

WORK GROUP

# Final Report

Presentation to the  
Prince George's County Council  
October 24, 2016

Presented by:  
Chairman Yates Clagett

# Prince George's County Transfer of Development Rights

## Final Report

### **Introduction**

A Transfer of Development Rights (TDR) program can provide support for agricultural land preservation using private funds to transfer development rights from a designated sending area in a rural part of the County to a designated receiving area inside the County's growth boundary. A transferable development right is the right to create a residential building lot or to construct a dwelling unit in an area designated for residential growth. This report identifies the criteria for a robust TDR program as part of a complete tool kit for preserving agricultural land in Prince George's County, Maryland, and states goals and next steps for determining the feasibility of a TDR program.

The TDR Work Group was established by CR-24-2014 (July 15, 2014) which created an eleven-member group to consider and recommend to the County Council a proposal for the voluntary transfer of development rights where developers would purchase these rights from rural landowners. CR-76-2015 (November 3, 2015) amended the membership of the TDR Work Group to nine members and extended the completion date to June 1, 2016. In coordination with the Soil Conservation District, the County sought to explore options to support the overall agricultural land preservation goals of:

- Preserve land using a variety of tools
- Help create a vibrant agricultural and forestry economy countywide that is sustainable

The TDR Work Group began to examine ways to:

- Protect the Sustainable Growth Act (SGA) Tier IV (Rural and Agricultural Areas)
- Fulfill policies in the 2012 *Priority Preservation Area Functional Master Plan* relating to protecting rural landowners' property value through a TDR program
- Spread the benefits of agricultural land preservation tools to smaller rural properties
- Promote "infill preservation" which would protect land adjacent to already preserved parcels
- Stabilize the agricultural industry for continued agribusiness land uses

### **Prince George's County Proposed Program**

The conditions for a robust TDR Program in Prince George's County include the following:

- Sending areas are defined as the SGA Tier IV and Tier III areas of the County. These are the areas intended for preservation of rural character that are not planned for public water and sewer, and where landowners have transferable development rights based on their zoning or an allocation formula determined locally, on the County level through a

collaboration with the Soil Conservation District, in consultation with the Prince George's Planning Department, and sanctioned by the County Council).

- Receiving areas consist of properties inside the growth boundary. These areas are intended for future growth, and are planned to accommodate a higher density of growth than is allowed by existing property, special exception and zoning rights. They include residential properties that are undeveloped or vacant, or that are prime candidates for redevelopment. Receiving areas are identified and vetted as good candidates by a process that includes the TDR Program staff and Soil Conservation District, in consultation with the Prince George's County Planning Department. Oversight of the placement of the TDR destination, i.e., growth areas, is essential to the success of the program and fulfills the mandate of orderly growth throughout the county. This process ultimately creates a TDR program that is functional, sustainable and beneficial to the County as a whole.
- The TDR program is voluntary, not mandatory.
- The TDR program supports the goals and policies established in County comprehensive and land use plans. The TDR program supports development in transit-oriented development ("TOD") areas, and does not inhibit development in those areas.
- The TDR Program restricts intra-Tier IV (*i.e.*, from Tier IV to Tier IV) transfers. Based on analysis, the Work Group determined that transfers within Tier IV are not beneficial because currently there is sufficient development capacity that exists in the Rural and Agricultural Area; therefore, the impetus does not appear to exist to create new and larger subdivisions through a Tier IV to Tier IV TDR Program. In addition, the redundancy of sending TDRs from the same area that would receive the TDRs (Tier IV would deplete the supply of sending parcels for development inside the growth boundary.
- There is a need to maximize use of private funding for preservation. Due to dwindling public sources of preservation funding, the Work Group was interested in utilizing to the full potential all sources of private funding, such as from developers. However, the Work Group concluded that to optimize a TDR Program, the County should also be able to purchase TDRs.

### **Current Preservation Tools and Status for Future Use**

The Work Group determined that a complete tool kit for preserving agricultural land would include the following:

- A robust TDR program with the criteria as described
- Direct funding of the Historic Agricultural Resources Preservation Program (HARPP): this tool is essential to maintain continued progress toward the established goal of preserving agricultural land in the designated areas, and should not be diminished from its current level of funding
- Continued participation in the statewide Maryland Agricultural Land Preservation Foundation (MALPF) Program
- A full-time Agricultural Marketing Specialist, to lead the effort to implement action steps established in the 2009 *Strategic Program for Agricultural Development* for the County

Other programs such as Rural Legacy, the County Purchase of Development Rights Program (DPR), woodland conservation banking, contribute to reaching preservation goals at varying

levels. Approximately 8,455 acres of land were preserved through woodland conservation banking as of 2011, and 430 acres have been preserved with Rural Legacy funding since 2004 in Prince George's County. The PDR Program, established in 2006 by CB-47-2006, was not funded by the County, and therefore could be a future source of funding for agricultural preservation.

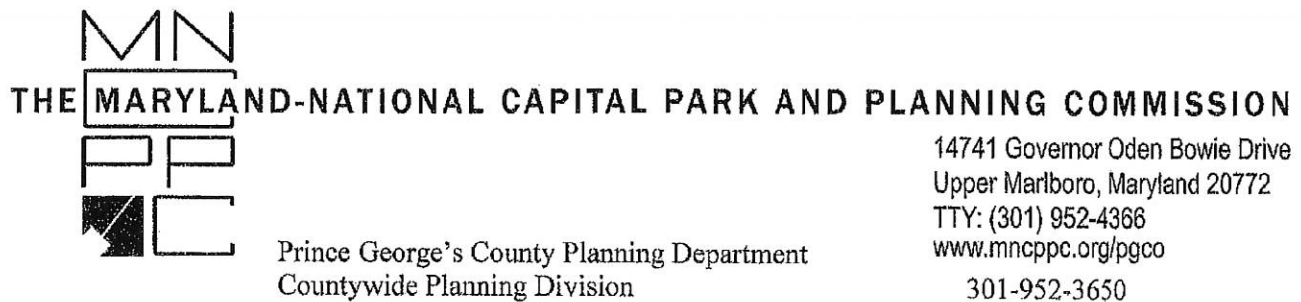
Factors contributing to the success of the programs that are underway include that they are voluntary, the funding has been available to use for preservation, and landowners have received income from them. The key factor jeopardizing preservation programs is dwindling funding availability. The County is hampered in reaching its agricultural preservation goals without a commitment to funding of local and state programs. In addition, there is a need for new tools to promote "infill preservation" and to allow smaller parcels to be eligible for preservation funding.

## Conclusions

- A TDR program will be necessary in the future, provided the projected population growth in the County and region does occur. This program need not be implemented now based on current demand for increased density in the receiving areas, but it should be included among the mechanisms necessary to simultaneously enhance growth inside the growth boundary and preserve agricultural land in the Rural and Agricultural Areas of the County.
- More investigation is warranted. Although a study showed that 5,086 TDRs are available in the Rural and Agricultural Areas of the County on 1,374 properties, the evidence is currently inconclusive to show that demand exists inside the growth boundary to provide a balance between supply and demand. In addition, while receiving areas have been identified as residentially zoned properties (either undeveloped/vacant or prime targets for redevelopment) inside the growth boundary, the total number of properties in this category is unknown.
- A TDR program can be one of the tools in the tool box, but it must be a robust program with sufficient supply and demand to warrant its creation. Next steps should include monitoring on an annual basis the forces that would create the necessary demand for a TDR program. This monitoring would involve collaboration with the Soil Conservation District, in consultation with the Planning Department, to follow the implementation of County comprehensive and land use plans and its effects on conditions in receiving areas.
- The County must maintain existing preservation programs

## Appendices:

- 1- Appendix A: Memo to Yates Clagett, Discussion of a Possible TDR Program for Prince George's County
  - a. Attachment A-2012 Sustainable Growth Act Map
  - b. Attachment B-Checklist for a Successful TDR Program, from *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*, by the Maryland Center for Agro-Ecology, January 2007.
  - c. Attachment C-Aspects of a Successful TDR Program, from *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore* (The Maryland Center for Agro-Ecology, Inc., January 2007.
- 2- Appendix B: What is a TDR and How Does a TDR Program Work?



