega Valley Association (October 5, 2000).
12. *Id.*
13. Advanced Rural/Regional Planning Studio, University of New Mexico, Maintaining Agricultural Traditions in the Lower Chama Valley (Fall, 1998) (unpublished evaluation, on file with the authors).
15. *Id.*
16. *See Id.* at 60-63, 167-68.
The first TDR occurred in New York in 1969 when Penn Central requested a permit to build a skyscraper on top of its station. The city wanted to preserve the train station as a historic building and offered Penn Central the opportunity to use its development rights at the station site to build on a different property. As a bonus to Penn Central for transferring its development rights and keeping the train station in its original form, the city modified the zoning code at the new location to allow a taller skyscraper than would otherwise have been allowed. The courts ruled that New York City was justified in adopting an ordinance allowing development rights to be transferred from one property to another.

Thirty years later, there are at least 107 TDR programs in place throughout the United States designed to preserve everything from historic buildings to agricultural land and open space. TDRs have been used to revitalize downtowns, protect groundwater quality, preserve wildlife habitats, and create space for recreation.

**TDRs in the Southwest**

Although TDRs have not yet been implemented in New Mexico, they have been used in other parts of the Southwest, including Arizona, Colorado, Nevada, and Texas. Objectives range from preservation of rural farmland to protection and rehabilitation of historic urban landmarks. Boulder County, Colorado, for example, has transferred development rights from unincorporated county land to seven incorporated cities, resulting in more than 2,500 acres of permanently protected rural land.

18. *Id.* at 138.
20. *Id.* at 15-17.
21. *Id.* at 13-17.
22. *Id.* at 14.
The New Mexico chapter of the American Planning Association has drafted a Transfer of Development Rights Act for the New Mexico State Legislature. If adopted, it would provide enabling legislation for TDRs in the state. Additionally, Santa Fe County hired a consultant to assist with the creation of a TDR program for Santa Fe County. Without enabling legislation, the county may still establish a TDR program based on its general authority to regulate land use and zoning densities.

**LA CIENEGA: PREPARING FOR THE FIRST TDR PROGRAM IN NEW MEXICO**

The planning class began by working with local residents to evaluate and identify potential preservation sending areas in the La Cienega Traditional Community. County assessor information on lot sizes, ownership, land status, land values, and zoning for more than 900 parcels was organized by township, range, and section number into a database showing potentially irrigable land, open space, residential, and commercial properties. Potentially irrigable lands were defined as parcels of land located between an associated acequia and stream, as well as parcels with individual irrigation capacity such as sumps or springs.

Compilation and analysis of assessor data indicate that there are currently 986 individual parcels of land within the planning area, of which 151 (15.3 percent) are potentially irrigable (table 1). The majority of these potentially irrigable parcels (89 percent) is located in the Traditional Community, where 134 parcels are potentially irrigable via acequias. Potentially irrigable parcels for La Cienega and La Cieneguilla represent 13.6 percent and 0.30 percent of the total planning area, respectively. Parcels of land within the planning area that cannot be irrigated with acequias range from 0.17 to 1,884 acres and 0.15 to 70 acres for the Traditional Community.

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24. Id. at 16.
26. Id. at 15.
27. Id.
28. Id.
29. Id.
<table>
<thead>
<tr>
<th></th>
<th>Traditional Community</th>
<th>Planning Area</th>
</tr>
</thead>
<tbody>
<tr>
<td>Potentially Irrigable</td>
<td>134</td>
<td>151</td>
</tr>
<tr>
<td>Non-Irrigable</td>
<td>69</td>
<td>835</td>
</tr>
<tr>
<td>Total</td>
<td>203</td>
<td>986</td>
</tr>
</tbody>
</table>

**Interviews and Surveys**

Local opinions on TDRs were solicited from 13 residents through in-depth interviews. The primary interview question centered on whether or not people thought a TDR program would be an appropriate land use control measure in the planning area. While all interviewees wanted to talk about development issues, some were opposed to a TDR program because they objected to development in general. Most interviewees were interested in considering a TDR program as a potential method for encouraging planned growth to alleviate existing development pressures. They desired more information and specific details about how a TDR program would work. Land use issues were a high priority and interview participants shared a common concern for preserving and protecting their community.

