

**Northern Shenandoah Valley
Agricultural Preservation Workshop – Transfer of Development Rights**

May 15, 2009
10:00AM – 2:00PM

Agenda

Time	Topic	Presenter
10:00	➤ Welcome & Introductions	Chris Price, Northern Shenandoah Valley Regional Commission
10:15	➤ Benefits of Agricultural Land Conservation for Virginia Local Governments	Sara Hollberg & Jill Templeton, Valley Conservation Council
10:45	➤ Transfer of Development Rights Overview	John Theilacker, Brandywine Conservancy
11:30	➤ TDR's in Virginia <ul style="list-style-type: none"> • Legislative Update • Frederick County Update 	Chris Price, NSVRC Eric Lawrence, Frederick County
12:00	➤ LUNCH	
12:45	➤ Panel Discussion (opportunities, challenges, and recommendations) <ul style="list-style-type: none"> • TDR's in Pennsylvania • TDR's in Montgomery County, Maryland • TDR's vs. PDR's vs. Donated Easements 	John Theilacker, Brandywine Conservancy John Zawitoski, Montgomery County (MD) Pat Felling, Potomac Conservancy
1:45	➤ Next Steps <ul style="list-style-type: none"> • Resources available (sample ordinances, etc.) • Announce upcoming GI workshop (with teaser) 	Chris Price, NSVRC Jim Lawrence, Shenandoah RC&D

THANK YOU to our workshop sponsors:

Northern Shenandoah Valley Regional Commission

Potomac Conservancy

Valley Conservation Council

Frederick County Easement Authority

Shenandoah RC&D

MidAtlantic Farm Credit

Mr. John Gavitt

Their financial contributions and staff/logistical support were vital to the success of this workshop.

PRESENTER BIOGRAPHIES

Sara S. Hollberg, AICP, Land Use Planner Valley Conservation Council

Ms. Hollberg has more than 20 years of planning experience working with communities in the Shenandoah Valley. Her publications include *Better Models for Development in the Shenandoah Valley* (co-authored with Ed McMahon of The Conservation Fund) and *State of the Valley Report*. For VCC, she offers technical assistance and puts together regional programs to help local staff address growth and development issues (past workshops range from Rural Zoning to Water Quality and Development to Conservation Tools for Resource Professionals). Previous positions include planning projects manager for Frazier Associates, a planning and historic preservation firm, and senior planner at the Central Shenandoah Planning District Commission, where she handled economic development, environmental, and planning projects for a region serving 21 localities. Sara is a member of the American Institute of Certified Planners and holds a BA from William and Mary and a master's in planning from the University of Virginia. She and her husband manage her family's large tree farm, 415 acres of which is in a permanent conservation easement.

Jill Templeton, Program Manager Valley Conservation Council

Ms. Templeton joined Valley Conservation Council's staff as Program Manager in 2008. Her previous nonprofit experience includes working for the National Parks Conservation Association in their Southeast Regional Office and on a successful legislative campaign for the Tennessee Clean Water Network. After moving to the Shenandoah Valley in 2005, she spent a season as a fire effects monitor at Shenandoah National Park and earned a Master of Public Administration degree from James Madison University. Jill received a B.A. in Environmental Studies with a concentration in environmental policy from Warren Wilson College in Asheville, North Carolina.

John Theilacker, AICP, Associate Director, Brandywine Conservancy Environmental Management Center, Chadds Ford, PA

John Theilacker holds masters degrees in environmental sciences and regional planning, and is a member of the Pennsylvania Planning Association and American Institute of Certified Planners. He manages the Center's Municipal Assistance Program (MAP) that develops and implements planning techniques that recognize ecological principles in the context of economic, social and political realities. His MAP program's expertise on a range of environmental and land use issues is shared through publications, workshops, sample ordinances and direct consulting services.

Mr. Theilacker is a contributing author of the Conservancy's 2005 Transfer of Development Rights manual, entitled *Transfer of Development Rights, A Flexible Option for Redirecting Growth in Pennsylvania*; lead author of the Conservancy's 2008 Lancaster County TDR

Practitioners Handbook; and assists municipalities and others interested in creating TDR programs. Mr. Theilacker has practiced community and environmental planning for the past thirty years, including in the states of Oregon, Washington, California, Virginia, and Pennsylvania.

**Eric R. Lawrence, AICP, Director, Department of Planning and Development
Frederick County, Virginia**

Eric R. Lawrence holds a Bachelors degree from the University of Maryland, and a Masters in Urban and Regional Planning (MURP) from the Virginia Commonwealth University. He received his AICP certification from the American Institute of Certified Planners in 1998, and continues to be an active member in the AICP, American Planning Association (APA), and the Virginia Chapter of APA. He has been employed in the local government planning arena for over 17 years; gaining and contributing to land use planning and project management with the Frederick County Department of Planning and Development and the Henrico County Planning Office. For the past seven years he has held the Director position with the Frederick County Department of Planning and Development.