October 27, 2015

**MEMORANDUM**

TO: Yates Clagett, Chair, Transfer of Development Rights Work Group  
Prince George's County Soil Conservation District

FROM: Derick Berlage, Chief, Countywide Planning Division *DB*  
CJ Lammers, Master Planner, Countywide Planning Division

SUBJECT: **Discussion of a Possible TDR Program in Prince George's County**

At their September 18, 2015 meeting, the Transfer of Development Rights (TDR) Work Group requested an analysis of options for establishing a TDR Program in Prince George's County. The following analysis uses a checklist endorsed by the Maryland Department of Planning. The analysis is preceded by a short history of how TDRs have been considered in the past in the County, and information regarding how TDR programs function in other counties.

**BACKGROUND**

TDR Programs have been used in Maryland since the 1980s as a way to preserve agricultural lands near areas of growth. Typically, development rights are transferred from rural areas to growth areas through a regulated program. Properties in rural areas that sell development rights must be located within designated "sending areas." After selling their transferable development rights, the properties typically are placed under permanent conservation easements that prohibit further subdivision. The growth areas, or "receiving areas" are places where a developer purchases the transferable development rights and uses the TDRs to increase allowable density. The purchase of TDRs in the receiving areas may be voluntary or mandatory, depending on the program. For the program to function there needs to be sufficient demand for growth in the receiving areas to ensure that the development rights will be purchased. TDR Programs are not recommended in places where development pressure is not high because the requirement to purchase development rights can be a deterrent to development.

Some TDR Programs include options to buy and sell development rights within rural areas to allow more density in selected places and preserve properties that sell their development rights in other places. The Sustainable Growth and Agricultural Preservation Act of 2012 (also

known as SB 236), resulted in a prohibition on new major subdivisions (defined in Prince George's County as more than seven lots) in areas designated as Tier IV on the County approved map (See Attachment A). SB 236 allows counties to establish a TDR program that transfers development rights from Tier IV properties conducting agricultural activities to other Tier IV properties conducting agricultural activities. Here is an excerpt from the Sustainable Growth Act Implementation Guidance document:

“Under SB236, a local jurisdiction may enact a law or ordinance for the transfer of the right to subdivide, up to seven lots, by an owner of property used for agricultural activities to the owner of another property used for agricultural activities (Environment Article, Section 9-206(M)). A property used for agricultural activities, the owner of which receives rights to subdivide through this provision, is limited to a total of 15 lots and the lots must be clustered. The transfers take place within Tier IV; TDRs cannot be from Tier III to Tier IV.”

### **EXAMPLES OF TDR PROGRAMS IN MARYLAND**

**Montgomery County** has a TDR program dating back to the 1980s, and it involves selling development rights from designated rural areas to designated growth centers in the County. In October 1980, the *Preservation of Agriculture and Rural Open Space Functional Master Plan* was approved which created a 93,000 acre Agricultural Reserve (Rural Density Transfer Zone) in the northern and western part of the County. Then in 1981, a *Sectional Map Amendment (SMA)* was approved, which constituted a major downzoning, restricting development in the designated areas from one dwelling unit per five acres to one dwelling unit per 25 acres. The calculation of available TDRs is based on one TDR per five acres of land; however, development is still allowed at one dwelling unit per 25 acres. Properties that sell TDRs are protected by a conservation easement.

As of June 30, 2015, the program has established TDR-based easements on 52,137 acres of land within the County. This is a result of \$117 million in private sector investments through the purchasing of TDRs (the average per acre cost was \$2,244 not including staffing costs). The public sector also protected farmland by investing \$64 million to preserve 21,738 acres for a per acre average cost of \$2,944. The 2007 Tracking of Transferrable Development Rights report states:

“The [Planning] Department’s analysis shows that since 1981, Montgomery County’s TDR program has severed by easement approximately 9,630 TDRs. Of the 9,630 TDRs that have been severed, 6,148 have been transferred to receiving areas by recording a subdivision plat. Conversely, 3,482 TDRs have been severed and perhaps changed ownership, but for various reasons have not been attached to a receiving area by recording a subdivision plat.”

The Montgomery County program has been successful in part because the downzoning happened 30 years ago, and because the program is managed by the County's Department of Economic Development's Agricultural Services Division, which tracks the TDRs and promotes the program. The significant staffing resources required to manage and track this program have not been itemized in these investment numbers.

Further information can be found here:

- Agriculture and Rural Open Space Functional Master Plan:  
[http://www.montgomeryplanning.org/community/plan\\_areas/rural\\_area/master\\_plans/ag\\_openspace/toc\\_ag\\_open80.shtm](http://www.montgomeryplanning.org/community/plan_areas/rural_area/master_plans/ag_openspace/toc_ag_open80.shtm)
- Rustic Roads Program:  
[http://www.montgomeryplanning.org/community/plan\\_areas/rural\\_area/rustic\\_roads.shtm](http://www.montgomeryplanning.org/community/plan_areas/rural_area/rustic_roads.shtm)
- Agricultural preservation information from Department of Economic Development:  
<http://www.montgomerycountymd.gov/ag-services/agpreservation.html>

**St. Mary's County** does not contain the large growth areas that Montgomery County has, and because the County contains vast areas of excellent farmland, their TDR Program is focused on preserving rural and agricultural lands through a program that sends and receives TDRs within areas designated as Rural Preservation Districts.

Because of increased development pressure in rural areas, in 2007 St. Mary's County began to require use of TDRs for all but the first dwelling on land within the Rural Preservation District (RPD). Any dwelling a landowner constructs beyond the first unit (with some exceptions) must be supported by the purchase of a TDR. A landowner may elect to use development rights on his or her own land to support development on-site, in which case the landowner effectively purchases the TDR from himself. Whether the TDR is self-purchased or purchased from a third party, the purchase extinguishes one development right in the Rural Preservation District. Therefore, as development in the Rural District proceeds, it slowly extinguishes development rights elsewhere in the District. The formula used by St. Mary's County means that the average density of the Rural District overall will be no more than one dwelling per 10 acres. Market and environmental constraints mean the average density probably be lower, closer to one dwelling per 20 acres. In addition to the TDR program, major subdivisions in this district are required to cluster development on 50% or less of the land while avoiding high priority agricultural and forest lands.

As summarized in Table 3, no TDR purchase is required for the first dwelling on any parcel of record that existed on the date of TDR program adoption. In the RPD, one TDR per dwelling unit is required to be purchased in order to develop at a density of one dwelling per five acres. To increase RPD parcel density to one dwelling per four acres, two TDRs are required for each additional dwelling unit and to increase density to one dwelling per three acres, three TDRs are required for each additional dwelling unit. Since each TDR preserves five acres of rural land or one environmentally constrained parcel of record, the use of rural TDRs to develop rural lands conserves significant off-site agricultural and forest land as well as sensitive areas.

Table 3. St. Mary's County TDR Program Requirements

Proposed Development	Number of TDRs Required to be Purchased
First DU	None
1 DU per 5 acres	1 TDR per additional DU
1 DU per 4 acres	2 TDRs per additional DU
1 DU per 3 acres	3 TDRs per additional DU

The program has been successful in part because it did not require a large-scale downzoning when it was initiated. Landowners who wish to develop their land are able to do so, while those who prefer to sell their TDRs and preserve their land have that option.

**Calvert County** was the first county in the State of Maryland to adopt TDR legislation. For its size, it has one of the most successful agricultural land preservation programs in Maryland.

Since about eight years ago during the economic downturn, TDRs have been difficult to market. Because SB 236 has limited the number of new residential lots on septic systems in rural areas, land within the Agricultural Preservation Districts (APDs) is less desirable to residential developers and there is less of a market for the sale and purchase of TDRs.

So far, 28,000 TDRs have been created and approximately half have been used or purchased. There is a potential for another 12,000 TDRs from APDs that are recorded but have not yet been sold.

#### **HISTORY OF TDR PROPOSALS IN PRINCE GEORGE'S COUNTY**

In 2003, a Rural Tier Planning Study was prepared for the purpose of implementing the Rural Tier recommendations of the 2002 *Prince George's County Approved General Plan*. Rural growth strategies were outlined and rural villages were identified as potential receiving areas for TDRs. TDRs were among a set of long-term growth strategies that also included rural area zoning and a purchase of development rights (PDR) program.

