

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL
2008 Legislative Session**

Bill No. _____ CB-80-2008 _____

Chapter No. _____

Proposed and Presented by _____ Council Members Dernoga and Bland _____

Introduced by _____ Council Members Dernoga and Bland _____

Co-Sponsors _____

Date of Introduction _____ October 21, 2008 _____

ZONING BILL

1 AN ORDINANCE concerning

2 Transfer of Development Rights

3 For the purpose of establishing a Transfer of Development Rights program in Prince George's
4 County.

5 BY adding:

6 Sections 27-1901, 27-1902, 27-1903, 27-1904, 27-1905, 27-1906,
7 27-1907, 27-1908, 27-1909, 27-1910, 27-1911, 27-1912, 27-1913,
8 27-1914, 27-1915, 27-1916, 27-1917,

9 The Zoning Ordinance of Prince George's County, Maryland,
10 being also

11 **SUBTITLE 27. ZONING.**

12 The Prince George's County Code
13 (2003 Edition, 2006 Supplement).

14 BY repealing and reenacting with amendments:

15 Sections 27-107.01, 27-317, 27-425, 27-426, 27-427, 27-428, and
16 27-441,

17 The Zoning Ordinance of Prince George's County, Maryland,
18 being also

19 **SUBTITLE 27. ZONING.**

20 The Prince George's County Code

(2003 Edition, 2006 Supplement).

SECTION 1. BE IT ENACTED by the County Council of Prince George's County, Maryland, sitting as the District Council for that part of the Maryland-Washington Regional District in Prince George's County, Maryland, that Sections 27-1901, 27-1902, 27-1903, 27-1904, 27-1905, 27-1906, 27-1907, 27-1908, 27-1909, 27-1910, 27-1911, 27-1912, 27-1913, 27-1914, 27-1915, 27-1916, 27-1917 of the Zoning Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's County Code, be and the same are hereby added:

SUBTITLE 27. ZONING.

PART 19. TRANSFER OF DEVELOPMENT RIGHTS.

DIVISION 1. GENERAL.

Sec. 27-1901. Introduction.

It is the policy of the County that landowners in the Sending Districts designated in this Part should be provided regulatory incentives to permanently restrict such lands from development in order to preserve sensitive natural resources and to preserve and enhance agricultural and forestry resources. The County Council recognizes both the need and the public value of protecting farm and forest lands, ecologically fragile watershed and flood plains, as well as the more general need to protect scenic vistas and view sheds enjoyed by the citizens and residents of the County. Md. Code Art. 28, § 8-101(b)(3) and Art. 66B, § 11.01 authorizes the County to establish a program for the Transfer Of Development Rights to encourage the preservation of natural resources and to facilitate orderly growth and development in the State. This Part establishes procedures for transferring densities from properties located in designated Sending Districts to properties located within designated Receiving Districts. At the request of the landowners in the Sending Districts and the Receiving Districts, the County may increase densities in the Receiving Districts and reduce densities in the Sending Districts. The use of TDRs to obtain density increments in Receiving Districts should not exceed the development potential recommended in adopted and approved master plans.

Sec. 27-1902. Purposes.

The regulations in this Part are established for the following purposes:

- (a) Implement the policies of the Prince George's County General Plan and the Green Infrastructure Plan relating to the Rural Tier;

1 **(b) Implement the policies of the Prince George’s County General Plan relating to the**
 2 **Developed Tier, including, but not limited to encouraging revitalization and appropriate infill;**

3 **(c) Preserve and enhance ecologically fragile and aesthetically valuable environments**
 4 **of the County, including streams, stream valleys, floodplains, wetlands, groundwater, steep**
 5 **slopes, woodlands, scenic vistas, and scenic corridors;**

6 **(d) Retain agricultural land and augment other local programs certified in accordance**
 7 **with the Code of Maryland Regulations for the preservation of agricultural land;**

8 **(e) Advance the woodland conservation policies of Prince George’s County,**
 9 **Maryland and the State of Maryland (see generally Section 25-117 and Title 5, Subtitle 16, of the**
 10 **Natural Resources Article of the Annotated Code of Maryland; and Title 08, Subtitle 19, of the**
 11 **Code of Maryland Regulations);**

12 **(f) Permit an alternate method of satisfying the woodland conservation and tree**
 13 **preservation requirements for a developing parcel using off-site mitigation through the**
 14 **encumbrance of separate forested property pursuant to this Part;**

15 **(g) Maintain rural character;**

16 **(h) Allow large-lot estate residences;**

17 **(i) Limit nonagricultural uses;**

18 **(j) Protect landowners’ equity in their land;**

19 **(k) Maintain the integrity of the rural transportation system; and**

20 **(l) Support development of a type and density, which will have minimal adverse**
 21 **effects upon natural features and surrounding properties.**

22 **Sec. 27-1903. Applicability.**

23 **(a) This Part 19 applies to:**

24 **(1) All properties in Designated Sending Districts in the Rural Tier and other such**
 25 **properties as specifically identified by the District Council through an approved Ordinance or**
 26 **Resolution.**

27 **(2) Applications for zoning map or text amendments, comprehensive design plans,**
 28 **comprehensive plans, comprehensive rezonings, special exception uses, site plans, preliminary**
 29 **plans of subdivision, final plats, record plats, or building permits in designated Receiving**
 30 **Districts within the Developing or Developed Tiers, and other such properties as specifically**
 31 **identified by the District Council through an approved Ordinance or Resolution.**

1 **(b) Exemptions.**

2 **(1) Intrafamily Conveyance.** This Part does not apply to the creation of lots through
 3 the conveyance to a son or daughter or lineal descendant or antecedent in accordance with
 4 Section 24-107(c)(3) of the Subdivision Regulations. Notwithstanding the foregoing, a property
 5 enrolled in this program shall only be entitled to the number of dwelling units permitted in the
 6 Transfer of Development Rights Easement Agreement.

