

ARTICLE III

Transfer of Development Rights (TDR) Program

Part 301 – Establishment and Purpose.

§165-301.01. Purpose.

Pursuant to the authority granted by §§ 15.2-2316.1 and 2316.2 of the Code of Virginia, there is established a transfer of development rights (TDR) program, the purpose of which is to transfer residential density from eligible sending areas to eligible receiving areas and/or transferee through a voluntary process for permanently conserving agricultural and forestry uses of lands and preserving rural open spaces, and natural and scenic resources. The TDR program is intended to supplement land use regulations, resource protection efforts and open space acquisition programs and encourage increased residential density where it can best be accommodated with the least impacts on the natural environment and public services by:

- A. Providing an effective and predictable incentive process for property owners of rural and agricultural land to preserve lands with a public benefit; and
- B. Implementing the Comprehensive Policy Plan by directing residential land uses to the Urban Development Area (UDA); and
- C. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights to receiving areas are processed in a timely way and balanced with other county goals and policies, and are adjusted to the specific conditions of each receiving area.

§165-301.02. Applicability.

The procedures and regulations in Article III of Chapter 165 shall apply to the transfer of development rights from land qualifying as sending properties to land qualifying as receiving properties and/or to a transferee. Land utilizing transferred development rights may be subdivided at an increased density above the base density specified by Table 1 and Table 2 in §165-302.03 in applicable receiving areas. All development utilizing transferred development rights shall conform to the guidelines contained in the Comprehensive Policy Plan.

§165-301.03. Right to Transfer Development Rights; General Provisions.

- A. A development right shall be transferred only by means of documents, including a covenant to which Frederick County is party and any appropriate releases, in a recordable form approved by the Director of Planning and Development or his designee. The covenant shall limit the future construction of dwellings on a sending property to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this chapter, any development rights previously extinguished or limited as a result of a recorded covenant against the property, the number of development rights to be transferred by the proposed transaction, and the number of existing single-family detached dwellings on the

sending property. If a sending property contains no dwelling units, a development right equal to that for one single-family dwelling must be maintained for the property, except that, for properties larger than one hundred (100) acres, one development right equal to that for one single-family dwelling must be maintained for each multiple of one hundred (100) acres, or fraction thereof, contained within the sending property.

- B. Each transferor shall have the right to sever all or a portion of the rights to develop from the parcel in a sending district and to sell, trade, or barter all or a portion of those rights to a transferee consistent with the purposes of §165-301.01 so long as the conditions of §165-301.03A are met.
- C. Any transfer of development rights pursuant to this Chapter authorizes only an increase in maximum density and shall not alter or waive the development standards of the receiving district, nor shall it allow a use otherwise prohibited in a receiving district.
- D. Transfer of development rights shall not be available for the following:
 - 1) Portions of lots owned by or subject to easements (including, but not limited to, easements of roads, railroads, electrical transmission lines, gas or petroleum pipelines) in favor of governmental agencies, utilities and nonprofit corporations.
 - 2) Land restricted from development by covenant, easement or deed restriction.
- E. Any transfer of development rights shall be recorded among the land records of Frederick County, Virginia.
- F. Value of transferable development rights. The monetary value of transferred development rights is completely determined between the seller and buyer.

Part 302 – Sending and Receiving Properties

§165-302.01. Sending Properties.

- A. For the purposes of this chapter, a sending property must be an entire tax parcel or lot qualified under §165-302.01B of this section. Sending areas may only be located within the rural areas outside of the Urban Development Area (UDA) and the Sewer and Water Service Area (SWSA), and zoned RA (Rural Areas), as described in the Comprehensive Policy Plan and the RA Zoning District of this Chapter. A sending property shall be maintained in a condition that is consistent with the criteria in this section under which the sending was qualified.
- B. Qualification of a sending property shall demonstrate that the site contains a public benefit such that the preservation of that benefit by transferring residential development rights to another site is in the public interest, according to all of the following criteria:

- 1) Designated in the Comprehensive Policy Plan as Rural Area;
 - 2) Designated on the Zoning Maps of Frederick County as being zoned RA (Rural Areas) and be located outside of the Urban Development Area (UDA) and the Sewer and Water Service Area (SWSA);
 - 3) Designated on the Sending Areas Map;
 - 4) Comprised of at least twenty (20) acres in size; and
 - 5) Qualified for subdivision in accordance with Chapter 144 of the Frederick County Code including, but not limited to, meeting all state road and access requirements.
- C. If a sending property has any outstanding code violations and/or unpaid taxes, the owner shall resolve these violations, including any required abatement, restoration, or payment of penalties or taxes, before the property may be qualified as a sending property in the transfer of development rights program.

§165-302.02. Receiving Properties.

- A. Except as provided in subsections B and C of this section, in order to be eligible as a receiving property, a property must be:
- 1) Located in one of the following zoning districts:
 - a. RP (Residential Performance) District;
 - b. R4 (Residential Planned Community) District; or
 - c. RA (Rural Areas) District; and
 - 2) Designated on the Receiving Areas Map;
 - 3) Served by public water and public sewer;
 - 4) Served by state maintained roads or have the ability to utilize private roads in the RP District as permitted by Chapter 165 or Chapter 144.
 - 5) Located within the Urban Development Area (UDA) or a designated and defined Rural Community Center as identified in the Comprehensive Policy Plan; and
 - 6) Identified in the Frederick County Comprehensive Policy Plan for residential land uses.

- B. A property is not eligible as a receiving property if the transfer of development rights to the property would adversely impact regionally or locally significant historical resources or naturally sensitive areas as specified in the Comprehensive Policy Plan.
- C. A property is not eligible as a receiving property if the property is located within the airport support area as identified by the Comprehensive Policy Plan.
- D. If a receiving property has any outstanding code violations and/or unpaid taxes, the owner shall resolve these violations, including any required abatement, restoration, or payment of penalties or taxes, before the property may be qualified as a receiving property in the transfer of development rights program.
- E. A receiving property may accept development rights from one or more sending properties, up to a maximum density specified in Table 1 and Table 2 in §165-302.03.

§165-302.03. Calculation of development rights.

- A. The number of residential development rights that a sending property is eligible to send to a receiving property and/or transferee shall be determined by applying the sending property base density established in subsection C of this section to the area of the sending property after deducting all the following:
 - 1. Development rights previously transferred in accordance with this chapter;
 - 2. Development rights previously extinguished or limited as a result of a recorded conservation easement or similar covenant against the property;
 - 3. The number of existing single-family dwellings on the sending property;
 - 4. The amount of any submerged land (i.e., lakes, ponds, streams), floodplains, and steep slopes as determined by Frederick County GIS Data.
 - 5. The amount of any land contained within easements (including, but not limited to, easements of roads, railroads, electrical transmission lines, gas or petroleum pipelines) in favor of governmental agencies, utilities and nonprofit corporations.
- B. If a sending property contains no dwelling units, a development right equal to that for one single-family dwelling must be maintained for the property. Properties with over 100 acres shall be required to retain the number of development rights required in accordance with Section 165-301.03A.
- C. For the purposes of calculating the amount of development rights a sending property can transfer, the square footage or acreage of land contained within a sending property shall be determined by a valid recorded plat or survey, submitted by the applicant property owner and that has been prepared and stamped by a land surveyor licensed in the Commonwealth of Virginia.
- D. For the purposes of the transfer of development rights program only, sending sites zoned RA (Rural Areas) shall have a base density of one dwelling unit per five acres for transfer purposes.