The study recommended that sending areas in the Rural Tier be downzoned to one dwelling unit per 25 acres, with property owners then being allowed to sell the development rights in an open market to compensate for the loss of development potential. Receiving areas would have been allowed to have density bonuses to compensate for the added cost of purchasing the development rights. There were several issues that citizens had with this proposal. They included the loss of property values in rural areas, the increase in densities in the designated receiving areas, and the potential for the purchase of TDRs to act as a deterrent to development in areas where development was desired.



In June, 2005, steps involved in establishing an effective TDR program were identified in a policy options information sheet. In addition, reports were prepared to address administrative and receiving area issues associated with a potential TDR Program.

In 2006, a Sectional Map Amendment and associated legislation were prepared to set up a TDR Program. The SMA proposed the downzoning of land in the O-S zone in the Rural Tier (the area now known as the Rural and Agricultural Area) to a minimum lot size of 25 acres. As a result of a multitude of issues raised, including a lack of desire to increase density in receiving areas or reduce development rights in sending areas, the Sectional Map Amendment and legislation were not pursued by the County Council.

### **ANALYSIS OF OPTIONS FOR THE WORK GROUP**

Staff believes that the TDR Work Group needs to answer two questions:

- Is a typical TDR Program (sending from rural areas to growth areas) feasible in Prince George's County?
- Is a Tier IV to Tier IV TDR Program feasible in Prince George's County?

#### **Feasibility of a Typical TDR Program**

The TDR Work Group discussed the feasibility of having a typical program where rural and agricultural areas send TDRs to growth areas. The group discussed the difficulties that the County has in generating the type and density of development needed at transit stations, hubs and other designated growth areas. It has been quite difficult to obtain the densities recommended in master and sector plans, when applicants frequently request reductions from those recommended densities when submitting development applications.

Attachment B contains a checklist from the report: *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*, by the Maryland Center for Agro-Ecology (January, 2007). The checklist was analyzed by staff at the request of the TDR Work Group Chairman, Yates Clagett. The analysis reached similar conclusions as those made during discussions of the TDR Work Group: there are several obstacles to a successful TDR Program in Prince George's County. Attachment C contains the entire TDR feasibility report of which the checklist is a part.

A requirement to purchase development rights in order to build in growth areas can be an added deterrent to development where Plan 2035 recommends that development occur. The TDR Work Group concluded that it was not wise to place an additional financial burden on development in places where Plan 2035 and master and sector plans recommend that development be focused.

**Feasibility of a Tier IV to Tier IV TDR Program**

In order to determine the feasibility of a Tier IV to Tier IV TDR program in Prince George's County, information was first gathered regarding the number of building lots remaining in the Rural and Agricultural Area.

Table 1 provides two important statistics. Column B shows the total number of existing lots and parcels that could hypothetically be built upon without subdividing (assuming that the lots or parcels have a proper septic field site). Column E provides the likely remaining build-out capacity, or in other words, the number of new lots that could hypothetically be created using the current zoning and subdivision regulations. These statistics are rough estimates based on available information and are inclusive of the entire Rural and Agricultural Area (formerly known as the Rural Tier).

Table 1. Likely Build-out Capacity of the Rural and Agricultural Area

A	B	C	D	E
Zoning	Lots and Parcels with Development Potential		Likely number of additional lots	Likely Build-out Capacity
	number	acres	number	number
O-S	663	12,387	667	1,330
R-A	445	5,359	484	929
<b>TOTAL</b>	<b>1,108</b>	<b>17,746</b>	<b>1,151</b>	<b>2,259</b>

Table 1 shows that there are approximately 2,259 lots or parcels that could be developed without changes to the regulations or a transfer of development rights program. This information was provided to illustrate the development capacity that already exists in the Rural and Agricultural Area, meaning that the pressure does not appear to exist to create new and larger subdivisions through a Tier IV to Tier IV TDR Program.

Table 2 is an assessment solely based on land within Tier IV, which in Prince George's County encompasses approximately 95 percent of the Rural and Agricultural Area. This assessment assumes:

- In Tier IV, in order to be eligible to send TDRs to other Tier IV properties, a property must have the capacity to create additional lots based on the minimum lot size required in the zone. For example, in the O-S zone, a property would have to be at least 10 acres in size in order to sell one development right (the minimum lot size in the O-S zone is five acres, so the property would need to retain one five acre portion to build on and could sell one development right for the other five acre portion). The cap on the number of development rights that can be transferred is seven.
- Only residentially-zoned properties are included. Land in commercial zones and the ROS zone (primarily a public land zone) were excluded.
- Lots or parcels that have more than one dwelling unit existing are assumed to have only one existing dwelling because, while this does occur on occasion, all

the residential zones being evaluated are single family detached zones. There is one mobile home park that was excluded from this assessment.

- Every lot or parcel must retain at least one development right.

Table 2. TDR Assessment

A	B	C
Zone	# of properties with TDRs to send	Available TDRs
O-S	904	3,383
R-A	398	1,451
R-R	52	169
R-E	19	76
R-55	1	7
<b>TOTAL</b>	<b>1,374</b>	<b>5,086</b>

This assessment is only tallying the number of hypothetical development rights that could be transferred, not the number that could be received. In a Tier IV to Tier IV TDR Program, not all of the development rights that could be transferred could be bought because some of the eligible properties for sending TDRs are also the areas that are eligible to receive the TDRs, eliminating them from the “sending pool” of TDRs. This is not a straight 50/50 calculation (50% sending/50% receiving), but a complicated scenario that was not within the scope of this inquiry. The take away is that while the assessment resulted in a potential of 5,086 TDRs that could be transferred, not all of these TDRs could be absorbed because some will become receiving properties.

Compared with other counties, Prince George’s TDR count of 5,086 is fairly small. Most programs are in the tens of thousands of TDRs being created and sold.

If there are other ways that our staff can be of assistance to you or to the TDR Work Group, please let us know.

- Attachment A: SGA Tier Map approved by the County Council, 2012
- Attachment B: Checklist for a Successful TDR Program, draft completed by M-NCPPC staff; Source: MDP, 2007
- Attachment C: Aspects of a Successful TDR Program, MDP, 2007

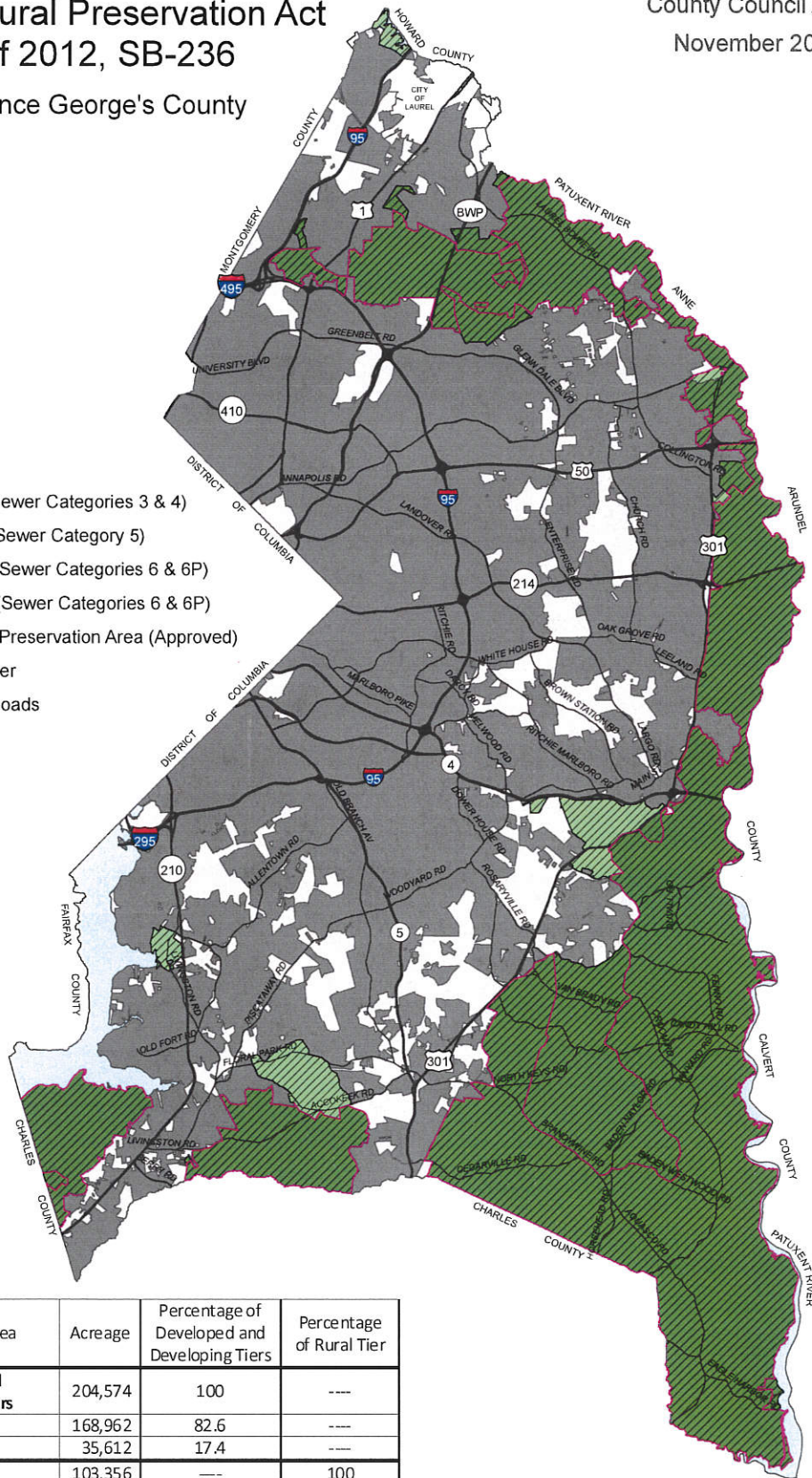
# The Sustainable Growth and Agricultural Preservation Act of 2012, SB-236