7 **(2) The requirements of the TDR Program shall not apply to any property or property**
 8 **adjacent to property located within a General Plan designated center in the Developing Tier**
 9 **which is to be developed as follows: a mixed use, urban town center including retail office and**
 10 **residential uses with a defined core, edge and fringe as defined by a Sector Plan; transit-and-**
 11 **pedestrian-oriented, with ample public spaces suitable for community events, adjacent to a**
 12 **planned or developed public park of 100 or more acres that includes a variety of recreational and**
 13 **cultural facilities for public use, such as amphitheatres.**

14 **(3) Rural Entertainment Park.** Any property located within the Rural Tier that obtains
 15 special exception approval for a Rural Entertainment Park shall be exempt from the requirements
 16 of the TDR Program.

17 **(c) The conditions of this Part shall be satisfied prior to the issuance of building permits**
 18 **for the Receiving District, as hereinafter defined. In the case of Forest TDR's, the conditions of**
 19 **this Part shall be satisfied prior to the issuance of a grading permit for the Receiving District.**

20 **Sec. 27-1904. Definitions.**

21 **(a) In this Section, the following words and phrases have the meanings indicated:**

22 **(1) Forest Retention Area Plat:** a plat delineating a Forest Retention Area to be
 23 recorded among the Land Records of Prince George's County.

24 **(2) Forest Management Plan:** an approved Forest Management Plan providing for
 25 managed timber harvests pursuant to a plan prepared by registered professional Forester shall be
 26 required for all property on which Transfer of Development Rights are created on property to be
 27 maintained in perpetuity as forest.

28 **(3) Receiving District:** An area of land designated to receive development rights
 29 transferred from Sending Districts.

30 **(4) Sending District:** An area of land from which development rights may be severed
 31 and transferred to properties in Receiving Districts.

1 (5) **Transfer of Development Right (TDR):** The potential for the improvement of a
2 parcel of real property, measured in dwelling units that exists because of the zoning classification
3 of the parcel. A "development right" is not an entitlement to the construction of dwelling units.
4 However, it is a concept that measures increments of development that may be transferred from a
5 Sending District or constructed in a Receiving District.

6 (6) **Forest Transfer of Development Right (Forest TDR):** Is a Transfer of
7 Development Right created on property to be maintained in perpetuity as forest. Forest TDR's
8 shall be used for off-site mitigation as an alternate method of satisfying the tree conservation
9 requirements for a developing parcel.

10 (7) **Transfer of Development Rights Easement Agreement:** The agreement
11 between the owner of property and the County which shall restrict the development and provide
12 for the perpetual preservation of the property once any of the Transfer of Development Rights
13 have been sold or transferred.

14 (8) **TDR Allocation Rate:** The number of TDRs per acre, expressed as theoretical
15 dwelling units per acre that may be allocated or assigned to properties in Sending Districts, based
16 upon existing zoning and the allocation calculation methods provided in this Part.

17 (9) **TDR Allocation Letter:** A written assessment issued by the Program
18 Administrator, indicating the TDR Allocation Rates and calculation methods as applied to
19 specific properties within designated Sending Districts.

20 (10) **TDR Certificate:** A certificate issued by the Program Administrator to the
21 owner(s) of record, stating the quantity of development rights allocated or assigned to specific
22 property in a Sending District. The certificate must be recorded among the land records of the
23 County to convey the development rights to a Receiving District. Once development rights are
24 conveyed to a Receiving District the certificate shall be extinguished. Nothing in this Part shall
25 be construed to prohibit the sale or transfer of certificates which are not assigned to a specific
26 Receiving District or specific property to be developed.

27 (11) **Conveyance of Transfer of Development Rights:** The delivery of the TDR
28 Certificate and its subsequent recordation among the land records of Prince George's County,
29 Maryland effectuates the transfer of TDR's from the Sending District to the Receiving District.

1 subject to a Forest Management Plan;

2 C. Metes and bounds description of the subject property together with copies of all
 3 easements encumbering the property; and

4 D. Copy of the deed into the current owner.

5 (5) In addition to the requirements noted above, the applicant(s) must provide any
 6 other data or explanatory material that the Program Administrator reasonably determines is
 7 needed to calculate the allocation of Transfer of Development Rights for the subject property.

8 (c) **Evaluation Criteria.** Each application shall be evaluated to determine the number of
 9 transferable development rights to be allocated to the property. The number of Transfer of
 10 Development Rights allocated to the property shall be based solely upon the sending area TDR
 11 Allocation Rates and calculation methods provided by this Part.