When asked about places in the planning area where a TDR transfer might be considered, residents suggested a variety of possible locations, especially the water landscape of the springs and acequias. All interviewees expressed a deep commitment and concern for the cultural values that the acequia system brought to La Cienega. The concept of a "water landscape" (paisaje del agua) is suggested by Rivera in his book on the history of acequia culture in New Mexico. Some life-long residents described a generational shift within the community. Traditional practices, such as irrigated agriculture, have been lost or are on the verge of being lost despite people's best intentions. There is an understanding that the villagers' way of life has changed, and interviewees expressed a desire to preserve and protect what is left of the rural character of their community. They expressed a

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30. Id. at 16.
31. Id. at 21-22.
32. Id. at 18.
33. RIVERA, supra note 4, at 200.
willingness to consider a TDR program that has the ability to encourage the continuation of a *paisaje del agua*.

La Cienega residents have experienced significant changes in development patterns recently. One interviewee said that she has "noticed a radical change in the viewscape over the last 20 years, but the pressure has accelerated over the last 12 years." Santa Fe, the closest neighboring city, has experienced tremendous growth and the communities surrounding Santa Fe have felt the ripple effects of the demand for housing. Because of the small size of the La Cienega community, the water supply limitations of the watershed, and the degree of change in a short period of time, the pressures caused by development were part of the discussion in every interview.

The pervasive and complex impacts of development on water quantity and quality were emphasized in all interviews. One respondent said that "spring flow is down and there is not enough water for all the irrigable land." Only part of La Cienega is on a municipal water system and all households in La Cieneguilla have individual or shared wells. In rural New Mexico, where municipal water and sewer systems are not available, as in many parts of the La Cienega Valley, the impact of development on water quality is an additional concern. A persistent theme was that paper water rights are difficult to enforce if the actual water does not exist because of drought periods and competing demands.

In addition to interviews, the planning class conducted a TDR preference survey on November 7, 2000, and analyzed 97 responses. Respondents ranked "streams" as the most important landscape characteristic they wished to preserve (71 percent), followed closely by "trees and wooded areas" (70 percent) and "acequias" (65 percent) (see figure 3).

A major goal of the survey was to determine residents' attitudes about the concept of a TDR program, particularly the concept that sending-site landowners can sell the rights to develop their land in order to preserve open space and a *paisaje del agua*. Survey respondents were asked, "Would you support a voluntary program that would allow people to sell the rights to develop their property in order to protect agricultural lands or open space? Why or why not?" Of the 83 people who answered the question,

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35. *Id.* at 22.
36. *See id.* at 23.
37. *Id.*
38. *Id.*
39. *Id.* at 24.
40. *Id.* at 27.
41. *Id.* at 17, 21.
three-fourths (76 percent) said they would support this concept because the outcomes of selling development rights to preserve land would outweigh any disadvantages. Of the 18 percent of respondents who said they would not support the concept of a TDR program, many made comments that demonstrated distrust, fear, and cynicism about regulatory measures and planning practices.42 Others indicated ambivalence about the effectiveness of the program and wanted more information about transferring development rights, as well as assurance that a TDR system would be effective.43

Another concept associated with a TDR program is clustered housing in receiving areas. Because the planning area could include receiving areas as well as sending areas, the survey asked, "Would you support clustered housing in the La Cienega and La Cieneguilla planning area in order to protect agricultural lands or open space? Why or why not?"44 Of the 82 people who answered the question, less than half (40 percent) would support clustered housing in the planning area, while 45 people (55 percent) said they would not (figure 4).45 Some respondents linked clustered housing to trailer or manufactured homes, which they considered a poor fit with the area’s character. Many survey participants responded that clustering homes contradicts the rural community character and that clustering was not appropriate because more development should not occur, period. These respondents implied that they would support sending TDRs outside the area and would not support the clustering associated with receiving development rights.

42. Id. at 32.
43. Id.
44. Id. at 33.
45. Id.
While La Cienega residents have a strong commitment to preserving natural and agricultural landscapes, survey responses indicate that residents are not willing to engage in "preservation at any cost." The desire for preservation is tempered by "why" and "how" preservation occurs. Many people said that for aesthetic or cultural reasons, they would be unwilling to accept clustered housing in the planning area even if it would help preserve the land. Some survey respondents were wary, ambivalent, and/or distrustful of land use regulations and preservation tactics. They wanted more information about TDRs and an assurance that such a program could accomplish ongoing compensation for preservation. While most development pressures in the planning area originate outside of the community in the form of subdivisions, residents are concerned about internal small-scale development in the form of manufactured homes and unregulated growth.

