What went wrong with TDRs? But first, you might ask, what *are* TDRs?

TDRs — more formally, transferable development rights — were the first form of environmental trading system to be used in the United States. For instance, the Supreme Court decided a the *Penn Central* case, which involved TDRs over a decade before Congress created the SO2 trading program in 1990.

The idea is simple. In return for not being able to develop one trace of land fully, the owner is allowed to transfer the "unused" development right to other land, either the same owners' or perhaps someone else's. For instance, if a building is subject to a lower height restriction than surrounding properties, the owner might be able to add the "unused" airspace to make a building on nearby land taller than would otherwise be allowed.

Among other benefits, TDR systems allow governments to avoid takings claims because the benefit of the TDR offsets the burden of the development restriction. This has earned some conservative ire. For instance, says TDRs are "a clever, albeit transparent, device" that could "render much of our regulatory takings jurisprudence a nullity." But this protest has been in vain — the *Penn Central* case established the contrary rule, which has never been modified.

One successful use of TDRs involved the Pine Barrens. Apart from figuring in an episode of *The Sopranos*, the New Jersey Pine Barrens are unknown to most nonresidents of the state. They contain roughly a million acres of forest and wetlands, overlaying a 17 trillion gallon aquifer. Altogether, the Barrens cover 20 percent of the state. The state's effort to preserve the Pine Barrens benefitted from an active TDR scheme, which allowed owners of the most protected lands to sell rights to developers in other zones.

Unfortunately, this seems to be an exception. A recent study by RFF reports that:

In reality, TDR programs have failed to live up to their promise. The way that many communities have designed and implemented their programs, in fact, has doomed them to failure. But some of the inherent features of TDR markets may also be to blame.

According to the RFF study, "Very few TDR programs have had active TDR markets with a significant number of transactions made over time." The study devotes particular attention to a program in Calvert County, Maryland program that was formerly successful but has now hit snags. Apart from poor design, the report discusses several reasons for the lackluster record of TDRs: thin markets, lack of demand because the receiving areas aren't attractive to developers, transaction costs, and lack of municipal capacity to monitor and implement the programs.

It’s too bad that the reality of TDRs has fallen so much short of their apparent promise.The main lesson is that, despite their appealing features, environmental trading systems aren’t easy to properly design and aren’t appropriate for all problems in all circumstances.