12 (d) **TDR Allocation Letter.** Within 30 days of acceptance of an application the Program
 13 Administrator shall calculate the number of Transfer of Development Rights allocated to the
 14 property using the TDR Allocation Rates, and the Program Administrator shall issue a TDR
 15 Allocation Letter to the owner(s) of record indicating the number of TDRs to be issued for the
 16 subject property subsequent to the recordation of a Transfer of Development Rights Easement
 17 Agreement. The TDR Allocation Letter shall include the calculations used to determine the
 18 allocation and the provisions for filing an appeal. If the owner disputes the calculation or the
 19 number of TDR's allocated to the property, the owner may appeal by sending written notice of
 20 the appeal to the Zoning Hearing Examiner within 30 days from the date the TDR Allocation
 21 Letter is mailed.

22 **Sec. 27-1907. Transfer of Development Rights Easement Agreement.**

23 (a) The Transfer of Development Rights Easement Agreement shall limit the number of
 24 residential structures that can be constructed on the property, the industrial or commercial
 25 activities permitted on the property, limitations on the further subdivision of the property,
 26 contain prohibitions on dumping and such other provisions as are typical in a preservation
 27 easement. The Transfer of Development Rights Easement Agreement shall permit managed
 28 forestry, agricultural and related commercial activities and permit periodic inspections for
 29 compliance with the terms of the easement. Nothing in the easement shall be construed to convey
 30 to the public a right of access to, or use of, any property subject to this Part. The owner shall
 31 retain the exclusive right to such access and use. The Transfer of Development Rights Easement

1 Agreement shall be monitored and enforced by the County.

2 (b) If all, or a portion of, the property is to be retained in perpetuity as forest, the
 3 Transfer of Development Rights Easement Agreement shall include covenants limited to that
 4 portion of the property to be retained as forest which prohibit building, construction of roads,
 5 installation of utilities, grading or clearing unless pursuant to an approved Forest Management
 6 Plan.

7 (c) A property encumbered by a Transfer of Development Rights Easement Agreement
 8 shall remain in the program in perpetuity if any, or all, of the Transfer of Development Rights
 9 are sold or conveyed. However, if a property in the program fails to sell any Transfer of
 10 Development Rights within four (4) years from the recordation of a Transfer of Development
 11 Rights Easement Agreement on the property, then the property owner has the right to have the
 12 Program Administrator or his assignee remove the property from the Program.

13 (d) Prior to the recordation of a Transfer of Development Rights Easement Agreement, a
 14 draft of the easement document and a 60-year title search shall be provided to the Program
 15 Administrator for review and approved for legal sufficiency, and to ensure a free and clear title
 16 and the ability of the owner(s) to place a preservation easement on the property.

17 **Sec. 27-1908. Issuance of TDR Certificate or Forest TDR Certificate.**

18 (a) A TDR Certificate shall be issued to the owner(s) of record in exchange for the
 19 following documentation:

20 (1) A typewritten letter signed by the owner(s) requesting the issuance of a TDR
 21 Certificate and the quantity of TDR's for the Certificate;

22 (2) Proof of the recordation of a Transfer of Development Rights Easement
 23 Agreement for each property on the application; and

24 (3) Subsequent to the recordation of a Transfer of Development Rights Easement
 25 Agreement, a current owner title search shall required to determine the number of TDR's
 26 conveyed to date.

27 (b) If the owner requests the issuance of a Forest TDR Certificate, in addition to the
 28 documents in subsection (a), the owner shall provide proof of the recordation of the Forest
 29 Retention Area Plat and a copy of the Forest Management Plan; and subsequent to the
 30 recordation of a Transfer of Development Rights Easement Agreement, a current owner title
 31 search shall required to determine the number of Forest TDR's conveyed to date.

1 (c) Once the documents provided under subsection (a) and (b) have been reviewed and
 2 approved for legal sufficiency, the TDR Certificate and/or Forest TDR Certificate shall be
 3 issued.

4 **Sec. 27-1909. Re-Issuance of TDR Certificate.**

5 (a) Replacement TDR Certificates or Forest TDR Certificates shall be issued in the
 6 following situations:

7 (1) Loss or destruction of the original TDR Certificate or Forest TDR Certificates;
 8 and

9 (2) Return of an original certificate because of a failure to sell, settle or convey the
 10 TDR's.

11 (b) The owner(s) shall file a written request to the Program Administrator for the
 12 replacement TDR Certificates or Forest TDR Certificates. If filing under Paragraph (a)(1), the
 13 owner(s) must provide a title search to verify that the TDR Certificates or Forest TDR
 14 Certificates have not been conveyed.

15 **Sec. 27-1910. Tracking System.**

16 (a) Database. A computer database shall be used to monitor all activities of the TDR
 17 Program, including allocation assessments and the issuance, replacement, sale, use and
 18 extinguishment of TDR Certificates or Forest TDR Certificates. The database shall be current
 19 and have the capability to:

20 (1) Identify TDR and Forest TDR allocations for properties located within designated
 21 Sending Districts;

22 (2) Record the progression of TDR Certificates or Forest TDR Certificates in
 23 conjunction with appropriate phases of the development review process; and

24 (3) Document TDR or Forest TDR use in the Receiving Districts and the
 25 extinguishment of TDR Certificates as applied to the approval of final plats of subdivision or site
 26 plans, when relevant.