Prince George's County

Attachment A  
County Council Approved  
November 20, 2012

## Legend

- Tier I (Sewer Categories 3 & 4)
- Tier II (Sewer Category 5)
- Tier III (Sewer Categories 6 & 6P)
- Tier IV (Sewer Categories 6 & 6P)
- Priority Preservation Area (Approved)
- Rural Tier
- Major Roads



Tiers by Area	Acreage	Percentage of Developed and Developing Tiers	Percentage of Rural Tier
<b>Developed and Developing Tiers</b>	204,574	100	---
Tier I	168,962	82.6	---
Tier II	35,612	17.4	---
<b>Rural Tier</b>	103,356	---	100
Tier III	5,243	---	5.1
Tier IV	98,113	---	94.9



The Maryland-National Capital  
Park & Planning Commission  
Prince George's County Planning Department  
Geographic Information System



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**Checklist for a Successful TDR Program**

At the request of Yates Claggett, Chair of the Transfer of Development Rights Work Group, staff used this checklist to evaluate the feasibility of a TDR Program in Prince George’s County, Maryland in 2015. Text in italics is quoted from the report. Checklist item numbers were added for reference.

Checklist Source: Maryland Department of Planning, published in the report: *The Feasibility of Successful TDR Programs for Maryland’s Eastern Shore*, by the Maryland Center for Agro-Ecology, January 2007.

Checklist Item	Checklist Criteria	Staff analysis	Criteria Met? Y/N/unknown
A.	<i><b>TDRs have sufficient value to buyers and sellers to sustain an active market to accomplish preservation goals.</b></i> They are characterized by:		
A.1.	<i>A balance of supply and demand for TDRs has been created in the design of the TDR program.</i>	A study showed that 5,086 TDRs are available on 1,374 properties. Evidence that sufficient demand exists inside the growth boundary to provide a balance is inconclusive at this point.	UNKNOWN
A.2.	<i>Receiver areas are large enough to absorb authorized TDRs.</i>	Receiving areas have been identified as residentially zoned properties (either undeveloped/vacant, or prime targets for redevelopment) inside the growth boundary. The total number of properties in this category is unknown.	UNKNOWN
A.3.	<i>As-of-right base density in TDR receiving areas is zoned lower than the market demand for the type and density of housing that developers want to build.</i>	Logical receiving areas would be designated growth centers in Plan 2035. These areas, for the most part, are already zoned at the highest densities available.	NO
A.4.	<i>Developers in TDR receiver areas can achieve the desired market density only with TDRs.</i>	Currently, desired market density is below recommended densities in applicable planning documents.	NO
A.5.	<i>Density bonuses for using TDRs are sufficiently high to justify the increased cost of purchasing TDR.</i>	Achieving desired densities does not require density bonuses.	NO
A.6.	<i>Buying TDRs is more profitable to developers than building to base density or alternative ways to achieve higher density in receiver areas.</i>	Currently, desired market density that is profitable is below the desired densities envisioned in the applicable planning documents.	NO

Checklist Item	Checklist Criteria	Staff analysis	Criteria Met? Y/N/unknown
A.7.	<i>Purchasing TDRs and the public approval process of using them in receiver sites is faster and more predictable than alternative ways to achieve the desired density.</i>	This would require a change in the development review process.	UNKNOWN
A.8.	<i>Selling TDRs is reasonably competitive in value to landowners, considering the residual value of land restricted by TDR easements or covenants, with developing the sending site, selling an easement to other state or local PDR programs, or is the only alternative zoning allows.</i>	This would require a change in the Zoning and Subdivision Ordinances. Competitiveness is unpredictable.	UNKNOWN
A.9.	<i>There is an active market for higher density housing types allowed with TDRs in receiver areas.</i>	Currently, there is no active market for the level of densities needed to make TDRs affordable.	NO
A.10.	<i>The county takes steps to maintain TDR values that are attractive to buyers and sellers by adding TDR receiver capacity, purchasing TDRs, adjusting the TDR allocation rate (amount of TDR/acre or du/TDR), allowing TDRs for increases in non-residential floor area, or other means.</i>	If a program were to be created, all of these steps could be achieved; however, the fiscal concerns may outweigh the demand for a program. Staffing costs and setting aside funds for purchasing TDRs can be costly line items.	UNKNOWN
B.	<b>The County has strong Comprehensive Plan and Zoning policies that support use of TDRs.</b>		
B.1.	<i>The TDR program is established as part of a larger strategy to preserve land and redirect growth.</i>	The exploration of TDRs has been recommended in most planning documents for more than a decade, including the 2002 General Plan, the 2012 PPA Plan, and various subregion plans.	YES
B.2.	<i>Goals are established in the Plan for the types, location and amount of land to preserve.</i>	Goals were not established and draft proposals have been created for types and locations, designating the rural area as the sending area and designated growth areas as receiving areas.	NO

Checklist Item	Checklist Criteria	Staff analysis	Criteria Met? Y/N/unknown
B.3.	<i>TDR sending areas are designated to protect the most valuable rural land, unique natural and historic resources, or other resources in the Plan's protection goals.</i>	The Rural and Agricultural Area is considered the most valuable rural land.	YES
B.4.	<i>TDRs are received only where the county and municipalities want development to occur.</i>	True, the designated growth areas.	YES
B.5.	<i>TDRs will not add new residences where they will contribute to the fragmentation of the best agricultural lands, conflict with existing farming operations or contribute to a sense of impermanence of farming in the community.</i>	This would depend on the type of TDR Program created. A Tier IV to Tier IV TDR Program could have the effect of concentrating subdivisions on a few properties, adding to the fragmentation and parcelization that already exists.	UNKNOWN
B.6.	<i>TDRs help mitigate the perceived effects of downzoning, help gain support from landowners, and help avoid litigation over rezoning actions.</i>	This would be a tenet of a successful program.	UNKNOWN
B.7.	<i>Zoning limits or prohibits the use of development rights on the sending site, and reduces the as-of-right base density in receiver sites below the level of market demand.</i>	This would be difficult given the current market situation.	NO
B.8.	<i>Zoning provides for additional density needed to accomplish comprehensive plan goals in receiver areas, only or primarily with the use of TDRs.</i>	This would be a tenet of a successful program.	UNKNOWN
B.9.	<i>The county adopts a policy that future increases in zoning density in receiving areas is allowed only with TDRs, until land preservation goals are met.</i>	This would be a tenet of a successful program.	UNKNOWN
B.10.	<i>County water and sewer plans anticipate and plan for development in receiving areas at the density needed to accommodate TDRs.</i>	This would require additional analysis.	UNKNOWN