He has contributed towards many aspects of community planning, from organizing and executing community visioning sessions, to writing Comprehensive Plan amendments. He has also implemented the policies of the Comprehensive Plan by drafting zoning and subdivision ordinances, and overseen their adoption and enforcement. Eric is presently participating in Frederick County's effort to implement a Transfer of Development Rights program.

**John Zawitoski, Director of Planning and Promotions
Montgomery County (MD) Department of Economic Development**

Born and raised in Southwest Baltimore County, John Zawitoski has always felt a close relationship with being outdoors. His love of the land and the interactions of man and his environment led him to decide to seek a career in Land Management. In 1982 he graduated from Allegany Community College in Cumberland Maryland, with an Associate of Arts degree in Forest Technology. He then decided that he wanted to expand his land management background to include agriculture, so in the fall of 1982 he transferred to the University of Maryland where in 1986 earned his Bachelors of Science degree in Agriculture.

Mr. Zawitoski has worked with the Maryland farm community in addressing the needs of farmers since 1989. His first assignment was with the Maryland Department of Agriculture working with farmers on Maryland's Eastern Shore solving non-point source pollution issues on their farmland. Promoted in 1990 to Regional Coordinator, John provided leadership to 7 Maryland Counties (including Montgomery) in developing and implementing soil conservation and water quality programs at the local level as a part of the Chesapeake Bay Restoration Initiative as well as assisting other states in developing Non-point source pollution control programs for agricultural operations.

In 1995, John joined the United States Department of Agriculture with the Farm Service Agency as District Director. During this time he served the farm community in 12 Maryland counties (including Montgomery) with farm community support and other environmental cost share programs. He left USDA, in 1997 to join the Montgomery County Department of Economic Development team. He now serves as the Department's Director of Planning and Promotions. His duties include coordinating the various agricultural land preservation programs available to landowners in Montgomery County, agricultural promotion and marketing and direct technical assistance to agricultural producers in solving local and state issues that impact Montgomery County Farmers.

**Patrick Felling, Virginia Policy Coordinator
Potomac Conservancy**

Patrick Felling is the Virginia Policy Coordinator for Potomac Conservancy, working out of the Shenandoah Resource Office in Winchester. Potomac Conservancy's mission is to protect the health, beauty and enjoyment of the Potomac River and its tributaries, including the rivers, streams and springs in the Shenandoah Valley.

Pat holds masters degrees in Environmental Science and in Public Affairs from Indiana University. He also has 14 years of environmental experience in state government, focused on policy, planning and compliance.

**Chris Price, AICP Executive Director
Northern Shenandoah Valley Regional Commission**

Chris Price is the Executive Director of the Northern Shenandoah Valley Regional Commission in Front Royal, VA. A native of central Pennsylvania, Chris has thirteen years of professional planning experience with a variety of city, county, and regional planning agencies including senior level positions with the City of Chesapeake, Virginia, the Centre Regional Planning Agency in State College, Pennsylvania, and the Centre County Planning and Community Development Office in Bellefonte, Pennsylvania.

Chris earned a Bachelor of Sciences degree in Industrial and Organizational Psychology from Penn State University, a Master of Public Administration degree from Old Dominion University, and is a member of the American Institute of Certified Planners. His primary areas of expertise include economic development strategic planning, comprehensive land use planning, transportation planning, agricultural preservation programs, and policy analysis.

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 413

An Act to amend and reenact §§ 15.2-2316.1 and 15.2-2316.2 of the Code of Virginia, relating to transfer of development rights.

[H 2055]

Approved March 27, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2316.1 and 15.2-2316.2 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2316.1. Definitions.

As used in this article, the term:

"Development rights" means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance. *"Development rights" includes "transferable development rights."*

"Receiving area" means ~~an area~~ *one or more areas* identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

"Receiving property" means a lot or parcel within *a receiving area and within* which development rights are increased pursuant to a transfer of development rights *affixed to the property*. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property. *Development rights may be transferred between receiving properties, as otherwise permitted in the ordinance.*

"Sending area" means ~~an area~~ *one or more areas* identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be *severed and* transferred to a receiving area.

"Sending property" means a lot or parcel ~~that a locality deems necessary to limit future development in accordance with the ordinance adopted in subsection C of § 15.2-2316.2 or a receiving property that has received development rights from a sending property within a sending area from which development rights are authorized to be severed.~~

"Severance of development rights" means the process by which development rights from a sending property are severed pursuant to this act.