27 (b) Reporting. Beginning no later than January 31, 2010, the Program Administrator shall
 28 provide annual status reports on the progress of the previous year's TDR Program to the District
 29 Council. Status reports shall be made more often if requested in writing by the Chairman of the
 30 District Council.

DIVISION 3. SENDING DISTRICT

Sec. 27-1911. Defined.

The Sending District includes all properties classified in the AC, O-S, R-A, R-E or R-R Zone and located within the Rural Tier, as defined in the 2002 General Plan as amended, and other such properties as specifically identified by the District Council through an approved Ordinance or Resolution or comprehensive plan.

Sec. 27-1912. TDR Allocation.

(a) The acreage of property to be placed under a preservation easement shall be multiplied by the TDR Allocation Rate listed in the following table, based upon either:

- (1) The zoning district in effect for the property as of April 1, 2006; or
- (2) As otherwise specified in subsection (d) below.

Zoning District	<u>TDR Allocation Rate per Lot</u>
<u>AC</u>	<u>4 TDRs per 5 Acre Lot</u>
<u>O-S</u>	<u>2 TDRs per 5 Acre Lot</u>
<u>R-A</u>	<u>1 TDR per 2 Acre Lot</u>
<u>R-E</u>	<u>1 TDR per 1 Acre Lot</u>
<u>R-R</u>	<u>1 TDR per 0.5 Acre Lot</u>

(3) For property in the Rural Tier that is below the minimum lot sizes recited herein, but classified for agricultural purposes by the Maryland Department of Assessments and Taxation, the property shall be entitled to 1 TDR.

(b) A Transfer of Development Rights does not authorize or prohibit development on the sending site.

(c) Forest TDR's. For purposes of calculating the number of Forest TDR's to be allocated, Forest TDR's shall be allocated at the rate of one (1) Forest TDR for each acre of land subject to the Forest Retention Area Plat.

(d) For purposes of this Section, a "net acre" means the total area of a property, minus the following land area characteristics:

1 (1) One hundred percent (100%) of:

2 A. Utility, railroad or street rights-of-way ten (10) feet wide or greater;

3 B. The 100-year floodplain, based upon the best information available at the time the
 4 TDR allocation assessment is requested;

5 C. Land currently subject to similar preservation or conservation easements; or

6 D. Publicly owned land.

7 (2) Fifty percent (50%) of the land area located within the Resource Conservation

8 Overlay Zone of the Chesapeake Bay Critical Area.

9 (e) Notwithstanding any provision herein to the contrary, the District Council may
 10 designate properties changed to a less dense zoning district after January 1, 2006, to be assigned
 11 Transfer of Development Rights equal to the allocation rate listed in the table in subsection (a)
 12 above, based on the zoning classification prior to the Sectional Map Amendment.

13 **(1) Properties In The Bowie Master Plan And Sectional Map Amendment (SMA)**

14 **Area -** Because the following properties have been classified in the O-S Zone and placed in the
 15 Rural Tier to promote agricultural and environmental preservation, and, in order to promote the
 16 policies of the TDR Program, the District Council does not want to divest the property of value;
 17 therefore, these properties shall be allocated TDRs in accordance with the table in subsection (b)
 18 above, based on the zoning classification prior to the Sectional Map Amendment. For any
 19 property classified to the O-S Zone and placed in the Rural Tier, that had previously been placed
 20 in a comprehensive design zone, TDRs shall be allocated on the basis of the maximum number
 21 of dwelling units approved on the Basic Plan for such property:

22 **A. Colts Neck Cluster -** (Comprising approximately 45 acres located on the
 23 southwest side of Race Track Road, Tax Map 29, Grid F2). Furthermore, this property may be
 24 developed with a maximum of 10 single-family detached dwellings on lots at the minimum size
 25 of 40,000 square feet, in accordance with the provisions of the Conservation Subdivision
 26 Regulations. For each existing or proposed dwelling unit, one TDR shall be subtracted from the
 27 total number that would otherwise be allocated.

28 **B. Horsepen Branch -** (Comprising several combined properties, located on
 29 the southwest side of Race Track Road, adjacent to the Horse Pen Branch of the Patuxent River,
 30 Tax Maps 28 & 29).

31 **C. Bowie Race Track -** (Consisting of property located on the northeast side of

1 Race Track Road, extending to the Patuxent River, Tax Map 30, Grid B3).

2 (e) Computation of TDR Allocation.

3 (1) The number of Transfer of Development Rights allocated to a parcel in the
 4 Sending District shall be computed equal to the Total Net Acres Minus all Acreage with Existing
 5 or Proposed Dwelling Units, then multiplied by the TDR Allocation Rate above.

6 (2) When the number of computed Transfer of Development Rights contains a
 7 fraction that is one-half (1/2) or more, the fraction shall be rounded up to the nearest whole
 8 number. If the fraction is less than one-half (1/2), the fraction shall be reduced to the nearest
 9 whole number.