46. Id. at 35.
47. Id. at 35-36.
Identifying Landscapes to Preserve

Because respondents stated that they value a rural landscape that includes trees, streams, hillsides, wildlife, and open areas, a land preservation plan should preserve these features along with acequias, as they are all part of an integrated paisaje del agua that defines rural character. Field surveys and aerial photograph interpretation of the La
Cienega Traditional Community reveal 10 areas, or 365 acres of contiguous undeveloped land (open space) (figure 5). \(^9\) Individual areas of contiguous open space within the Traditional Community range from 11 to 98 acres. \(^50\) Table 2 summarizes data for individual areas of open space within the Traditional Community.

Santa Fe County planning maps estimated the amount of open space outside of the Traditional Community within the La Cienega/La Cieneguilla Community Planning Area. \(^51\) The maps identified three large privately owned open space areas within the planning area (see figure 6). "Open Space per Parcel ratios" (OS/P ratios) can assist La Cienega and La Cieneguilla residents in comparing specific open space areas relative to the number of properties within that area. Local residents could use OS/P ratios as a tool for choosing priority sending areas. \(^52\) For example, an area with a high OS/P ratio that also has agricultural potential could be considered a viable sending area.

<table>
<thead>
<tr>
<th>Table 2: Open Space Characteristics</th>
</tr>
</thead>
<tbody>
<tr>
<td>Open Space Area</td>
</tr>
<tr>
<td>A</td>
</tr>
<tr>
<td>B</td>
</tr>
<tr>
<td>C</td>
</tr>
<tr>
<td>D</td>
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<tr>
<td>E</td>
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<td>F</td>
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<tr>
<td>G</td>
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<tr>
<td>H</td>
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<tr>
<td>I</td>
</tr>
<tr>
<td>J</td>
</tr>
</tbody>
</table>

*The OS/P ratio reflects an average acreage of open space for an average parcel size within a select area. The OS/P ratio is calculated by dividing the total acres of open space in an area by the total number of individually divided parcels within the area.

\(^{49}\) Id. at 40. "Open space" refers to undeveloped land.

\(^{50}\) Id.

\(^{51}\) Id. at 41.

\(^{52}\) Id.
Interviews with developers in La Cienega indicated that properties with large contiguous open spaces are more highly preferred for development than open space areas owned by several owners. One likely reason for this is that it may be easier for a developer to buy from a few property owners with large properties of several acres than many property owners with the same number of acres. Based on developers' interest in these large open spaces, local residents may decide that areas with high OS/P ratios are more desirable sending areas.

Zoning Considerations

TDR programs are attractive to perspective developers in receiving areas because they provide the opportunity to increase housing densities in the prospective area of development. Housing densities are established through zoning regulations created and enforced by Santa Fe County, based on the county's hydrologic conditions and water availability. The four distinct zoning designations in the study area are Basin, Basin Fringe, Homestead, and Traditional Community (figure 7). Each designation specifies minimum lot sizes. Santa Fe County's zoning regulation allows for variances, or minimum lot size adjustments, in baseline lot sizes in the four zones within the study area. Specific conditions must be met prior to obtaining a variance, including water conservation measures (W), presence of a community water (CW) and/or sewer system (CS), and the development of a local land use plan (LLUP) for the area requesting the adjustment. Minimum baseline lot sizes, maximum allowable lot size reductions, and stipulations for variance approval for zoning designations within the study are presented in table 3.

53. Id.
54. Id. at 45.
55. Id. at 46.
Figure 6

Legend

Land Ownership in the La Cienega/La Cieneguilla Community Planning Area

- BLM Land
- Largely developed land
- Privately owned open land
- Major streams
- State Land

Planning Area Boundary
La Cieneguilla
La Cienega Traditional Village Boundary
La Cienega Creek
Figure 7

