

## Collaborative Development Rights

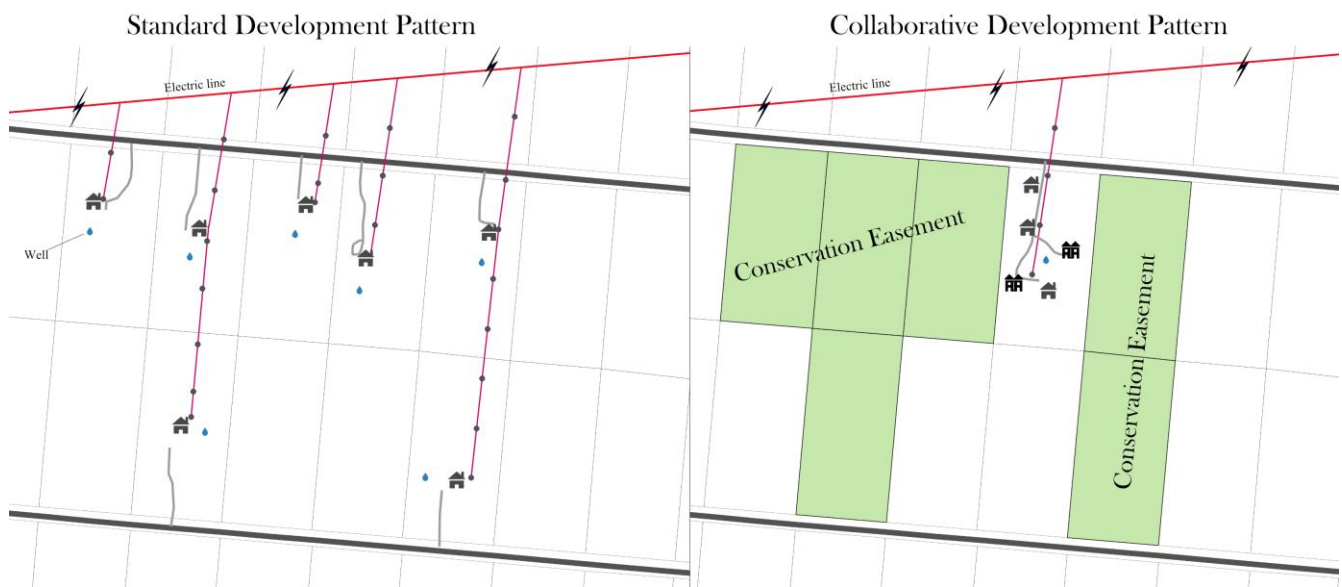
### Reshaping the map of the West

by Sky Tallman

So many of the vast open spaces, still a common sight across the American West, have been carved up into an array of small, private parcels. The open range has been mapped for a sprawling future. The lure of this land attracts would-be homesteaders who can get a piece of cheap land and dream of the day when they have enough time and money to build their very own house on the prairie. As long as having enough time and money to live out our dreams remains a scarce commodity, not much happens across the vastness of the Western plains, and the earth itself looks nothing like the parcel map. In some cases, people move out to their little piece of ground and find themselves priced out of building, making do without a permanent structure or infrastructure and far from services.

One new strategy developed by Sky Tallman and Electra Johnson as part of a draft update to the county strategic master plan is to allow neighbors to incrementally redraw the map and save on development costs by pooling their resources. The strategy, dubbed “collaborative development rights” combines aspects of transferrable development rights and cluster development.

The basic idea is to allow for two or more nearby property owners to develop on a single parcel in return for conserving the undeveloped parcel(s) as open space or agricultural land. This allows two or more projects to share upfront costs that can make building in rural areas very costly, such as a well, driveway access, septic system, tying into the electric grid, and even potentially building compounds instead of free-standing homes, saving costs on shared walls or roofs. Those who are marginally priced out of building could improve their living conditions, build community, and initiate a first step in shifting the future development pattern from one of eventual sprawl to one that invites the potential for the emergence of villages.