10 **Sec. 27-1913. Reserved.**

11
 12 **DIVISION 4. RECEIVING DISTRICTS.**

13 **Sec. 27-1914. Defined.**

14 Receiving Districts include:

15 (a) All zoning districts located in the Developing Tier as designated in the General Plan as
 16 amended, and other such properties as specifically identified by the District Council through an
 17 approved Ordinance or Resolution or comprehensive plan;

18 (b) In the Developed Tier, as designated in the General Plan (as amended), properties that
 19 develop under a zoning classification with no set density (such as M-U-I, M-U-T-C, mixed-use
 20 zones or similar zones that allow the development criteria to set the density) or that are in an area
 21 subject to an overlay zone (e.g., DDOZ or TDOZ or similar zones created in the future), and
 22 other such properties as specifically identified by the District Council through an approved
 23 Ordinance or Resolution or comprehensive plan, and for such other properties that obtain density
 24 increases; and

25 (c) Specific properties located within the Rural Tier that obtain an approved Special
 26 Exception for an Equestrian Conservation Subdivision.

27 (d) While it is not generally intended that the Rural Tier be a Receiving District of density,
 28 developments in the Rural Tier shall be subject to the requirements of Section 27-1915.

29 **Sec. 27-1915. Redemption of TDR Certificates.**

30 (a) The actual TDR Certificates required for existing density or approved density increases
 31 shall be provided to the Program Administrator for authentication and extinguishment prior to

1 the issuance of building permits.

2 (b) Forest TDR Certificates.

3 (1) An applicant may redeem Forest TDR Certificates to satisfy the requirements to
 4 provide off-site tree mitigation by providing the actual Certificates to the Program Administrator
 5 for authentication and extinguishment prior to issuance of the grading permit. Each Forest TDR
 6 acquired shall be converted to tree conservation credits on the basis of each Forest TDR equals
 7 one acre of tree conservation.

8 (2) The applicant shall disclose to the Planning Board that Forest TDR's will be used
 9 to satisfy off-site tree mitigation requirements prior to the Planning Board's approval of the
 10 applicant's off-site mitigation proposal. If the applicant fails to disclose the use of a Forest TDR
 11 Certificate prior to the Planning Board's approval of the applicant's off site mitigation proposal,
 12 the applicant may only use the Forest TDR Certificate by filing an amendment to the off-site
 13 mitigation proposal.

14 (3) In addition, for two every two Forest TDRs acquired from property in the AC
 15 Zone, the Program Administrator shall allocate one (1) Transfer of Development Right to the
 16 applicant and shall issue the appropriate TDR Certificate to the applicant.

17 (c) The number of Transfer of Development Rights to be acquired in a Receiving District
 18 shall be as follows:

19 (1) Applications for building permits accepted for processing beginning January 1,
 20 2009, and reflecting zoning density as it existed prior to January 1, 2008, shall require Transfer
 21 of Development Rights at the rates indicated in column "A" of the following table.

22 (2) Applications for building permits accepted for processing beginning January 1,
 23 2009, and reflecting a density increase obtained on or after December 31, 2007 as the result of
 24 District Council action described in Section 27-1903, shall require Transfer of Development
 25 Rights at the rates indicated in column "B" of the following table.

26 (3) However, in the Developed Tier, upon a majority vote by the District Council,
 27 Transfer of Development Rights requirements may be lessened or waived for properties within
 28 designated Receiving Districts when the property is being developed exclusively with single-
 29 family detached dwellings.

30 (4) The County Council may reduce the percentage of TDRs required under Column B,
 31 below, to 10% for development within one-quarter mile of a Metro station in a Community

1 Center located in the Developed Tier or for development within a Regional Center located within
 2 one-half mile of the District of Columbia boundary.

TDRs to be Acquired

<u>Nature of Density Increase</u>	<u>COLUMN A TDRs to be Acquired For Zoning Density Existing Prior To January 1, 2008</u>	<u>COLUMN B TDRs to be Acquired For Density Increases Obtained On Or After December 31, 2007</u>
<u>Residential Density Increase Obtained by Any Mechanism in Sec. 27-1903 (except as provided below)</u>	<u>5%</u>	<u>75% of Approved Residential Units</u>
<u>Special Exception Uses</u>	<u>5%</u>	<u>60% of Approved Density in Excess of the Density Allowed by Existing Zoning</u>
<u>Hotel or Motel Special Exception Use</u>	<u>5%</u>	<u>60% of Approved Units in Excess of the Density Allowed by Existing Zoning</u>
<u>Residential Density Increase Obtained by Any Mechanism in Sec. 27-1903 in Developed Tier or Corridors and Centers</u>	<u>5%</u>	<u>20% of Approved Residential Units</u>
<u>Conversion of Nonresidential Property to Residential Use</u>	<u>NA</u>	<u>75% of Approved Residential Units</u>

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TDR's To be Acquired in the Rural Tier