Checklist Item	Checklist Criteria	Staff analysis	Criteria Met? Y/N/unknown
B.11.	Subdivision rules and procedures ensure that receiving area infrastructure is capable of absorbing development with TDR bonus density, including water and sewer service, septic systems, schools and roads.	This would require additional analysis.	UNKNOWN
C.	<b>Administration of TDRs is simple, efficient and predictable.</b>		
	<b>Note: this section contains guidelines for a successful program that should be followed if a program is created. Analysis is not provided for the individual guidelines. The criteria cannot be met because a program does not exist.</b>		
C.1.	Buyers of TDR can obtain all approvals for their use in receiver sites with certainty and predictability, and can use TDRs for additional density as-of-right in receiver projects.		
C.2.	Buyers and sellers of TDR are provided clear rules for use of TDRs in receiver areas and restrictions on using development rights on sending site.		
C.3.	Buyers and sellers of TDR are informed about the current market values of TDRs.		
C.4.	Receiver areas for TDR are designated and zoned for densities needed to absorb TDRs, without uncertain discretionary or conditional use review.		
C.5.	TDRs are allowed on a gross land area basis; the number of TDRs authorized for sale is not reduced by environmental conditions for development on the sending parcel.		
C.6.	Arbitrary rules limiting the transfer or use of TDRs are avoided (e.g. distance between selling and receiver sites, use of TDRs in the same political districts, etc.).		
C.7.	Special rules for development in receiver areas do not discriminate against TDR projects.		
C.8.	Land records, mapping and administration of TDRs are complete, maintained and publicly accessible.		
C.9.	Restrictions on TDR sending sites are permanent, recorded in land records, used in the subdivision and zoning approval process, and sending sites are monitored for compliance.		
C.10.	Lengthy delays in recording and using TDRs are avoided.		
C.11.	Local government monitors and modifies TDR program as needed to improve effectiveness and efficiency, and adds receiving areas or increases their TDR capacity as needed to maintain demand.		
D.	<b>The TDR program has broad public support.</b>		



Checklist Item	Checklist Criteria	Staff analysis	Criteria Met? Y/N/unknown
D.1.	<i>Rural landowners are motivated to protect land and farming as an industry, more than by profit from selling land for development; and they support TDRs, easement purchase programs and zoning to preserve agricultural uses.</i>	Support has been demonstrated by many rural land owners. Property owners in receiving areas have demonstrated less support.	YES/NO
D.2.	<i>Real estate developers support TDRs to obtain increased density in receiving areas, and as a flexible and expedient alternative to purchasing additional land.,</i>	Pressure is currently not being exerted to obtain additional densities.	NO
D.3.	<i>Farming, community and environmental groups support TDRs as one means to protect more land.</i>	Support has been demonstrated by many rural land owners.	YES
D.4.	<i>TDR receiving site communities accept or support the density, design quality and compatibility of development using TDRs.</i>	Property owners in receiving areas have not demonstrated support for increased densities.	NO
D.5.	<i>Elected government officials accept TDRs as a viable method to protect land with private funds, protect the equity of rural landowners, control the location and quality of growth and implement the comprehensive plan.</i>	Elected officials understand the value of rural and agricultural land as part of a viable county, and they support TDRs as a way to preserve rural and agricultural land. The difficulties have come in previous attempts to balance all interests in a countywide approach.	YES

## Aspects of a Successful TDR Program

The following recommendations appear in Grant Dehart and Rob Etgen's Report: *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore* (The Maryland Center for Agro-Ecology, Inc., January 2007), excerpted below. Although the report examines the Eastern Shore specifically, the recommendations are applicable to TDR programs in general. These recommendations are numbers 1 through 7 below. Daniel Rosen at MDP added 8 and 9.

### **1. Counties considering the adoption of a new TDR program or enhancement of an existing program should evaluate the Criteria for a Successful TDR Program.**

[These are reproduced in Appendix I.]

### **2. State actions could help facilitate successful TDR Programs.**

With Maryland's dominant success in preserving land with TDRs compared to other states, there should be an opportunity for the State of Maryland to provide more guidance... that will help local governments evaluate, design and adopt TDR legislation. The lessons from successful programs in Calvert and Montgomery County and unsuccessful experiences in the other counties demonstrate the need for this guidance. ...

The State should update its "Models and Guidelines" report on creating TDR program as well as other guidance, and become more active in providing technical assistance to local jurisdictions.

### **3. Counties should recognize that TDRs are a valuable commodity. Counties with TDR programs are advised to require TDRs for any upzoning to increase density for new development projects, and work with municipalities to incorporate TDRs into new annexations and infill redevelopment.**

Most parties interviewed in all six counties during this study agreed that local governments should have a policy not to increase zoning density for new development in counties with TDR programs, without requiring that all or a major part of this increase in density be accomplished with TDRs. This kind of policy has helped create a demand for TDRs in both Montgomery and Calvert County, and has been adopted by Charles County. Counties [are advised to] require the use of residential TDRs for zoning increases in the size or floor area of commercial and industrial uses to generate TDR demand.

As a former chairman of the Montgomery County Planning Board and former developer once said:

*... There's no market if the land is actually zoned to the density you're willing to allow. It's time we stopped giving away zoning for free and started making developers pay for favorable zoning.<sup>1</sup>*

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<sup>1</sup> William Hussmann, Former Chairman of the Montgomery County Maryland Planning Board, to visiting group of Michigan legislators, quoted in the Michigan Farm Bureau's web site after the visit.

**4. Counties are advised to protect TDR sending sites with permanent conservation easements, rather than deed restrictions that are less than permanent.**

Restrictive covenants as a land preservation instrument provide limited protection. Such restrictions can be extinguished by property foreclosures or other events. If a landowner that has sold TDRs is able to restore development rights to a sending parcel, or if a local government removes such restrictions from TDR sending sites, such actions will likely undermine public confidence in the TDR program and other deed restrictions on protected lands.

**5. TDR programs need to serve the goals and objectives of Local Comprehensive Plans. The primary purpose of TDR programs is to preserve valuable farmland, natural areas and open space. New growth or development should not be planned merely to create more demand for TDRs.**

Rural Maryland is a special place. Our large agricultural sector needs to remain competitive in today's world markets while re-establishing local and value-added markets to provide economically and environmentally sensitive products. While it is essential that these activities continue to create and sustain economic and social development by providing jobs and revenue, and enhancing the welfare of the state and local areas, they should not diminish the special historic character of our towns and villages, Rural Legacy and Heritage Areas, and wildlife preserves.

A significant change in the character of Rural Maryland should not be the price of having successful TDR programs. Some counties may choose not to adopt a TDR program, if the impact of new development using TDRs in receiver areas is too great, or if such development is not supported by local communities and their elected leaders. They may decide that other tools for land preservation, including PDRs and protective zoning, can preserve as much or more land without the problems or citizen opposition often associated with using TDRs for development.

**6. Counties should seek to preserve farmland, natural resources and open space by limiting development through zoning, to help ensure a successful TDR program while redirecting development pressure away from rural areas.**

Success with TDRs is more likely in counties that have zoned rural lands to protect agricultural and natural resource lands by limiting allowable residential densities.<sup>2</sup>

**7. Counties with TDR programs are advised to establish procedures to monitor, review and periodically adjust the design of the program and the zoning for sending and receiver areas, in order to maintain TDR demand and ensure that the goals of the program are being met.**

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<sup>2</sup> MDP agrees with the recommendation in *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore* that protective zoning of "1 dwelling per 20 acres or more, as in Baltimore, Calvert, Caroline, Kent, and Montgomery County" is desirable. The Maryland Association of Counties disagrees, and believes that downzoning should be accompanied by more significant land preservation funding from the State.

Few if any TDR programs are perfectly designed or 100% complete when they are adopted. Successful programs do not remain static after they are adopted. Local governments should not refrain from adopting a program if it can be improved over time and adjusted to maintain a balance of supply and demand, based on actual experience during implementation. TDRs values will fluctuate with this demand and with the overall real estate market. As one farmer in Cecil County expressed it:

*My theory is that you are not going to start off with a perfect program right off the bat. You have to pass something and then start tweaking it from there, because if you try to pass a perfect program right off the bat, you'll be there 10 years from now and still not have a program.*

In addition to these recommendations from the Dehart/Etgen report, the TDR/Land Preservation Work Group makes the following recommendations, relating to TDRs, PDRs, and other land preservation tools.