*In a regular grid of 5-acre parcels, such as the one above, a 1/2-mile radius around a single parcel would include 140 parcels; a 1/4-mile radius, there would include 49 parcels. In a scenario in which half of eligible parcels were to transfer rights to contiguous receiving parcels built out to a density of*

*3.5 units per acre, a 1/2-mile sending radius could facilitate the build-out of four receiving parcels and the conservation of 350-acres.*

A few considerations in developing the concept include if and how to define limits with regard to the proximity of sending and receiving parcels and the frequency or dispersion of receiving parcels, consideration of ownership and management of parcels and structures, lot sizes, circulation, and growth.

**1. Proximity and Dispersion:** Requiring sending parcels to be near receiving parcels makes it more likely that as clusters grow, conserved areas are contiguous or close enough to contribute to loosely connected habitat. Also, spreading clusters out by requiring a certain distance between them enhances both the clustering and conservation impacts of the strategy over time. For example requiring receiving parcels to be either contiguous or a half-mile apart would allow a cluster to grow over time, while also inducing the eventual emergence of a village form.

The practice of subdividing large ranches and rural land holdings into large or medium lots along with rural zoning codes that aim to preserve rural character with large minimum lot sizes and low densities have essentially made the emergence of villages unlikely, if not downright illegal. Indeed, about the only way for a new village-like pattern to develop in most rural areas is if it is a master-planned community or planned-unit development. Collective development rights open up the potential for a type of bottom-up, incremental development pattern in rural areas. At the parcel level, it removes density as a consideration without impacting potential density as measured within the sending radius.

By not limiting collaboration to a small number of users, the more people who collaborate on a single parcel, the more nearby parcels get conserved. Collaborative developments that mix uses or develop an internal economy, could enhance nearby conservation by incentivizing additional collaborators to purchase nearby parcels in order to transfer rights. In considering how different the outcomes would be if collaborative development rights were exercised by ten different people building homes on a parcel versus a single developer purchasing ten adjacent parcels to conserve and leading the development be part of conversations about what a county wants to encourage and achieve with the policy. In a high-growth scenario, it might be advantageous to encourage developer-led consolidations, however, in low-growth scenarios aimed primarily at lowering the upfront cost of building for existing property owners, a limit to how many development rights a single owner can transfer could be established.

**2. Ownership and Management:** Land use codes do not typically aim to regulate ownership, but to avoid the creation of parcels that would be likely to default on taxes and come into county ownership or the creation of parcels on which the right to develop might be contested through sales to unknowing buyers or inheritance. If sending parcels are divested of development rights, they essentially lose almost all of their economic value, and to ensure that these parcels are both managed (for fire mitigation, for example) and conserved, their ownership should be joined with the receiving parcel. Ownership on receiving parcels will likewise need to be negotiated among owners and articulated in a deed as a condition of a building permit. Likely the common area and conserved land would be owned collectively or by an association, and individual homes or buildings would be condominiumized.

**3. Lot sizes:** To make conservation of open and natural spaces or agricultural uses a significant outcome, the size of sending and receiving parcels should be considered. Receiving parcels that are too large could still result in a sprawling development pattern and fail to deliver on the potential savings to

collaborators that comes from shared infrastructure costs. Likewise, sending parcels should have a minimum size or be proportional in size to receiving parcels.

**4. Circulation:** In the event that a receiving parcel experiences significant development and the emerging village needs to grow onto an adjacent parcel, connectivity should be considered. If the emerging cluster is to continue to grow, there is a public interest in ensuring that the entire development is well-connected and that a system of blocks begins to develop. At a basic level, this could include a requirement that the internal circulation of two adjacent receiving parcels connect both internally and to the adjacent road. If receiving parcels are larger than five or six acres, establishing a maximum block size of 4 – 6 acres that will provide an eventual framework for walkability. To be avoided is an outcome in which an old property line separates two adjacent cul-de-sac neighborhoods.