"Transfer of development rights" means the process by which development rights from a sending property are affixed to one or more receiving properties.

"Transferable development rights" means all or that portion of development rights that are transferred or are transferable.

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

~~B. Any proposed transfer of development rights shall only be initiated upon application by the property owners of both the sending and receiving properties. A locality may not require property owners to transfer development rights as a condition of the development of any property.~~

~~C. Prior to any transfer of development rights, In order to implement the provisions of this act, a locality shall adopt an ordinance based on findings of public benefit. Such ordinance that shall provide for:~~

~~1. The issuance and recordation of the instruments necessary to sever development rights from the sending property, *to convey development rights to one or more parties, or and* to affix development rights to ~~the one or more~~ *receiving property properties*. These instruments shall be executed by the ~~affected~~ *property owners of the development rights being transferred*, and ~~any lienholders~~ *lien holders of such property owners*. The instruments shall identify the development rights being ~~transferred~~ *severed*, ~~identification of and the sending property and properties or the receiving property properties, as applicable;~~~~

~~2. The preservation of the character of the sending property and assurance Assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;~~

~~3. The severance of transferable development rights from the sending property and the transfer of development rights to a receiving property;~~

~~4. The purchase, sale, exchange, or other conveyance of transferable development rights, after~~

severance, and prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. The ordinance shall include permitted uses and the maximum increases in density in the receiving area;

9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in a severance or transfer of development rights;

10. *The development rights severed from the sending areas to be equal to the development rights permitted to be attached in the receiving areas;*

11. An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area; and

~~11. The review of an application by the planning commission or its agent to determine whether the application complies with the provisions of the ordinance. The application shall be deemed approved upon the determination of compliance with the ordinance and upon recordation of the instrument transferring the development rights in the land records of the office of the circuit court clerk for the locality; and~~

~~12. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this article.~~

~~12. The application to be deemed approved upon the determination of compliance with the ordinance by the agent of the planning commission, or other agent designated by the locality.~~

~~D. The ordinance may provide for the allowance for residential density to be converted to an increase in the square feet of a commercial, industrial or other use on the receiving property.~~

~~C. In order to implement the provisions of this act, a locality may provide in its ordinance for:~~

~~1. The purchase of all or part of such development rights, which shall retire the development rights so purchased;~~

~~2. The severance of development rights from existing zoned or subdivided properties as otherwise provided in subsection E;~~

~~3. The owner of such development rights to make application to the locality for a real estate tax abatement for a period up to 25 years, to compensate the owner of such development rights for the fair market value of all or part of the development rights, which shall retire the number of development rights equal to the amount of the tax abatement, and such abatement is transferable with the property;~~

~~4. The owner of a property to request designation by the locality of the owner's property as a "sending property" or a "receiving property";~~

~~5. The allowance for residential density to be converted to bonus density on the receiving property by (i) an increase in the residential density on the receiving property or (ii) an increase in the square feet of commercial, industrial, or other uses on the receiving property, which upon conversion shall retire the development rights so converted;~~

~~6. The receiving areas to include such urban development areas in the locality established pursuant to § 15.2-2223.1;~~

~~7. The sending properties, subsequent to severance of development rights, to generate one or more forms of renewable energy, as defined in § 56-576, subject to the provisions of the local zoning ordinance;~~

~~8. The sending properties, subsequent to severance of development rights, to produce agricultural products or forestal products, as defined in § 15.2-4302;~~

~~9. The review of an application by the planning commission to determine whether the application complies with the provisions of the ordinance;~~

~~10. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this act; and~~

~~11. Approval of an application upon the determination of compliance with the ordinance by the agent of the planning commission.~~

~~D. The locality may, by ordinance, designate receiving areas or receiving properties, or add to, supplement, or amend its designations of receiving areas or receiving properties, so long as the development rights permitted to be attached in the receiving areas are equal to the development rights permitted to be severed in the sending areas.~~

~~E. Any proposed severance or transfer of development rights shall only be initiated upon application by the property owners of the sending properties, development rights, or receiving properties as otherwise provided herein.~~

~~F. A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.~~

G. The owner of a property may sever development rights from the sending property, pursuant to the provisions of this act. An application to transfer development rights to one or more receiving properties, for the purpose of affixing such rights thereto, shall only be initiated upon application by the owner of such development rights and the owners of the receiving properties.