<u>Preliminary Plans of Subdivision, Final Plats, Site Plan or Other Approval Increasing Density</u>	<u>TDRs to be Acquired For Density Increases Obtained On Or After December 31, 2007</u>
O-S Zone	100%
R-A Zone	100%
Other Residential Zones	50%
<u>Equestrian Conservation Subdivision Special Exception Use in the Rural Tier</u>	<u>50%</u>
<u>Special Exception Uses</u>	<u>100% of Approved Density in Excess of the Density Allowed by Existing Zoning</u>

<u>Preliminary Plans of Subdivision, Final Plats, Site Plan or Other Approval Increasing Density</u>	<u>TDRs to be Acquired For Density Increases Obtained On Or After December 31, 2007</u>
<u>Conversion of Nonresidential Property to Residential Use</u>	75%
<u>Conversion of Residential Property to Nonresidential Use</u>	0.5 TDR per acre

1 (c) Properties in Zoning Classifications With No Set Density. For properties that develop
 2 under a zoning classification with no set density (such as M-U-I, M-U-T-C, MARC Planned
 3 Community, mixed-use zones or similar zones that allow the development criteria to set the
 4 density) or that are in an area subject to an overlay zone (e.g., DDOZ or TDOZ or similar zones
 5 created in the future), the following rules shall apply:

6 (1) Residential or mixed-use development shall be considered have a base density of
 7 twelve (12) units to the acre and shall be subject to the percentage in Column A. Dwelling units
 8 in excess of the base density shall be subject to the percentage in Column B.

9 (2) Residential or mixed-use development that is six (6) or more stories in height and
 10 of concrete and steel construction shall only be subject to Column A (for all units), unless the
 11 development receives County funding through a special tax, tax increment financing,
 12 revitalization tax credit or similar public financing subsidy.

13 (3) If a residential or mix-use project is subject to the percentage in Column B:

14 (A) if within the boundaries of a sector plan or other comprehensive plan that
 15 provides for credits for alternative modes of transportation, the percentage of units subject to
 16 Column B shall be considered to qualify for an equivalent percentage of reduction; or

17 (B) if not within the boundaries of such a sector plan or other comprehensive
 18 plan, the dwelling units derived from TDRs acquired to satisfy Column B shall be exempt from
 19 Section 27-568 (a) or Section 27-574 up to an amount of ten percent (10%) of all spaces
 20 required.

21 (4) If a residential or mix-use development is subject to the percentage in Column B,
 22 the dwelling units derived from TDRs acquired to satisfy Column B shall be excluded from
 23 Section 24-124 (a), but not to exceed ten percent (10%) of all trips generated by the
 24 development.

25 (d) Optional Development Standards for Development Rights Acquired Under Column A.

1 With respect to Transfer of Development Rights acquired to meet the requirement of Column A,
2 the applicant may request to increase the density of its project by the number of such Transfer of
3 Development Rights (i.e., 5%). If necessary, in order to achieve the additional lot yield to
4 accommodate the Transfer of Development Rights, the applicant may reduce the lot sizes of up
5 to fifty percent (50%) of the proposed lots by up to ten percent (10%) of the minimum lot size. If
6 necessary, lot coverage limits (in terms of square feet) may be increased by up to ten percent
7 (10%) for the reduced size lots. If the applicant has already received approval of a preliminary
8 plan of subdivision, a detailed site plan or a similar type of plan approval, the applicant shall be
9 entitled to apply for an administrative revision to such plan and the Maryland-National Capital
10 Park and Planning Commission shall process the administrative revision within sixty (60) days
11 of acceptance of the plan revision.

12 (e) Prioritization of Plan Approval. For any development project subject to the percentage
13 in Column B, the Maryland-National Capital Park and Planning Commission and each County
14 review agency shall prioritize the review of plans and permits for such development.

15 (f) Phasing of TDR Acquisition. For any development project subject to the percentage in
16 Column B that must acquire ten (10) TDRs or more, the applicant may propose a phasing
17 schedule to the Program Administrator. The phasing schedule shall provide that acquisition of
18 TDR's or payment of a fee in lieu shall be pro rated over the number of dwelling units in the
19 project, and that the applicant shall acquire and redeem TDRs in groups of 10 or more, or pay a
20 fee in lieu in groups of 10 or more development rights in accordance with the approved phasing
21 schedule. The Planning Director and the Director of the Department of Environmental Resources
22 or their designee(s) shall also approve the phasing schedule. A phasing schedule may only be
23 approved if it provides that each group of TDRs will be acquired prior to the application for the
24 next phase of building permits. The Director of the Department of Environmental Resources or
25 his designee may not issue building permits for a subsequent phase until the Program
26 Administrator certifies that the necessary TDR Certificates have been redeemed or that the
27 necessary fee in lieu has been paid.

28 (f) When the number of computed Transfer of Development Rights contains a fraction that
29 is one-half (1/2) or more, the fraction shall be rounded up to the nearest whole number. If the
30 fraction is less than one-half (1/2), the fraction shall be reduced to the nearest whole number.
31 However, if the development contains four (4) or more dwelling units, the number of Transfer of

1 Development Rights to be acquired shall not be less than one (1).

2 **Sec. 27-1916. Fee in Lieu for Purchase and Retirement Fund Option.**

3 In lieu of purchasing development rights from a sending parcel for use in development of a
 4 receiving parcel, a person may pay a fee to the County, which the County shall hold in a separate
 5 Purchase and Retirement Fund for use in purchasing development rights from owners of sending
 6 parcels and other related purposes.