Zoning in and adjacent to the La Cienega/ La Cleneguilla Community Planning Area

<table>
<thead>
<tr>
<th></th>
<th>minimum lot size</th>
<th>min. adjusted lot size with conditions applied</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basin</td>
<td>10</td>
<td>2.5</td>
</tr>
<tr>
<td>Basin Fringe</td>
<td>50</td>
<td>12.5</td>
</tr>
<tr>
<td>Homestead</td>
<td>160</td>
<td>40</td>
</tr>
<tr>
<td>Traditional Community</td>
<td>0.75</td>
<td>0.33</td>
</tr>
</tbody>
</table>
TABLE 3: Zoning Designation and Allowable Lot Sizes within the Study Area

<table>
<thead>
<tr>
<th>Zoning Designation</th>
<th>Minimum Lot Size</th>
<th>Maximum Allowable Reduction*</th>
<th>Variance Stipulation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Basin</td>
<td>10</td>
<td>2.5</td>
<td>W</td>
</tr>
<tr>
<td>Basin Fringe</td>
<td>50</td>
<td>12.5**</td>
<td>W</td>
</tr>
<tr>
<td>Homestead</td>
<td>160</td>
<td>40**</td>
<td>W</td>
</tr>
<tr>
<td>Traditional Community</td>
<td>0.75</td>
<td>0.33***</td>
<td>W, CW, CS, LLUP</td>
</tr>
</tbody>
</table>

*Figures in this column represent the maximum allowable adjustment for lot sizes in developments employing water conservation measures.

**Adjustments for smaller lot sizes are allowed (to a minimum of 2.5 acres) based on water availability.

***Reduction requires that the Traditional Community have CW and CS or LLUP.

The Traditional Community of La Cienega is currently zoned to allow a landowner to subdivide a property to 0.75 of an acre. If the community decided that larger parcels would better serve the open space preservation goals reflected in the survey, zoning could be changed to limit subdivision to a larger acreage. This type of zoning change would encourage sending site owners to participate in a TDR program.

Valuing TDRs in La Cienega

Assigning a value to a TDR is an important consideration for landowners in La Cienega who need information on economic incentives for selling development rights. The analysis involves (1) estimating the value of a development right to a receiving site developer, and (2) estimating profits to sending site owners selling development rights. The following example uses land value information that is within a reasonable range of current market prices in the La Cienega and La Cieneguilla Planning Area. While not specific to a particular parcel of land, the calculation may be a reasonable estimate of the amount a receiving area owner would be willing to pay for a TDR, as well as the amount a sending area owner would be willing to accept as compensation for preserving land. Zoning in the Traditional Community allows owners to divide parcels to 0.75 acre, so that an owner of a 10-acre parcel could divide the land into as

56. Id.
57. Id. at 57.
many as 13 parcels (10/0.75). Although no formal market analysis has been done, land prices in the village may range from $18,000 to $30,000 an acre for a five to ten-acre parcel.\(^\text{58}\) There is no information on the amount a developer would be willing to pay for a TDR allowing a higher density of development in the Santa Fe area. However, TDR transactions in other regions indicate that $4,000 per TDR may be a reasonable estimate.\(^\text{59}\)

If a developer in a receiving area, such as the Community College District, would be willing to pay $4,000 for a TDR, a per acre ratio can be developed.\(^\text{60}\)

\[
\text{TDR Ratio} = \frac{\text{sending area value per acre}}{\text{receiving area value}} = \frac{$24,000}{$4,000} = 6
\]

In this example, six TDRs could be sold for each acre of land reserved as agricultural land or open space. An owner of an acre of land in La Cienega would be compensated $24,000 for selling six TDRs to a receiving area developer in return for agreeing to not develop the land.

**CONCLUSION**

By providing a mechanism to facilitate the exchange of development rights and to quantify these rights in monetary forms, TDRs offers an innovative alternative to the classic conflict between growth and conservation. Nearly all of the residents surveyed in the northern New Mexico village of La Cienega identified acéquias, irrigated farmland, open space, wildlife habitat, wooded areas, and a paisaje del agua as worthy of preservation, and three-quarters of those interviewed indicated they were willing to support a voluntary program allowing landowners to sell development rights but still preserve agricultural lands and open space. Though not yet applied in New Mexico, the concept of a TDR merits consideration as an option for permitting growth and development to occur where appropriate, while retaining traditional rural landscapes and cultural values.

\(^{58}\) Id. at 58-59.

\(^{59}\) Id. at 59; Telephone interview with Rick Pruetz, private consultant specializing in land use and real estate law (Nov. 30, 2000).