~~E H.~~ *Development rights made transferable severed pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once an application has been approved and a deed of transferable development rights created pursuant to this article has been sold, conveyed, or otherwise transferred by the owner of the sending property, the transfer of development rights shall vest in the grantee and may be transferred to a successor in interest. Any transfer of the development rights to a different property in a receiving area shall be subject to review pursuant to the provisions of the ordinance adopted pursuant to provision 11 of subsection C. Once a deed for transferable development rights, created pursuant to this act, has been recorded in the land records of the office of the circuit court clerk for the locality to reflect the transferable development rights sold, conveyed, or otherwise transferred by the owner of the sending property, the development rights shall vest in the grantee and may be transferred by such grantee to a successor in interest. Nothing herein shall be construed to prevent the owner of the sending property from recording a deed covenant against the sending property severing the development rights on said property, with the owner of the sending property retaining ownership of the severed development rights. Any transfer of the development rights to a property in a receiving area shall be in accordance with the provisions of the ordinance adopted pursuant to this article.*

~~F I.~~ *For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is recorded as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is severed from and recorded as a distinct interest in real property, or the transferable development right is used at a receiving property and becomes appurtenant thereto. Once a transferable development right is severed from the sending property, the assessment of the fee interest in the sending property shall reflect any change in the fair market value that results from the inability of the owner of the fee interest to use such property for such uses terminated by the severance of the transferable development right. Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value on a separate real estate tax bill sent to the owner of said development right as taxable real estate in accordance with Article 1 (§ 58.1-3200 et seq.) of Chapter 32 of Title 58.1. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.*

~~G J.~~ *Approved transfers of development rights shall become effective upon the recording of the conveyance and the filing of a certified copy of such recording with the local governing body of the locality. The owner of a sending property from which development rights are severed shall provide a copy of the instrument, showing the deed book and page number, or instrument or GPIN, to the real estate tax assessor for the locality.*

~~H K.~~ *Localities, from time to time as the locality designates sending and receiving areas, shall incorporate the map identified in ~~provision 6 of subsection C~~ subdivision B 6 into the comprehensive plan.*

~~I L.~~ *No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or ~~modify~~ downzone the uses, or the density of ~~use~~ uses permitted in the zoning district applicable to any property to which development rights have been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a *material* change in circumstances substantially affecting the public health, safety, or welfare.*

~~J M.~~ *A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.*

~~K N.~~ *Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such*

agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.). *The development right shall be taxed as taxable real estate by the local jurisdiction where the sending property is located, until such time as the development right becomes attached to a receiving property, at which time it shall be taxed as taxable real estate by the local jurisdiction where the receiving property is located.*

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

Montgomery County Transferable Development Rights (TDR) Program

John P. Zawitoski
Farmland Preservation Program Administrator
Montgomery County Department of Economic Development
Agricultural Services Division

The Transfer of Development Rights (TDR) program allows landowners to transfer a development right from one parcel of land to another parcel. For agricultural land preservation, TDRs are used to shift development from agricultural areas "TDR sending areas" to designated growth zones or "TDR receiving areas" which are closer to public services. When rights are transferred from a parcel within the designated "TDR sending area," the land is restricted by a permanent TDR easement. The land to which the rights are transferred are called the "receiving area." A TDR program represents the private sector's investment in land preservation as the price paid for TDRs are negotiated between a landowner and a developer. A developer who purchases TDRs is permitted to build at a higher density than permitted by the "base zoning." The funds paid for a TDR by the developer to a landowner creates a wealth transfer from the developed areas back into the rural economy.

Established in 1981, Montgomery County's TDR program was developed as part of the Functional Master Plan for the Preservation of Agriculture and Rural Open Space. Through *FY2004*, over 45,052 acres have been protected by this program. This Functional Master Plan created the 93,000 acre Agricultural Reserve. Prior to the creation of the "Ag Reserve," the previous Rural Zone designation allowed for lands to be developed at a density of 1 unit per 5 acres. As result of this Master Plan, the "Agricultural Reserve," was designated and rezoned to the Rural Density Transfer Zone. The primary purpose of this zone is to protect the farmland in the Agricultural Reserve from further fragmentation. Development in the RDT zone is limited to one dwelling per 25 acres. However, the property owner has the right to sell "development rights" or "TDRs" from their land based on the density of the prior Rural Zone (one unit per five acres) for use on properties in other areas of the County specifically designated on area master plans to accommodate higher density.

The calculation of TDRs based upon the previous Rural Zone designation was done in an attempt to provide a compensation mechanism to rural landowners impacted by the down-zoning. The calculated rate for TDRs was developed as the vehicle by which a portion of the lost equity could be built back upon the lands that were subject to the down-zone.