**8. The State should consider allowing densities of 3.5 units per acre in Priority Funding Areas to be achieved through TDRs added to a lower base density, in some instances.**

Traditional settlement patterns and market demand in some Counties may make the PFA density requirement of 3.5 units per acre the upper limit to what will be built. Allowing additional density through the use of TDRs would then be fruitless. Therefore, in County PFAs that can be built out at 3.5 units per acre, it would make sense to allow a lower base density in the PFA, with the extra units added through the purchase of TDR. Calvert County allows only one unit per acre without TDRs, which creates a great incentive for buying TDRs because no one is doing development of one-acre lots in the PFA. Calvert allows up to 14 units per acre in its PFAs. For jurisdictions where density that high is not common, the base density could be set at one unit per acre, with TDRs required for 2-4 units per acre and waived at higher densities where TDRs are harder to justify financially (e.g., 10 -20 units per acre).

**9. Receiving areas should be designed so that residents see the added density as improving their quality of life instead of detracting from it.**

Receiving areas often encounter stiff opposition because residents don't like the type of development they were getting in the past and do not want TDRs to create even more of it. Public involvement in creating receiving areas—for example, a public charrette process—can make residents feel like partners in rather than victims of the development process. The result can create not mere subdivisions but desirable places, high quality, high density, mixed use, amenity-filled neighborhoods. Higher density stops being an issue.

Form-based codes may be one helpful tool for creating desirable TDR receiving zones. For one of many examples of a form-based code, see the Town of Denton Pattern Book (the file is big—over 61 MB): <http://rja-ltd.com/Denton%20Pattern%20Book%20March%202007.pdf>

Since the Dehart and Etgen report was written, two more authors, Rick Pruetz and Noah Standridge, looked at the twenty most successful TDR programs nationwide, not just in Maryland, to see which ones featured the ten attributes mentioned most often in their survey of twenty articles about what makes a successful TDR program.

#### Factor 1: Demand for Bonus Density

[M]any TDR programs fail because developers are satisfied with the density that they get...without buying TDRs. When demand is inadequate, some communities consider downzoning the receiving area (rezoning the receiving area to allow less development potential as a matter of right) and requiring developers to buy TDRs to exceed that newly reduced baseline density. Downzoning is politically unpopular and likely to generate threats of lawsuits, particularly if the downzoning appears designed solely to create demand for TDRs. Downzonings are more acceptable when they restrict both sending and receiving sites and when the current zoning in the areas they affect is clearly failing to achieve the community's comprehensive plan. This was the case in Calvert County....<sup>3</sup>

Calvert County went through two countywide downzonings in the past decade. Rural areas are now zoned 1:20, and TDRs are required in development zones to build at the densities that were in effect there before the downzoning.

#### Factor 2: Receiving Areas Customized to the Community

Features of receiving areas that need to be specially tailored to local circumstances include:

- 1) adequate infrastructure to accommodate the additional development;
- 2) political acceptability;
- 3) compatibility with existing development;
- 4) clear designation;
- 5) consistency with the comprehensive plan;
- 6) location where developers perceive a market for higher density;
- and 7) a receiving area located in another jurisdiction if the sending area is in a community that cannot accept more growth.

#### Factor 3: Strict Sending-Area Development Regulations

Only 2 of the 20 leading TDR programs we identified have sending-area zoning that allows development densities greater than one dwelling unit per five acres. Furthermore, these two programs are not among the most successful on our list. This suggests that although it may be possible to achieve limited success without strict sending-area zoning, permissive sending-area zoning will likely create serious problems for a TDR program. ...A weak regulatory framework can also cause a landowner to question a community's commitment to preservation. For example, farmers could legitimately wonder whether it makes sense to preserve their land if permissive zoning will ultimately allow their farms to be surrounded by subdivisions whose residents may object to agricultural practices, noises, and odors.

Strict zoning predates TDR in some communities, but many have permissive zoning and find it necessary to downzone the sending area when they adopt a TDR ordinance. Most famously, Montgomery County, MD, downzoned its 90,000-acre sending area from a maximum of one unit per 5 acres to one unit per 25 acres. In fact, many communities adopt TDR specifically as a way to mitigate a downzoning.

#### Factor 4: Few or No Alternatives to TDR for Achieving Additional Development

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<sup>3</sup> This and the following excerpts in this section are from Pruetz, Rick, and Noah Standridge. "What Makes Transfer of Development Rights Work? Success Factors from Research and Practice." *Journal of the American Planning Association*, Vol. 75, No. 1, Winter 2009, pages 78-87.

A successful TDR program allows extra density in receiving areas only through TDRs and doesn't allow extra density for clustering, design improvements, extra amenities, etc.

Most successful programs rarely allow developments to circumvent TDR requirements. In the New Jersey Pinelands program, the State of New Jersey not only required the 60 jurisdictions to conform their codes to implement the regional TDR program, but the Pinelands Commission reviews and certifies all municipal zoning and land use ordinances and master plans for consistency with the Comprehensive Management Plan.

#### Factor 5: Market Incentives: Transfer Ratios and Conversion Factors

Many TDR programs use a one-to-one transfer ratio, meaning that for each dwelling unit precluded at a sending site, one bonus dwelling unit is allowed at a receiving site. At times, this formula can work for both landowners and developers. But it is also likely that the dollar value increase resulting from one additional dwelling unit in a receiving area will not equal the value reduction caused by preserving a relatively large amount of land in the sending area.

In an effort to create market incentives for sending-area landowners and receiving-area developers, many TDR programs adopt an enhanced transfer ratio, meaning that more than one additional dwelling is allowed in the receiving area for each dwelling unit precluded in the sending area.

A conversion factor is a benefit for using TDRs that involves something other than an increase in residential density: more commercial square footage, greater building height, increase in impervious surface, etc.

#### Factor 6: Ensuring that Developers Will Be Able to Use TDRs

If developers have met all the requirements of the TDR program, they should be allowed to achieve the maximum density in the receiving area by right without having to go through extra hearings or approvals to use the TDR's.

#### Factor 7: Strong Public Support for Preservation

Of the 20 leading TDR programs we reviewed, 13 exhibit strong public support for preservation by having at least one of the following: a locally funded purchase of development rights (PDR) program; another conservation funding program approved by county voters since 1988; or a TDR bank, which is a government entity that uses public funds to buy TDRs and hold them for resale to developers.

#### Factor 8: Simplicity

Praised for its simplicity was Montgomery County's TDR program. Some programs, such as interjurisdictional TDRs, are inherently complicated.

#### Factor 9: TDR Promotion and Facilitation

[A] comprehensive, well-maintained webpage is a good indication of outreach to the general public. King County, WA, sets a high standard for promotion with regular press releases about TDR as well as a website with background information and access to codes. The New Jersey Pinelands website illustrates exceptional public outreach through a variety of recreational and educational programs aimed at school-age children as well as adults.

(See <http://www.state.nj.us/pinlands/> and <http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx> ).

Factor 10: A TDR Bank

A TDR bank is an entity officially authorized by the community to buy, hold and resell TDRs. Eleven of the 20 publications we reviewed discuss how having a TDR bank can enhance a TDR program. The bank can acquire TDRs from sending-area landowners who cannot find private buyers. It can establish and stabilize TDR prices. It can facilitate transactions. It can market the TDR program. It can create an ongoing preservation revolving fund by buying TDRs, selling them, and using the proceeds to buy more TDRs.

**Appendix: Checklist for a Successful TDR Program**

Pages 11 through 15 of *Report: The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*, by Grant Dehart and Rob Etgen, published by the Maryland Center for Agro-Ecology, Inc., contains the following excerpt that can be used for a checklist by jurisdictions creating or evaluating a local TDR program:

**Criteria for a Successful TDR Program**

Based on these findings from TDR Program Profiles in Maryland, New Jersey and Washington State, and an earlier draft of Measures of a Successful TDR Program reviewed and discussed by the principal investigators with the Technical Advisory Committee, the following key criteria were developed and used in evaluating the feasibility of successful TDR programs in selected Eastern Shore counties. A summary checklist of these criteria was developed, applied to each of the counties in the Eastern Shore assessment area and included as an attachment to each of the TDR Program Assessments. Three counties had existing TDR programs, Caroline, Queen Anne's and Talbot, but Caroline's has been revised and reenacted. These criteria could be used to help other counties evaluate ways to improve existing programs, or to help those counties that are designing new TDR programs avoid problems that have inhibited program performance in some Maryland counties. These criteria are listed generally in the order that the principle investigators believe are most important to TDR program success. It is unlikely that any county will have a perfect program, or a 100% score when measuring their TDR program with these criteria. However, those that cannot meet many of these performance measures are unlikely to have success, and some criteria tend to be more essential than others. Successful TDR Programs are characterized by the following features:

**A. TDRs have sufficient value to buyers and sellers to sustain an active market to accomplish preservation goals.** They are characterized by:

- A balance of supply and demand for TDRs has been created in the design of the TDR program.
- Receiver areas are large enough to absorb authorized TDRs.
- As-of-right base density in TDR receiving areas is zoned lower than the market demand for the type and density of housing that developers want to build.
- Developers in TDR receiver areas can achieve the desired market density only with TDRs.
- Density bonuses for using TDRs are sufficiently high to justify the increased cost of purchasing TDR.
- Buying TDRs is more profitable to developers than building to base density or alternative ways to achieve higher density in receiver areas.
- Purchasing TDRs and the public approval process of using them in receiver sites is faster and more predictable than alternative ways to achieve the desired density.
- Selling TDRs is reasonably competitive in value to landowners, considering the residual value of land restricted by TDR easements or covenants, with developing the sending site, selling an easement to other state or local PDR programs, or is the only alternative zoning allows.
- There is an active market for higher density housing types allowed with TDRs in receiver areas.
- The county takes steps to maintain TDR values that are attractive to buyers and sellers by adding TDR receiver capacity, purchasing TDRs, adjusting the TDR allocation rate (amount of TDR/acre or du/TDR), allowing TDRs for increases in non-residential floor area, or other means.

**B. The County has strong Comprehensive Plan and Zoning policies that support use of TDRs**

- The TDR program is established as part of a larger strategy to preserve land and redirect growth.
- Goals are established in the Plan for the types, location and amount of land to preserve.
- TDR sending areas are designated to protect the most valuable rural land, unique natural and historic resources, or other resources in the Plan's protection goals.
- TDRs are received only where the county and municipalities want development to occur.
- TDRs will not add new residences where they will contribute to the fragmentation of the best agricultural lands, conflict with existing farming operations or contribute to a sense of impermanence of farming in the community.
- TDRs help mitigate the perceived effects of downzoning, help gain support from landowners, and help avoid litigation over rezoning actions.
- Zoning limits or prohibits the use of development rights on the sending site, and reduces the as-of-right base density in receiver sites below the level of market demand.



- Zoning provides for additional density needed to accomplish comprehensive plan goals in receiver areas, only or primarily with the use of TDRs.
- The county adopts a policy that future increases in zoning density in receiving areas is allowed only with TDRs, until land preservation goals are met.
- County water and sewer plans anticipate and plan for development in receiving areas at the density needed to accommodate TDRs.
- Subdivision rules and procedures ensure that receiving area infrastructure is capable of absorbing development with TDR bonus density, including water and sewer service, septic systems, schools and roads.

**C. Administration of TDRs is simple, efficient and predictable**

- Buyers of TDR can obtain all approvals for their use in receiver sites with certainty and predictability, and can use TDRs for additional density as-of-right in receiver projects.
- Buyers and sellers of TDR are provided clear rules for use of TDRs in receiver areas and restrictions on using development rights on sending site.
- Buyers and sellers of TDR are informed about the current market values of TDRs.
- Receiver areas for TDR are designated and zoned for densities needed to absorb TDRs, without uncertain discretionary or conditional use review.
- TDRs are allowed on a gross land area basis; the number of TDRs authorized for sale is not reduced by environmental conditions for development on the sending parcel.
- Arbitrary rules limiting the transfer or use of TDRs are avoided (e.g. distance between selling and receiver sites, use of TDRs in the same political districts, etc.).
- Special rules for development in receiver areas do not discriminate against TDR projects.
- Land records, mapping and administration of TDRs are complete, maintained and publicly accessible.
- Restrictions on TDR sending sites are permanent, recorded in land records, used in the subdivision and zoning approval process, and sending sites are monitored for compliance.
- Lengthy delays in recording and using TDRs are avoided.
- Local government monitors and modifies TDR program as needed to improve effectiveness and efficiency, and adds receiving areas or increases their TDR capacity as needed to maintain demand.

**D. The TDR program has broad public support.**

- Rural landowners are motivated to protect land and farming as an industry, more than by profit from selling land for development; and they support TDRs, easement purchase programs and zoning to preserve agricultural uses.
- Real estate developers support TDRs to obtain increased density in receiving areas, and as a flexible and expedient alternative to purchasing additional land.,

- Farming, community and environmental groups support TDRs as one means to protect more land.
- TDR receiving site communities accept or support the density, design quality and compatibility of development using TDRs.
- Elected government officials accept TDRs as a viable method to protect land with private funds, protect the equity of rural landowners, control the location and quality of growth and implement the comprehensive plan.

**What are Transferable Development Rights (TDRs) and how do sending and receiving areas work?**

- TDR- a transferable development right is the right to create a residential building lot or to construct a dwelling unit in an area designated for residential growth. The purpose of a TDR program is to preserve valuable farmland, natural areas, and open space. New growth or development should not be planned merely to create more demand for TDRs.
- A Transfer of Development Rights program is created by a local government (after state enabling legislation) to allow a landowner to transfer a development right, which is regarded as a valuable commodity, to another piece of property owned by a different landowner.
- The local government creates a market in development rights between landowners in specific preservation areas (selling the right from a sending area) and developers in growth areas (buying the development right for use in a receiving area)
- The local government identifies sending areas (e.g., rural and agricultural areas intended for preservation of rural character) and recognizes landowners that have transferable development rights based on their zoning, or by an allocation formula determined by the local government.
  - As an example, a property that is zoned R-A (Rural-Agricultural) in Prince George's County allows one dwelling unit per two acres. A 20-acre parcel would have ten development rights to transfer.
- The local government identifies receiving areas (e.g., areas inside a growth boundary that are intended for future growth, or that could accommodate a higher density of growth than is allowed by right). It may set a maximum number of potential development rights that the receiving area can accommodate. Receiving areas should be designed so that residents see the added density as improving their quality of life instead of detracting from it.
- The local government establishes a process for transferring development rights to a developer, placing a conservation easement on the sending property, and tracking TDRs over time. It maintains a market for TDRs over time.
- Typically, local governments strive to have twice as many receiving sites as there are TDRs available to send from the sending area as a rule of thumb, thus giving the TDRs value. Having more TDRs in the sending areas than receiving sites drives down the value of a TDR.
- Local governments are advised to establish procedures to monitor, review and periodically adjust the design of the program and the zoning for sending and receiving areas, in order to maintain TDR demand and ensure that the goals of the program are being met.

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**

**2014 Legislative Session**

Resolution No. CR-24-2014

Proposed by Council Member Franklin

Introduced by Council Members Franklin, Davis, Olson and Patterson

Co-Sponsors \_\_\_\_\_

Date of Introduction April 29, 2014

**RESOLUTION**

1 A RESOLUTION concerning

2 Transfer of Development Rights Work Group

3 For the purpose of convening a Transfer of Development Rights ("TDR") Work Group to  
4 consider and recommend to the County Council a proposal for the voluntary transfer of  
5 development rights in Prince George's County.

6 WHEREAS, the Rural Tier of Prince George's County, as designated in the 2002 *Approved*  
7 *General Plan*, as amended, encompasses the eastern and southern portions of the County, in the  
8 Patuxent River, Potomac River, and Mattawoman Creek watersheds, including 171 square miles,  
9 approximately 35 percent of the County's land area; and

10 WHEREAS, the Rural Tier is the most scenic part of the County, characterized by fine and  
11 diverse landscapes, many of the County's remaining farmlands, extensive woodlands and  
12 wetland areas, numerous streams and stream valleys, and diverse wildlife habitat; and

13 WHEREAS, the main features of the Rural Tier, forests and agricultural lands, present  
14 unique planning, land use, and development issues and policy problems; and

15 WHEREAS, during the 2006 Legislative Year, the County Council proposed various  
16 legislation for the purpose of establishing a comprehensive policy on agricultural preservation in  
17 the Rural Tier; and

18 WHEREAS, the Agricultural Preservation Work Group held 25 meetings over an 18-month  
19 period and conducted a comprehensive review of all preservation mechanisms and all County  
20 policies including Maryland Agricultural Land Preservation Foundation (MALPF), Rural  
21 Legacy, Tree Conservation, Purchase of Development Rights (PDRs), Transfer of Development  
22 Rights, Right to Farm, Property Tax Exemptions, and State of the Agricultural Industry and

- 1 (6) One representative selected by an environmental organization in the County, and  
2 (7) One representative selected by the Maryland National Capital Building Industry  
3 Association.

