

**5.3.ii. Policy****TRANSFER OF DENSITY (TD)**

Trust Council: December 9, 1995

**A: PURPOSE:**

1. The purpose of this policy is to provide a tool which would allow local communities to achieve public conservation objectives without limiting the ability of property owners to achieve private development objectives. The mechanism is similar in concept to parcel size averaging, a tool already included in various subdivision bylaws in the Trust Area. However, Transfer of Density operates between parcels rather than within a parcel.

**B: POLICY:**

1. TD may be used to accomplish land conservation objectives that are consistent with the object of the Islands Trust and the Islands Trust Policy Statement. For example, TD may be used in situations where agricultural land, forest ecosystems, water supply areas, wetlands, heritage sites, shore-lands, and areas of scenic or recreational significance would have development potential but can be protected from development by transferring density to more suitable locations.
2. Local Trust Committees should establish a planning context for the use of TD during the preparation or revision of Official Community Plans or, where transfer of density is proposed outside a period of plan preparation or review, by amendment of the OCP on a site-specific basis.
3. The value of development potential proposed on a receiver site may need to be in excess of the value of that potential removed from the donor site to effect a transfer of density.
4. TD may be used to transfer density between islands within a Local Trust Committee Area but shall not be used to transfer density between Local Trust Committee Areas unless such transfers are explicitly provided for in the Islands Trust Policy Statement.
5. Where an Official Community Plan specifies that there shall be no net increase in density, then no net increase in density should be considered as a result of the operation of this policy.

**C: PROCEDURE:**

1. TD requires the amendment of zoning bylaws on a site-specific basis to increase density at a “receiver site” (unless pre-identified in zoning), and reduce density at the “donor site”. Such zoning bylaw amendments must occur within the context of OCP objectives, policies and map designations that:
  - a) identify areas (donor sites) to be protected from development by transferring density when opportunities to do so arise;
  - b) identify areas (receiver sites) in which additional density can be accommodated in terms of physical infrastructure and compatibility of land use and density;

BC planning legislation does not authorize a comprehensive transfer scheme in which development potential is “banked” by the local government and traded on a market-driven basis.

Sample OCP Policy Statements are as follows:

Donor Area

The Local Trust Committee considers that [donor area] is worthy of preservation and protection and that the preservation and protection of this area warrants consideration by the Local Trust Committee, on a case by case basis, of zoning measures designed to transfer permitted density from the [donor area] to other parts of the Local Trust Committee Area. On application by an owner of land in the [donor area] who evidences willingness to grant a covenant in favour of the Local Trust Committee to preserve and protect the [donor area], the Local Trust Committee will consider rezoning both [donor area] and another part of the Local Trust Committee Area to effect the transfer of density in accordance with this plan.

Receiver Area

The Local Trust Committee considers that the [receiver area] is capable of accommodating greater density than permitted by the zoning bylaw and that the accommodation of such greater density may be in the interest of the Local Trust Committee Area generally [provided that no net increase in density within the Local Trust Committee area results]. Accordingly, and in conjunction with policy [refer to donor area policy] the Local Trust Committee will consider rezoning of both the [receiver area] and another part of the Local Trust Committee area to effect a transfer of density in accordance with this plan.

2. Donor Sites Should be Protected by:
  - a) rezoning to create a new zone; and a covenant in favour of the Local Trust Committee or the Trust Fund Board (as well as with other government agencies or non-government organizations as appropriate), registered under Section 219 of the *Land Title Act*.
  - or
  - b) amendment to an existing zone to remove permitted uses and densities; and a covenant in favour of the Local Trust Committee or the Trust Fund Board (as well as with other government agencies or non-government organizations as appropriate), registered under Section 219 of the *Land Title Act*.

Section 903 of the *Municipal Act* permits the adoption of zoning regulations in respect of use and density that are different for different locations within a zone. Thus, amendments to the zoning bylaw to remove the permitted use on the parcel need not rezone to a different zoning designation (ie. it could remain “residential”) in order to remove permitted uses and densities.

3. Where a single owner of donor and receiver sites is involved, the Local Trust Committee must require the applicant to apply to rezone both donor and receiver sites. The applicant must also provide the Islands Trust and its solicitors with all necessary covenants, agreements and/or undertakings to ensure successful completion of the transfer.
4. Where separate owners of donor and recipient sites are involved, the Local Trust Committee must require the owners to apply to rezone their respective properties and the owner of the donor site to provide the necessary covenants, agreements and/or undertakings as described above. **The Local Trust Committee should consider the settlement of compensation between the owners as a purely private matter in which the Local Trust Committee is not involved.**
5. At no time shall a Local Trust Committee fetter its discretion by agreeing explicitly or implicitly to adopt a bylaw effecting a Transfer of Density.

#### **D: DONOR AND RECEIVER PROCEDURES:**

##### Donor Actions

1. A property owner examines the zoning bylaw and identifies the development potential on their property, potential which they choose not to exercise in order to preserve and protect the area.
2. The property owner contacts the Islands Trust and determines if the site is in a donor area.

3. If the site is in a donor area and its development potential is clearly established, then the owner seeks a property owner who wishes to receive this development potential. This activity occurs without assistance or discussion with the Local Trust Committee.
4. The donor and receiver then approach the Local Trust Committee with two rezoning applications, one which decreases the density on the donor site and one which increases the density of the receiver site. There are no limits on transfer other than:
  - a) the permitted density of the two sites taken together cannot be increased if the OCP contains a “no net increase” policy; and
  - b) the receiver site can have density higher than the density permitted for that site (subject to such density being transferred from the donor site), but such density cannot exceed the carrying capacity of the site as determined by health and environmental agencies and by other policies of the OCP, eg. rate of growth controls, lack of public facilities necessary to serve the development, etc.
5. When making a rezoning application, the donor must voluntarily enter into a covenant (legal costs paid by the donor) to prevent further development of the site except to the extent permitted after TD.
6. The Local Trust Committee then reviews the rezoning applications in accordance with normal procedures. If the bylaws are adopted, then the donor site will be subject to both a zoning regulation and a covenant that restricts development.

#### Receiver Actions

1. A receiver identifies an interest in developing a property and inquires with the Islands Trust:
  - a) as to whether the site is in a receiver area; and
  - b) as to the development potential established in the zoning bylaw.
2. If there is a desire to seek additional development rights, then the receiver seeks out a donor and approaches the Local Trust Committee as per step 4 above.
3. The Local Trust Committee would reserve the right to have the receiver undertake studies as if he/she were applying for rezoning in order to determine the development potential that could be achieved taking into account the conditions in 4b above.
4. The receiver then applies for rezoning to allow for a density equivalent to what would be allowed, based on the assessment in step 3, and what is requested, as a transfer from the donor site.