It is important to distinguish the difference between the TDRs that must be retained on a sending area property in order for the land to be developed in accordance with the 1/25 zoning designation from TDRs that can be transferred for use in designated TDR receiving areas. These "retained" TDRs are referred to as "the Development TDR" and must be present for properties to be developed in accordance with zoning. For example, a 100 acre farm, for the purpose of calculating TDRs, has 20 TDRs that are available; however 4 TDRs must be kept with the land if a landowner intends to construct

dwellings at the 1/25 rate. The 4 TDRs that are retained represent the "Development TDR." By contrast, the remaining 16 TDRs that can be sold to developers for use in designated County receiving areas are referred to as the "Transferable TDR." These 16 TDRs can be sold to a developer without impacting a landowner's ability to develop in accordance with the 1/25 acre zoning designation. The sale of these TDRs represents the compensation mechanism for the lost equity resulting from the down-zoning.

Furthermore, once a TDR is transferred or severed from the property, the current zoning density designation is then frozen or "locked in" at 1 unit per 25 acres permanently or in "perpetuity" and a permanent easement is recorded among the land records to memorialize this transaction.

The Montgomery County TDR program represents a good example of the private sectors investment into the preservation of farmland within the County. Since the TDR programs inception, over \$63 million dollars have been invested by the development community through the purchase of TDRs. This significant investment in farmland preservation creates a wealth transfer system by which financial resources within the urban/suburban corridors is transferred back into the rural areas.

While prices paid for TDRs are negotiated between a landowner and a developer, it is important to note the value fluctuates year to year. Many things may influence value of a TDR, including classic supply/demand models, status of local economies, developer acceptance of TDR use, and willingness of landowners. One of the greatest influences on this value is the availability of adequate "receiving capacity" to accommodate the capacity of TDRs within the "sending area". During *FY1996*, the TDR Market hit a County average high of \$11,000 per TDR, however due to insufficient receiving area capacity, the value of TDRs steadily declined.

After several years of declining TDR values and waning landowner participation, the Planning Board assembled a TDR Task Force to look into developing innovative approaches to help stimulate the program. The TDR Task Force completed their analysis and finalized their report during *FY2002*. These recommendations included:

- **Policy Tools** - In order to support the TDR program, the Master plan development process in all areas of the County outside of the Agricultural Reserve, must formally include the creation and/or expansion of TDR receiving zones, whenever any additional density is contemplated. Examples of policy tools are detailed below:
 1. Distinguishing between theoretical TDR use in receiving areas versus actual TDR use potentials;
 2. Ensuring there is no net loss of receiving areas within the County;
 3. Exploring inter-jurisdictional transfers of TDRs;

4. Use of TDRs in affordable housing models; and
5. The Coordination of Government and Non-Profit preservation initiatives.