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- E. Any fractions of development rights that results from the calculations in subsection A of this section shall not be included in the final determination of total development rights available for transfer.
- F. Development rights from one sending property may be allocated to more than one receiving property and/or transferee and one receiving property and/or transferee may accept development rights from more than one sending property.
- G. The determination of the number of residential development rights a sending property has available for transfer to a receiving property and/or transferee shall be documented in a TDR LETTER OF INTENT to issue a TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE issued by the Director of Planning and Development or his designee, pursuant to the provisions of this Part 302.05 of Chapter 165, and shall be considered a final determination, not subject to revision. Such a determination shall be valid only for purposes of the transfer of development rights program and for no other purpose. Any changes to the proposed sending property shall void any issued letters of intent.
- H. A sending property transferee may extinguish TDR density rights, sever and hold TDR density rights, sever and sell TDR density rights, or apply TDR rights to a receiving property in a receiving district in order to obtain approval for development at a density greater than would otherwise be allowed on the land in the receiving district, up to the maximum density or intensity outlined in the table below:

**Table 1
Maximum Density Allowed in Zoning Districts through Transfer of
Development Rights (TDR) Program**

Zoning District	Property Size In Acres	Maximum Density in Dwelling Units per Acre	Maximum Density in Dwelling Units per Acre with TDR Transfers
RA (Rural Areas)	RA Receiving Property	1 Unit Per 5 Acres	Maximum Density allowed in the RP District within the UDA per § 165-402.05
			1 Unit Per Acre in Designated Rural Community Centers served by Community Septic Systems
RP (Residential Performance)	<10	10	15
	10-100	5.5	8
	>100	4	6
R4 (Residential Planned Community)	>100	4	6

- I. TDR density rights may be converted to bonus density rights by an increase in the residential density on the receiving property, based on the conversion factors in the table below:

Table 2
Maximum Density Allowed in Zoning Districts through Transfer of
Development Rights (TDR) Program

Designated Sending Area	Each Transferred Density Right May Be Converted to This Bonus Density in the Receiving Area
Sending Area #1	1 Density Right =2 Dwelling Units
Sending Area #2	1 Density Right =1.5 Dwelling Units
Sending Area #3	1 Density Right =1 Dwelling Unit

1. Allowable bonus density remains subject to the maximum density provisions outlined in Table 1 of §165-302.03H.
2. If properties located in Sending Area #1 (designated Agricultural and Forestal District) that have transferred bonus density rights are subsequently withdrawn from the designated sending area (the designated Agricultural and Forestal District), the total number of density rights transferred, including bonus density rights, shall be counted against any future subdivision ability of the property.

§165-302.04. TDR Sending Property Development Limitations.

- A. Following the transfer of residential development rights, a sending property that has retained part of their development rights may subsequently accommodate remaining residential dwelling units on the sending property consistent with the requirements of the RA (Rural Areas) District and all requirements of the Frederick County Code. A sending property that has retained part of its development rights may also transfer the remainder of the eligible rights through the transfer of development rights program.
- B. On sending properties with environmental features as outlined in § 165-302.03A, the development rights shall be severed from the areas outside of the specified environmental features. If development rights are retained on the sending property, future subdivision of the parcel cannot occur on the areas where development rights have already been severed.
- C. The limitations in this section shall be included in a deed covenant applicable to the sending property.

§165-302.05. Sending Property Certification.

- A. The Director of Planning and Development or his designee shall be responsible for determining that a proposed sending property meets the qualifications of §165-302.01. The Director of Planning and Development or his designee shall render a determination or denial under this subsection within

sixty (60) days of the date of submittal of a completed sending property determination application. If the determination is that a property meets the qualifications of §165-302.01, the Director of Planning and Development or his designee shall issue the determination in the form of a LETTER OF INTENT to issue a TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE. A LETTER OF INTENT issued under this subsection shall be valid until the development rights are severed and extinguished through the transfer process, or unless applicable zoning changes are approved that would affect the sending property, or unless the property is developed.