**5. Growth:** It is not hard to imagine that a successful collaborative development might grow to the point that it needs to expand, converting an adjacent parcel into a receiving parcel. To convert two adjacent parcels into receiving parcels, consider requiring each to receive at least three development rights from sending parcels within the sending radius. As the cluster of receiving parcels grows, raise the threshold. To convert a third adjacent parcel into a receiving parcel, each parcel must receive at least four development rights from sending parcels within the receiving parcel. To convert four or more adjacent parcels into receiving parcels, the net density of connected receiving parcels must be at least four dwelling units per acre. At this point, which would likely be a rare occurrence, we would be seeing the emergence of a village and the successful conservation of a significant portion of contiguous nearby land, and expanding the sending radius could be necessary to allow the continued success of the project.

Collaborative development rights should be seen as a transitional strategy to allow for and incentivize a shift in the pattern of growth in rural areas. At some point, as a successful cluster grows into an emerging village, it will make sense to shift to a more formal planning process to manage the growth around the self-organized core, to upgrade infrastructure, and to shift to an organizing principle other than collaborative development rights. The intent is not to force or mandate the village form, but to open the possibility of a rural development pattern other than the sprawl that is already written into the parcel map.

Villages and clusters of development are a quintessential element of rural character. Throughout our rural history, collaborating with others is how people have been able to thrive in rural areas. While easy access to trucks and cheap gasoline have allowed us to replace a reliance on neighbors with a reliance on more distant population centers (often mislabeled ‘self-reliance’), collaboration, the sharing of resources, and the building of community through the building of shared places is the basic building block of society. Rugged collaboration is as old as the West. It is what got our ancestors through hard times, and it is part of how we can build resilience today.

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Model zoning language for Collaborative Development Rights:

In the [ \_\_\_\_ ] Zone District, the development rights of properties within ½ mile may be transferred from sending parcels and combined on a single receiving parcel for the purpose of conservation of open space and agricultural lands, and to allow for the clustering of development.

1. Sending parcels are those parcels from which development rights are sent to another parcel. Receiving parcels are those parcels to which development rights are transferred. Upon sending of a development right, the deed to the sending parcel shall record the removal of development rights, the receiving parcel number to which rights were transferred, and the date of transfer. Future use of sending parcels shall be restricted to conservation or agriculture.
2. Sending parcels must divest all development rights and may not have existing residential or commercial uses.
3. Sending parcels shall be placed under the joint ownership of owners of the receiving parcel, or under the ownership of an association of such owners.
4. The deed to a receiving parcel shall record the development rights received from sending parcel(s), including the date and parcel number of sending parcel(s).
5. Receiving parcels gain the right to develop one additional residential unit, or one additional structure for a use permitted in the zone district, for each sending parcel that transfers development rights. The receiving parcel gains the right to develop a single additional dwelling unit or structure even if the sending parcel would have been permitted to construct more than one dwelling or structure.
6. A receiving parcel may receive development rights from multiple sending parcels within the sending radius of ½-mile.
7. A receiving parcel must be at least five (5) acres, and no greater than twelve (12) acres. A sending parcel must contain at least 80% of the area of the receiving parcel, and be within a sending radius of ½-mile of the receiving parcel.
8. Improvements on receiving parcels may have separate ownership structures; ownership of land and structures shall be recorded in the deed.
9. Dispersion: To avoid sprawl and ensure dispersion of clusters, receiving parcels must be contiguous or spaced at least one-half mile apart.
  1. Contiguous receiving parcels: To convert two adjacent parcels into receiving parcels, each must receive at least three development rights from sending parcels within the sending radius. To convert a third adjacent parcel into a receiving parcel, each parcel must receive at least four development rights from within the receiving parcel. To convert four or more adjacent parcels into receiving parcels, the net density of connected receiving parcels must be at least four dwelling units per acre.
    1. Connectivity: To ensure internal connectivity in clusters, when two or more contiguous parcels are designated receiving parcels, internal roads, driveways or rights-of way on each parcel shall be made to connect. All contiguous receiving parcels shall connect with principal access road and connection between parcels shall connect internal circulation on both parcels.
10. The Planning Commission shall review proposals to combine the rights of five or more parcels on a single parcel, and may require a single developer combining the rights to five or more

parcels to include at least one unit as a deed-restricted affordable unit, or to add a deed restriction that not more than one unit be used as a short-term rental.

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