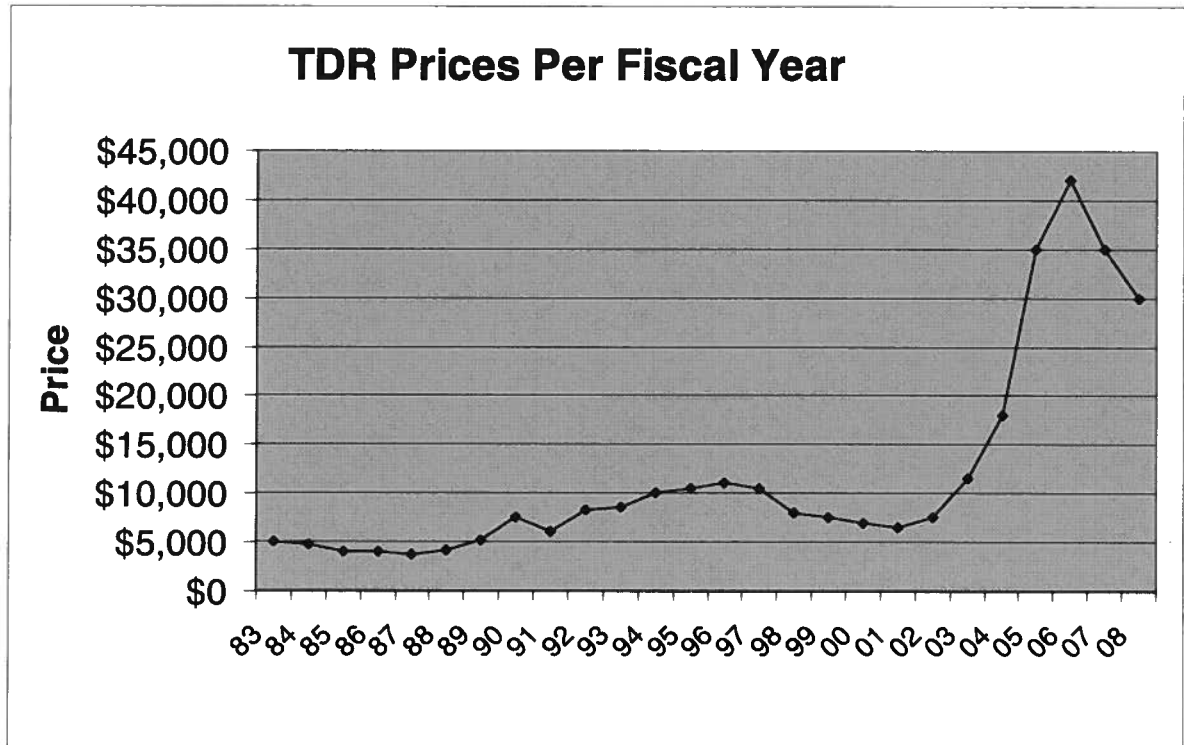
- **Regulatory Tools**

1. Changing the minimum TDR use requirement in receiving areas, by reducing the use requirement for properties of 20 acres or less to 25% of capacity when the TDR receiving zone density is 10 dwelling units per acre or more and the elimination of the TDR minimum use requirement for properties of 5 acres or less when the TDR receiving zone capacity is 20 dwelling units per acre or fewer;
2. Allow relief from on-site afforestation when TDRs are used *-Balance the goals of the Forest Conservation Law with those of TDR receiving areas to implement an upfront planning process allowing for offsite mitigation;*
3. Create TDR receiving versions of the CBD, Planned Development, Transit Station and Mixed Use Zones to use when they have existing or are designated for planned transit access; and
4. Allow residential uses by right in certain commercial zones through the use of TDRs.

- **Information Tools**

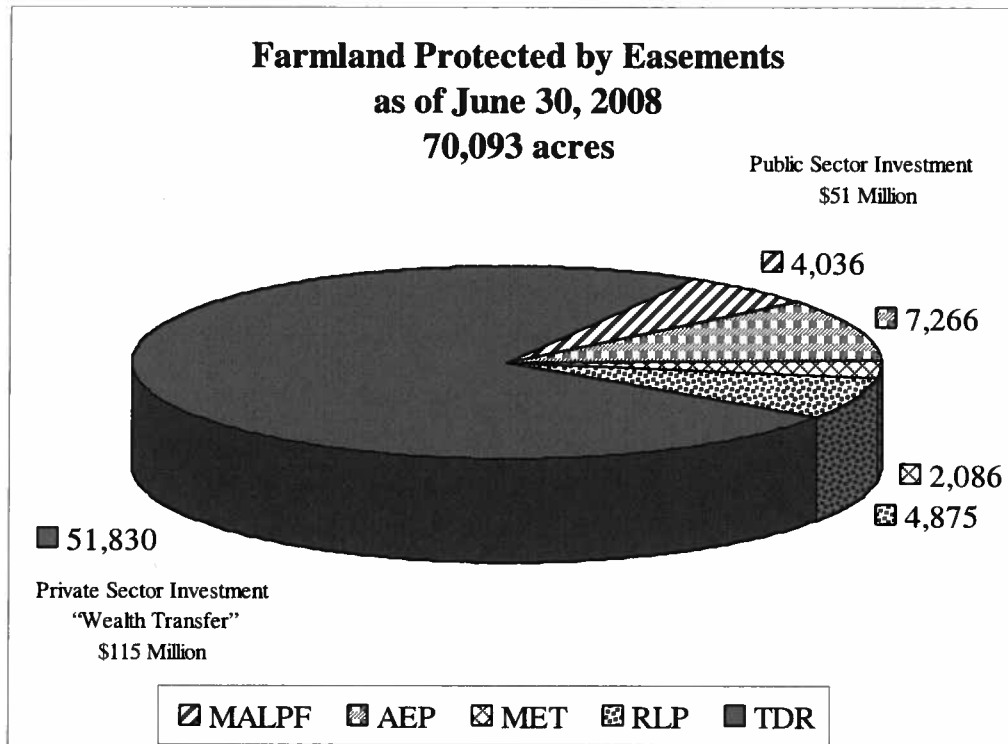
1. Begin an annual TDR "countdown" tally and progress report, accounting for all deductions from the total remaining TDRs available for transfer in the RDT zone;
2. Implement an improved and easier to use "tracking system" to determine TDRs retained for subdivision versus those that are sold;
3. Revision of the methodology used in generating the TDR Status Report; and
4. Conduct a survey of property owners in the RDT Zone to provide information regarding the variety of easement programs available in the County.

The TDR Task Force report was approved by the Montgomery County Planning Board early in *FY2003*.