- B. Determinations of sending property qualifications under subsection A of this section are appealable to the Board of Supervisors by filing a notice of appeal with the Director of Planning and Development or his designee within thirty (30) days of the date of the determination.
- C. The Director of Planning and Development shall be responsible for maintaining permanent records of action taken pursuant to the transfer of development rights program under this Article III of Chapter 165, including records of letters of intent issued, certificates issued, deed restrictions and covenants known to be recorded, and development rights retired, otherwise extinguished, or transferred to specific properties and/or transferees.
- D. Responsibility for preparing a completed application for a determination that a proposed sending property meets the qualifications of §165-302.01 rests exclusively with the applicant/property owner. An application for a transfer of development rights to issue a transfer of development rights LETTER OF INTENT shall contain:
 - 1) A certificate of title for the sending property prepared by an attorney admitted to practice law in the Commonwealth of Virginia;
 - 2) Five copies of a valid recorded plat or survey, of the proposed sending parcel and a legal description of the sending property prepared by a land surveyor licensed in the Commonwealth of Virginia;
 - 3) A plan showing the existing and proposed dwelling units and any areas already subject to a conservation easement or other similar encumbrance;
 - 4) A completed density calculation worksheet for estimating the number of available development rights;
 - 5) The application fee as set forth in the Development Review Fees adopted by the Board of Supervisors; and
 - 6) Such additional information required by the Director of Planning and Development or his designee as necessary to determine the number of development rights that qualify for transfer.
- E. A transfer of development rights LETTER OF INTENT issued by the Director of Planning and Development or his designee shall state the following information:
 - 1) The name of the transferor;

- 2) The name of the transferee , if then known;
 - 3) A legal description of the sending property on which the calculation of development rights is based;
 - 4) A statement of the size, in acres, of the sending property on which the calculation of development rights is based;
 - 5) A statement of the number of development rights, stated in terms of number of dwelling units, eligible for transfer;
 - 6) If only a portion of the total development rights are being transferred from the sending property, a statement of the number of remaining development rights, stated in terms of number of dwelling units, remaining on the sending property;
 - 7) The date of issuance;
 - 8) The signature of the Director of Planning and Development or his designee; and
 - 9) A serial number assigned by the Director of Planning and Development or his designee.
- F. No transfer of development rights under this ordinance shall be recognized by Frederick County as valid unless the instrument of transfer contains the transfer of development rights certificate issued under this section.

§165-302.06. Instruments of Transfer.

- A. An instrument of transfer of development rights shall be reviewed and approved as to the form and legal sufficiency by the County Attorney and, upon such approval, the County Attorney shall notify the transferor or his or her agent, who shall record the instrument with the Clerk of the Circuit Court and shall provide a copy to the Commissioner of the Revenue. An instrument of transfer of development rights shall conform to the requirements of this section and shall contain the following:
- 1) The names of the transferor and the transferee;
 - 2) A legal description and plat of the sending property prepared by a land surveyor licensed in the Commonwealth of Virginia;
 - 3) The transfer of development rights certificate described in §165-302.03F;
 - 4) A covenant indicating the number of development rights remaining on the sending property and stating that the sending property may not be subdivided to or developed to a greater density than permitted by the remaining development rights;
 - 5) A covenant that the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors a specific number of development rights from the sending property to a receiving property and/or a transferee;
 - 6) A covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred; and
 - 7) A covenant that all provisions of the instrument of transfer of development rights shall run with and bind the sending property and may be enforced by Frederick County.

- B. An instrument of transfer of development rights shall be recorded prior to release of development permits, including building permits, for the receiving property.

Part 303 – Transfer Process and Development Procedures.

§165-303.01. Transfer Process.