4 BE IT FURTHER RESOLVED that any Final Recommendation or other proposal by the  
5 TDR Work Group must be endorsed in writing by at least six (6) of its members.

6 BE IT FURTHER RESOLVED that the Council Administrator shall assign appropriate  
7 technical and administrative support personnel to assist the TDR Work Group in its work, and  
8 additional support shall be provided by the Prince George's County Soil Conservation District,  
9 and the Prince George's County Planning Director (or the Planning Director's designee).

10 BE IT FURTHER RESOLVED that the TDR Work Group shall transmit its Final  
11 Recommendation to the Clerk of the Council in writing by February 1, 2015, and present its  
12 Final Recommendation to the County Council shortly thereafter, with the option to extend its  
13 transmittal deadline to a date no later than May 1, 2015 at the discretion of the TDR Work Group  
14 Chair.

15 BE IT FURTHER RESOLVED that the TDR Work Group shall cease to exist on (i) the  
16 date it presents its Final Recommendation to the County Council or (ii) May 1, 2015, whichever  
17 is earlier.

## Prince George's County Council Agenda Item Summary

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**Meeting Date:** 7/15/2014  
**Reference No.:** CR-024-2014  
**Draft No.:** 2  
**Proposer(s):** Franklin  
**Sponsor(s):** Franklin, Davis, Olson, Patterson  
**Item Title:** A Resolution concerning the Transfer of Development Rights Work Group for the purpose of convening the Transfer of Development Rights Work Group to consider and recommend to the County Council a proposal for the voluntary transfer of development rights in Prince George's County.

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**Drafter:** Jackie Brown, PZED Committee Director  
**Resource Personnel:** Brendon Laster, Legislative Aide

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### LEGISLATIVE HISTORY:

<b>Date Presented:</b>		<b>Executive Action:</b>
<b>Committee Referral:</b>	4/29/2014 - PZED	<b>Effective Date:</b>
<b>Committee Action:</b>	7/2/2014 - FAV(A)	
<b>Date Introduced:</b>	4/29/2014	
<b>Public Hearing:</b>		
<b>Council Action (1)</b>	7/15/2014 - ADOPTED	
<b>Council Votes:</b>	WC:A, DLD:A, MRF:A, AH:-, ML:A, EO:A, OP:A, IT:A, KT:-	
<b>Pass/Fail:</b>	P	
<b>Remarks:</b>		

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### AFFECTED CODE SECTIONS:

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### COMMITTEE REPORTS:

#### Planning, Zoning and Economic Development

Date 7/2/2014

Committee Vote: Favorable as amended, 4-0 (In favor: Council Members Turner, Franklin, Harrison, and Olson)

Staff gave an overview of the legislation and informed the committee of written referral comments and correspondence that were received. Council Chair Franklin, the resolution sponsor, informed the committee that CR-24-2014 is a tool to consider establishing a voluntary program with a dual purpose of ensuring equity in the Rural Tier and directing development in areas of the County where it is encouraged. Chair Franklin explained that the resolution provides the opportunity to bring stakeholders together to develop and agree on the voluntary program prior to any Council action on a Transfer of Development Rights program.

Steven Darcey, representing Prince George's Soil Conservation District (SCD), testified in support of CR-24-2014. Mr. Darcey noted the timeframe in the resolution for the Work Group's final recommendation was ambitious and suggested that a regular meeting schedule is necessary once the Work Group commences its work. He also indicated that SCD cannot attest to any fiscal impacts at this time; however, the agency does expect that their involvement may necessitate extra staff time to support this Work Group. Phil Hutton, Chair of the Legislative

**COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND**  
**2015 Legislative Session**

Resolution No. CR-76-2015

Proposed by Council Member Franklin

Introduced by Council Member Franklin, Turner, Lehman, Davis and Glaros

Co-Sponsors \_\_\_\_\_

Date of Introduction November 3, 2015

**RESOLUTION**

1 A RESOLUTION concerning

2 Transfer of Development Rights Work Group

3 For the purpose amending the membership of the Transfer of Development Rights Work Group  
4 and extending the date for the Transfer of Development Rights Work Group to transmit its Final  
5 Recommendation to the County Council.

6 WHEREAS, by adoption of CR-24-2014 on July 15, 2014, the Prince George's County  
7 Council established the Transfer of Development Rights (TDR) Work Group, an eleven (11)  
8 member group, to consider and recommend to the County Council a proposal for the voluntary  
9 transfer of development rights in Prince George's County and provide its Final Recommendation  
10 to the Council by February 1, 2015 with the option to extend its transmittal deadline to a date no  
11 later than May 1, 2015; and

12 WHEREAS, the TDR Work Group continues to meet and desires additional time to  
13 examine the opportunities for addressing issues related to TDRs through evaluation of current  
14 land preservation programs, the Sustainable Growth and Agricultural Preservation Act of 2012,  
15 new farm enterprises and trends, data regarding potential transferrable development rights and  
16 available land in Tiers I and II, urban agriculture, and to consider appropriate recommendations  
17 for implementation related thereto; and

18 WHEREAS, there is a need to modify the membership of the TDR Work Group and to  
19 provide additional time for the Work Group to complete it duties and responsibilities; and

20 WHEREAS, Section 506 of the Charter provides that the County Council may appoint, for  
21 designated periods, one or more temporary advisory boards of citizens of the County who shall  
22 assist in the consideration of County policies and programs.

## Prince George's County Council Agenda Item Summary

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**Meeting Date:** 11/3/2015  
**Reference No.:** CR-076-2015  
**Draft No.:** 1  
**Proposer(s):** Franklin  
**Sponsor(s):** Franklin, Turner, Lehman, Davis, Glaros  
**Item Title:** A Resolution concerning the Transfer of Development Rights (TDR) Work Group for the purpose of amending the membership of and extending the reporting date for the TDR Work Group.

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**Drafter:** Jackie Brown, PZED Committee Director  
**Resource Personnel:** Brendon Laster, Chief of Staff

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### LEGISLATIVE HISTORY:

<b>Date Presented:</b>		<b>Executive Action:</b>
<b>Committee Referral:</b>		<b>Effective Date:</b>
<b>Committee Action:</b>		
<b>Date Introduced:</b>	11/3/2015	
<b>Public Hearing:</b>		
<b>Council Action (1)</b>	11/3/2015 - ADOPTED	
<b>Council Votes:</b>	DLD:A, MRF:A, DG:A, AH:A, ML:A, OP:-, DT:A, KT:A, TT:A	
<b>Pass/Fail:</b>	P	
<b>Remarks:</b>		

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### AFFECTED CODE SECTIONS:

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### COMMITTEE REPORTS:

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### BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

The County Council adopted CR-024-2014, which established the Transfer of Development Rights (TDR) Work Group, an eleven member group, to consider and recommend to the County Council a proposal for the voluntary transfer of development rights in Prince George's County. The recommendations to the Council were due on February 1, 2015. The proposed legislation amends the membership of the Work Group to include nine members and extends the reporting date for the TDR Work Group to May 1, 2016.

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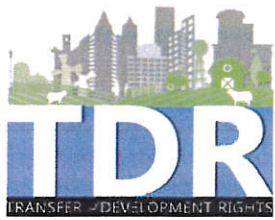
### CODE INDEX TOPICS:

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### INCLUSION FILES:

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# Work Group Members

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## Work Group

<b>Farm Bureau Representatives (2)</b>
<b>Mr. Yates Clagett Jr. (Chair)</b>
<b>Mr. Phillip Hutton</b>
<b>Soil Conservation Representative (1)</b>
<b>Mr. Steven Darcey</b>
<b>County Resident Representatives (2)</b>
<b>Ms. Gale Lammers</b>
<b>Ms. Stephanie Eugene</b>
<b>Prince George's County Association of Realtors (1)</b>
<b>Mr. Boyd J. Campbell</b>
<b>County Executive Representative (1)</b>
<b>Ms. Regina Speed-Bost</b>
<b>Environmental Representative (1) (Prince George's Sierra Club)</b>
<b>Mr. Charles Reilly</b>
<b>M-NCBIA Representative (1)</b>
<b>Mr. Ken Dunn</b>