During the last quarter of *FY03* and through *FY04* the County witnessed a steady increase in TDR prices. Over this period values have ranged from about \$18,000 to \$42,000 per TDR. This increased demand and the prices paid for TDRs can be attributed to development moving forward within receiving areas as part of the Clarksburg Master Plan. This increased demand created a "boom" market for TDRs.. As the receiving areas within Clarksburg achieve their maximum capacity, the market is expected to wane once again in the absence of new planned receiving capacity. As the demand for TDRs reduces, so will the TDR prices developers will pay. As this trend occurs, greater importance for implementing the recommendations of the TDR Task Force Report will become evident. The expanded use of TDRs helped the County achieve its goal of protecting 70,000 acres of farmland during the Fiscal Year 2008.

Farmland Protected by Easements including TDRs as of June 30, 2008



TDR PROCESS

ZONING

The Master Plan designates receiving areas for transferred development rights through the designation on the land use plan map and appropriate references in the text of the plan. A separate zoning action is then accomplished by the District Council to map the TDR Receiving Master Plan Area Zones on the zoning maps of the County. (The zone designates the maximum density allowed by the zone; the master plan may designate a lower density for a particular site included in the zone.) Text Amendment 87009 and Sectional Map Amendments G-563 through G-570 accomplished this action.

SUBDIVISION AND SITE PLAN

The Preliminary Plan of Subdivision for property in a receiving area is prepared to show at least two-thirds of the possible development rights allowed by the master plan for the property (except by a finding by the Planning Board that for environmental or compatibility reasons it would be desirable to permit a lower density, in which the two-thirds requirement can be waived).

The Planning Staff reviews subdivision for all requirements of the subdivision regulations (Chapter 50, Montgomery County Code) and the Planning Board takes action within 60 days of submittal of the complete subdivision application.

Once the Preliminary Subdivision Plan is approved, the applicant files a Site Plan showing the additional detailed requirements of Division 59-D-3 of the Zoning Ordinance for action by the Planning Board within 45 days of receipt of the complete application. (The Site Plan must show the total number of dwelling units including TDRs and MPDU's and include a final reconciliation of all density computations as apply from the density bonus granted for each purpose. If units are eliminated for compatibility reasons from the maximum allowed by zoning, then the remaining bonus units are prorated among TDRs and MPDU's.)

Following the Site Plan approval, the applicant submits a Record Plat of Subdivision for the property to the Planning Board, which upon final approval will be recorded in the Land Records administered by the Clerk of the Montgomery County District Court.

Prior to final Record Plat approval, however, easement documents on the sending area properties in the agricultural reserve must be recorded along with a deed of transfer for the TDRs. The easement on the conservation area (farmland or open space) must limit development in perpetuity and is prepared naming the County as grantee of the easement, allowing the development restrictions of the easement to be released only by action of the County. The easement limits the number of future residential units permitted on the covered property, allowing only agricultural and related uses to remain after all TDR units are restricted by easement.

The Deed of Transfer conveys ownership of the TDRs from the original owner of sending area property to the developer as the purchaser. This document must be recorded in the Land Records with an appropriate liber/folio reference number.

The Record Plat is approved for recordation in the Land Records by the Planning Board upon a showing by the applicant (developer) of the liber/folio number of the deed of transfer and the liber/folio number and serial number of the particular TDR easement(s) to be included in the applicant's subdivision Record Plat. (Reference to the recorded document(s) is included and is described in the notes included on the Record Plat.) The transfer of development rights is complete when the TDR Record Plat of Subdivision is recorded in the Land Records.

BUILDING PERMIT

With an approved and recorded Record Plat and an approved Site Plan, the applicant is eligible to apply for building permits for actual construction from the Department of Environmental Protection, Montgomery County. Each permit issued must be shown for

construction on an approved recorded lot or be eligible for a waiver of the subdivision regulations.

