

Transferable Slip Rights

I. Nature of the Tool / Relationship to Waterfronts

Transferable Slip Rights (TSRs), or Transferable Slip Credits, are similar in theory to Transferable Development Rights. TSRs are regulatory tools which allow property owners or developers to transfer their slip “rights”¹ in the “sending” area to a “receiving” area—another shoreline property. Where the underlying zoning allows more slips than the environmental or land use regulations allow, TSRs can be valuable to both the local government and the land owner. The local government may require that the sending area property be acquired in fee simple or it may require a conservation easement so that the sending area property is permanently preserved.

II. Pros & Cons

The most obvious benefit of using TSRs to preserve recreational and working waterfront communities is the protection of public boat slips.² Like TDRs, TSRs can be an incentive to developers by allowing a greater number of slips or greater density building in other waterfront areas. In most cases, TSR programs are enacted as a result of conditions in the water, such as manatee habitats, rather than conditions on the land or shoreline.

Providing greater slip density can also be a negative in communities seeking to preserve a working or recreational waterfront culture and history. Whereas no let loss policies based on one-to-one ratio limit all waterfront development, TSRs discourage development in designated shoreline areas while allowing building in other waterfront areas. TSRs do not create more working waterfront areas; they only transfer the rights to an existing number of slips permitted to be built.

III. Legal Issues

The legal issues surrounding TSR programs have not been addressed by any court or in any legal treatise because the theory and practice is so new. However, because TSRs are similar to TDRs, the legal issues will likely be similar. The most common challenges to TDRs are takings claims. However, the U.S. Supreme Court gave credence to TDR programs in the landmark takings case *Penn Central Transportation Co. v. New York City*.³ In *Penn Central*, the Court found that even if a taking had occurred, the TDRs available “undoubtedly mitigate whatever financial burdens the law imposed...[and] are to be taken into account in considering the impact of the regulation.”⁴ It is likely that *Penn Central* would apply to TSR takings challenges.

IV. Best Policy Practice

¹ It may be more accurate to reference slip credits rather than slip rights.

² As it is used in most regulations and ordinances, “public boat slips” refers to slips accessible to the public on a “first come, first served” basis.

³ 438 U.S. 104 (1978).

⁴ *Id.* at 137.

Lee County, Florida is the first county in Florida to implement a TSR/Transferable Slip Credit program. The program allows developers to transfer slip credits from one discontinuous shoreline area to another construction location. The program was implemented as a result of the State's Manatee Protection Program.⁵

The TSR program involves a fairly complex formula to "score" parcels using various factors, including: manatee abundance, manatee mortality, manatee aggregation areas, proximity to open water, presence or absence of speed zones, and whether a project is a new or expanding facility. The total "score" is then used to categorize the parcel as preferred, conditional or non-preferred. A maximum number of slips allowed is then recommended based on the category of the parcel. Preferred parcels have an unlimited number of slips per 100 feet of shoreline. Conditional parcels may have a maximum of five slips per 100 feet of shoreline. Non-preferred parcels may only have three slips per 100 feet of shoreline.⁶ Transferable slip credits are transferred based on the "scores" of the parcels. Credits from shorelines with existing docks may be given credits for the actual number of slips removed rather than the "scored" number, but landowners must provide detailed information before the credit will be granted. TSRs are not applicable to non-preferred parcels.

⁵ In 1989, the Governor and Cabinet recommended the development of Manatee Protection Programs (MPPs) in 13 "key" counties. In 2002, the Legislature amended Chapter 370.12(2) Florida Statutes, the Florida Manatee Sanctuary Act, to incorporate the 1989 directive for the development of county MPPs. This statute provided deadlines for MPP

development and required adoption of the boat facility element into county comprehensive plans.

⁶ These maximum slip figures are based on categorized parcels outside of special concern areas. Generally, the Caloosahatchee River and Matlacha Pass have been identified as areas of special concern, which require a higher level of protection.