7 **(a) Fee Schedule.** A schedule of the “in lieu of” fees for the Purchase and Retirement
 8 Fund shall be established annually. The fee in lieu for each TDR shall be one hundred twenty
 9 percent (120%) of the average fair market value paid for TDRs in “arms-length” intermediate
 10 transactions in the previous fiscal year, as calculated by the Program Administrator. The
 11 Program Administrator shall make public the fee in lieu calculations no later than thirty (30)
 12 days following the end of the fiscal year. The District Council shall reserve the right to increase
 13 or decrease the fee in lieu within the thirty (30) day period following the Program
 14 Administrator’s annual determination, after which such determination shall remain in effect until
 15 the following fiscal year. The calculation of the fee may be altered by proposal of the Program
 16 Administrator, such to the approval of a Resolution by the District Council.

17 Until the end of Fiscal Year 2009, the Program Administrator may base the fee in lieu for
 18 each TDR at one hundred 100 percent (100%) of the average value paid for development rights
 19 under the HARPP program or the PDR program.

20 **(b) Administration of Fee in Lieu Program.** The Program Administrator shall
 21 administer the fee in lieu program and coordinate the necessary forms and documentation
 22 consistent with the requirements of this Part. Those applicants who pay the fee in lieu may apply
 23 credits received for said payments to develop land in a receiving parcel to the same extent that
 24 TDRs may be used. Credits acquired through the Fee in Lieu Program shall not be allocated in a
 25 manner so as to enable an applicant to create a bank of credits, nor may an applicant transfer
 26 credits.

27 **(c) Use of Funds from Payment of Fees in Lieu.** Except as provided herein, payments
 28 received by the Program Administrator as fees in lieu of purchasing development rights from
 29 sending zones shall be used to acquire easements on properties in accordance with either the
 30 Historic Agricultural Resource Preservation Program (HARPP) pursuant to Subtitle 29, Division
 31 9 of the Prince George’s County Code (2003 Edition, 2006 Supplement) and the Historic

1 Agricultural Resource Preservation Program Regulations, or the Purchase of Development
 2 Rights Program (PDR) pursuant to Subtitle 30, Division 3 of the Prince George's County Code
 3 (2003 Edition, 2006 Supplement) and the Purchase of Development Rights Program Regulations,
 4 and giving preference to properties with acreages less than 50 acres or to purchase TDR's under
 5 a County TDR purchase and retire program. However, the Program Administrator shall, in
 6 coordination with the Maryland-National Capital Park and Planning Commission, set aside one-
 7 third (1/3) of the funds received as fees in lieu to be used by the Commission to procure urban
 8 green space within the Developed Tier and/or utilize such funds to provide public recreational
 9 facilities.

10 SECTION 2. BE IT FURTHER ENACTED by the County Council of Prince George's
 11 County, Maryland, sitting as the District Council for that part of the Maryland-Washington
 12 Regional District in Prince George's County, Maryland, that Section 27-317 of the Zoning
 13 Ordinance of Prince George's County, Maryland, being also Subtitle 27 of the Prince George's
 14 County Code, be and the same is hereby repealed and reenacted with the following amendments:

15 **SUBTITLE 27. ZONING.**

16 **PART 4. SPECIAL EXCEPTIONS.**

17 **DIVISION 1. ADMINISTRATIVE PROCEDURES.**

18 **SUBDIVISION 9. SPECIAL EXCEPTION APPROVAL.**

19 **Sec. 27-317. Required findings.**

20 (a) A Special Exception may be approved if:

- 21 (1) The proposed use and site plan are in harmony with the purpose of this Subtitle;
- 22 (2) The proposed use is in conformance with all the applicable requirements and
 23 regulations of this Subtitle;
- 24 (3) The proposed use will not substantially impair the integrity of any validly
 25 approved Master Plan or Functional Master Plan, or, in the absence of a Master Plan or
 26 Functional Master Plan, the General Plan;
- 27 (4) The proposed use will not adversely affect the health, safety, or welfare of
 28 residents or workers in the area;
- 29 (5) The proposed use will not be detrimental to the use or development of adjacent
 30 properties or the general neighborhood; and

1 (6) The proposed site plan is in conformance with an approved Tree Conservation
2 Plan.

3 (b) To approve a special exception use in the Rural Tier, in addition to the required findings
4 of subsection (a) above, the District Council shall find that the layout and design of the proposed
5 use serves the purposes of Part 19 and preserves or enhances the area’s rural character. A Rural
6 Entertainment Park special exception shall satisfy the site and design criteria of Section 27-
7 404.01.

8 * * * * *

9 **Sec. 27-359.01. Equestrian Conservation Subdivisions**

10 (a) An equestrian conservation subdivision shall be permitted, subject to the following:

11 (1) The development shall provide a variety of single-family detached dwellings in a
12 rural, recreation-oriented setting.

13 (2) The development shall be located on a parcel of land containing at least three
14 hundred fifty (350) contiguous acres.

15 (3) The development shall consist of at least seventy (70) dwelling units and an
16 equestrian complex.