ADMINISTRATIVE PRACTICES FOR THE TRANSFER OF DEVELOPMENT RIGHTS

1. The Montgomery County Planning Board-approved TDR Deed form, TDR Easement form and TDR Extinguishment form must be used.
2. The TDR Easement form must be approved by the County Attorney and recorded prior to the recordation of the relevant TDR deed or deeds.
3. The County Attorney will assign serial numbers to TDRs at the time a TDR Easement is approved and recorded.
4. Deed reservations ("A to B, reserving unto himself 5 TDRS," for example) will not be recognized in deeds executed after July 1, 1984. If a grantor wishes to retain TDRS, a TDR easement and TDR deed must be used.
5. For the purpose of computing TDRS, the acreage on an R-DT parcel may be determined by reference to the Tax Maps or to an actual survey.
6. An application for approval of a record plat using TDRs must list the serial numbers of the TDRs to be used to increase the base density.
7. A record plat using TDRs shall include a notation of the serial numbers of the TDRs used.
8. Prior to recordation of a plat using TDRS, the applicant must provide a properly executed TDR Extinguishment for the TDRs used to the Development Review Division. Development Review will send a copy of each TDR Extinguishment to the County Attorney.
9. The Development Review Division will maintain a list of the serial numbers of all TDRs that have been used and extinguished. Before a plat using TDRs will be recorded, the Development Review Division will check the serial numbers of the TDRs to be used against the list of extinguished TDRS.
10. The appropriate TDR Extinguishment must be recorded immediately following the recordation of a plat using TDRS.

Presenter Contact Information

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Agricultural Preservation Resources

Potomac Conservancy - Potomac Conservancy protects the health, beauty, and enjoyment of the Potomac River and its tributaries. The Conservancy's primary focus is protection of water quality through land protection and sound land use practices. Because clean water alone is not enough, the Conservancy also works to preserve and restore the Potomac's scenic landscapes, and to enhance river-based recreational opportunities.

Website: www.potomac.org

Valley Conservation Council - Founded in 1990, Valley Conservation Council (VCC) is a land trust supported by hundreds of member households throughout the region and beyond. VCC is one of several dozen private organizations and state and federal agencies working together to conserve rural heritage, protect our waters, and save resources for the future in Virginia. VCC is dedicated to protecting the agricultural, natural, and cultural resources of the Shenandoah Valley region in Virginia through private action and public planning. VCC believes that to protect the Valley's natural resources we must provide solutions that foster the continued health of the region's economy and quality of life, while solving problems presented by the area's rapid population growth and sprawling suburban development patterns.

Website: www.valleyconservation.org

Shenandoah RC&D - The Shenandoah RC&D Council's mission is to sponsor and promote projects and programs that improve the quality of life and sustainable use of natural resources, primarily in the Shenandoah River Watershed, by providing volunteer leadership, technical resources, and financial assistance.

Website: www.shenandoahrcd.org

Brandywine Conservancy - The mission of the Brandywine Conservancy's Environmental Management Center is to conserve the natural and cultural resources of the Brandywine River watershed and other selected areas with a primary emphasis on conservation of water quantity and quality. The mission is founded on a belief that a healthy and secure natural environment is essential to meet the needs and aspirations of present and future generations. To accomplish its mission the Environmental Management Center works with individuals, municipal governments, county and state government agencies, and private organizations to:

- Permanently protect and conserve land and water, including natural, cultural and scenic resources;
- Create and strengthen municipal and county plans and regulations that support resource conservation;
- Improve site planning and design to support resource conservation in land development projects;
- Conduct research and analyses of approaches to planning and to conservation of natural and cultural resources;
- Enhance awareness and knowledge of conservation approaches within the Brandywine River watershed and beyond.

The Environmental Management Center focuses on the integration of conservation with social and economic development through three programs: Land Stewardship, Municipal Assistance and Conservation Design.

Website: www.brandywineconservancy.org

Green Infrastructure Planning Resources

The Conservation Fund

Information below available at: www.conservationfund.org

Conservation Leadership Network
The National Conservation Training Center
698 Conservation Way
Shepherdstown, WV 25443
Phone: (304) 876-7462
Fax: (304) 876-7751

Conservation Leadership Network courses are designed to foster collaboration and to replicate real world scenarios. Courses are applicable for individuals from a variety of disciplines and sectors, with responsibilities that scale the national, regional, and local levels. Courses are offered at locations around the U.S., including the National Conservation Training Center in Shepherdstown, WV. Current course offerings and web links are listed below.

Strategic Conservation Planning Using the Green Infrastructure Approach
<http://www.conservationfund.org/node/239>

GIS Tools for Strategic Conservation Planning
<http://www.conservationfund.org/node/670>

Balancing Nature and Commerce in Communities that Neighbor Public Lands
<http://www.conservationfund.org/node/458>

The Green Infrastructure Center, Inc.

Additional information available at www.gicinc.org

The Green Infrastructure Center is a nonprofit organization founded in December 2006 to assist communities in developing strategies for protecting and conserving their ecological and cultural assets through environmentally-sensitive decisions, lifestyles and planning.

The Center provides tools to help communities identify the services provided by natural systems, such as enhanced quality of life and economic benefits, and develop strategies to protect and sustain these resources

The Green Infrastructure Center is located in downtown Charlottesville, Virginia in the Frank Ix building in the office suite with E² inc.

Contact: Karen E. Firehock, Executive Director
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