Development rights shall be transferred using the following process:

- A. Following approval of the sending property determination application and issuance of the LETTER OF INTENT as described in §165-302.05, the Director of Planning and Development or his designee shall issue the TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE, agreeing to a transfer of development rights in exchange for the proposed sending property deed covenant to which Frederick County is a party. If a sending property with a TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE changes ownership, the certificate may be transferred to the new owner if requested in writing to the Department of Planning and Development by the person(s) that owned the property when the certificate was issued, provided that the documents evidencing the transfer of ownership are also provided to the Department of Planning and Development.
- B. In applying for receiving property or receiving person approval, the applicant shall provide the Department of Planning and Development with one of the following:
 - 1) A TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE issued in the name of the applicant;
 - 2) A TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE issued in the name of another person or persons and a signed option to purchase those TDR sending property development rights; or
 - 3) A TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE issued in the name of the applicant or another person(s) and a copy of a signed option to purchase those TDR sending property development rights.
- C. The receiving property applicant and/or transferee shall deliver the documentation outlined in § 165-303.01B for the number of TDR development rights being severed or transferred and the TDR extinguishment document to the County.
- D. Development rights from a sending property shall be considered transferred to a receiving property and/or a transferee and extinguished when the extinguishment document for the sending property has been recorded.

§165-303.02. Development Approval Procedures.

- A. A request to utilize transferred development rights on an eligible receiving property must be in the form of a Master Development Plan and a Subdivision Design Plan submitted to the Department of Planning and Development in accordance with the Zoning and Subdivision regulations contained in Chapters 165 and 144 of the County Code.

- B. All subdivisions for receiving properties zoned RA (Rural Areas) utilizing development rights shall be subject to the same requirements as property zoned RP (Residential Performance) and shall not qualify for the standards specified in §144-31 of the Frederick County Code.
- C. A final recorded plat for a subdivision using transferred development rights shall contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance required by §165-302.06.

ARTICLE I
GENERAL PROVISIONS, AMENDMENTS, AND CONDITIONAL USE PERMITS

Part 101 – General Provisions

165-101.02 Definitions & word usage.

As used in this ordinance, the following words and terms have the meanings specified herein:

DEVELOPMENT RIGHTS - the permitted density of development that is allowed on a sending property under any zoning ordinance of the County on a date of transfer of such rights.

RECEIVING AREA – One or more areas identified in this Chapter and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

RECEIVING PROPERTY - A lot or parcel of land within a receiving area and within which development rights are increased pursuant to a transfer of development rights affixed to the property.

SENDING AREA - One or more areas identified in this Chapter and designated by the comprehensive plan as an area from which development rights are authorized to be severed and transferred to a receiving area.

SENDING PROPERTY - A lot or parcel of land in a sending area that is the subject of a transfer of development rights, where the owner of the parcel is conveying development rights of the parcel, and on which those rights so conveyed are extinguished and may not be used, by reason of the transfer of development rights.

EXTINGUISHMENT OF DEVELOPMENT RIGHTS - The process by which development rights from a sending property are severed from the sending property to a receiving property or transferee, pursuant to the transfer of development rights program under Chapter 165 of the County Code.

TRANSFER OF DEVELOPMENT RIGHTS - The procedure prescribed by this ordinance whereby the owner of a parcel in a sending area may convey development rights to the owner of a parcel in a receiving area or to another person or entity, whereby the development rights so conveyed are severed or extinguished on the sending property and may be exercised on the receiving parcel in addition to the development rights already existing regarding that parcel or may be held by the receiving person or entity.

TRANSFERABLE DEVELOPMENT RIGHTS - All or that portion of development rights that are transferred or are transferable.

TRANSFeree – A person or legal entity that owns property in a receiving area or who receives and holds development rights from a sending property.

TRANSFEROR – The person or legal entity, including a person or legal entity that owns property in a sending area, who conveys development rights.

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TRANSFER OF DEVELOPMENT RIGHTS LETTER OF INTENT – A letter issued by the Director of Planning and Development or his designee determining the number of residential development rights a sending property has available for transfer to a receiving property or transferee.

TRANSFER OF DEVELOPMENT RIGHTS (TDR) CERTIFICATE- A letter issued by the Director of Planning and Development or his designee agreeing to sever a specified number of residential development rights from a sending property in exchange for a restrictive deed covenant to which Frederick County is a party to on the sending property that restricts further development.