17 (4) Not less than one hundred fifty (150) acres of the gross tract area shall be devoted
18 to the equestrian complex and accessory uses.

19 (5) The main recreation facility shall be developed prior to, or concurrently with, the
20 first stage of residential development.

21 (6) The number of dwelling units permitted shall not exceed:

22 (A) O-S Zone - One (1) unit per five (5) acres of gross tract area;

23 (B) R-A Zone - One (1) unit per two (2) acres of gross tract area;

24 (C) R-E Zone - One (1) unit per forty thousand (40,000) square feet of gross
25 tract area; or

26 (D) R-R Zone - One (1) unit per twenty thousand (20,000) square feet of gross
27 tract area.

28 (7) The residential component shall be developed in accordance with the provisions
29 of Section 24-152 of the Conservation Subdivision Regulations and Section 27-445.12 of the
30 Zoning Ordinance.

1 (8) Notwithstanding other provisions to the contrary, the acreage of the main
2 recreation facility and the approved accessory uses shall be credited towards meeting the acreage
3 requirements for the conservation parcel and other open space areas.

4 (b) Uses.

5 (1) If the main recreation facility is an equestrian complex, at least one hundred (100)
6 acres shall be permanently dedicated to trails, riding areas, stables, and grazing areas. Accessory
7 uses shall be located interior to the development and shown on the Conceptual Site Plan.

8 Accessory uses shall be limited to the following:

9 (A) Tack shops;

10 (B) Concession areas for food or beverages;

11 (C) Eating and drinking establishments;

12 (D) Indoor riding arena; and

13 (E) Any other uses related to equestrian activities and deemed appropriate by the

14 District Council at the time of special exception approval.

15 (2) All uses accessory to the main recreation facility shall be located in general
16 proximity to one another to establish a focal point of recreation activity without impairing the
17 tranquility of adjacent residential areas by adverse impacts such as noise, lighting or visibility.

18 (c) Site plans.

19 (1) The site plan approved by the District Council at the time of special exception
20 approval shall be a Conceptual Site Plan prepared in accordance with Part 3, Division 9, of this
21 Subtitle. The Conceptual Site Plan shall also include details on the staging of the proposed
22 development.

23 (2) Prior to the issuance of permits, the applicant shall obtain Planning Board
24 approval of the Detailed Site Plan(s) prepared in accordance with Part 3, Division 9, of this
25 Subtitle. The Detailed Site Plan(s) shall include architectural elevations and material
26 specifications for the dwellings and all buildings proposed in conjunction with the central
27 recreation facility.

28 (d) Covenants.

29 (1) Covenants which ensure the perpetual maintenance of the recreation facility shall
30 be recorded in the County's land records. A copy of the proposed covenants shall be provided as
31 part of the special exception application. Prior to signature approval of the Detailed Site Plan(s),

1 the applicant shall provide documentary evidence that the covenants as reviewed and approved
2 by the District Council have been recorded.

3 * * * * *

4 SECTION 3. BE IT FURTHER ENACTED that if any sentence, clause, section, provision,
5 or part of this Act is held illegal, invalid, unconstitutional, or unenforceable, such illegality,
6 invalidity, unconstitutionality, or unenforceability shall not affect or impair any of the remaining
7 sentences, clauses, sections, provisions, or parts of the Act. It is hereby declared to be the intent
8 of the District Council that this Act would have been adopted as if such illegal, invalid,
9 unconstitutional, or unenforceable sentence, clause, section, provision, or part had not been
10 included.

11 SECTION 4. BE IT FURTHER ENACTED that the District Council finds the TDR
12 Allocation Rates are critical elements in the success of the TDR Program. Accordingly, the TDR
13 Allocation Rates are based upon a market study that was used to prepare this ordinance, a public
14 participation program that involved key stakeholders from the development community, real
15 estate professionals, County residents, the judgment of professional staff, planning consultants
16 and legal consultants. In recognition that these rates and ratios must be kept current with local
17 real estate market conditions, the Council Chairman may request periodic updates to the TDR
18 market study. The updates shall contain specific recommendations for adjusting the TDR
19 Allocation Rates to: (1) Provide adequate economic incentives for property owners in designated
20 Sending Districts to participate in the program; and (2) Provide adequate incentives for the
21 continued use of TDRs in conjunction with development proposals in designated Receiving
22 Districts. Furthermore, in response to the annual status report provided by the Planning
23 Department, the District Council shall evaluate the cumulative effectiveness of the TDR
24 program.
25

1 SECTION 5. BE IT FURTHER ENACTED that this Ordinance shall take effect on the
2 date of its adoption.

Adopted this _____ day of _____, 2008.

COUNTY COUNCIL OF PRINCE GEORGE'S
COUNTY, MARYLAND, SITTING AS THE
DISTRICT COUNCIL FOR THAT PART OF
THE MARYLAND-WASHINGTON REGIONAL
DISTRICT IN PRINCE GEORGE'S COUNTY,
MARYLAND

BY: _____
Samuel H. Dean
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

KEY:
Underscoring indicates language added to existing law.
[Brackets] indicate language deleted from existing law.
Asterisks *** indicate intervening existing Code provisions that remain unchanged.