



# STAFF REPORT

<b>PC Meeting Date:</b>	March 17, 2021
<b>Agenda Title:</b>	Zoning Text Amendment #DPA2017-00008, Transfer of Development Right Program
<b>District Impact:</b>	Countywide
<b>Requested Action:</b>	Recommend Approval of Zoning Text Amendment #DPA2017-00008, Transfer of Development Rights Program
<b>Department:</b>	Planning Office
<b>Case Planner:</b>	David J. McGettigan, AICP

## EXECUTIVE SUMMARY

This is a request to establish and adopt a Transfer of Development Rights (TDR) Ordinance into the Zoning Ordinance. The program allows for landowners in designated areas of the county to sever their residential development rights and transfer them other areas of the County. The TDR program is intended to complement and supplement land use regulations, resource protection efforts, and open space acquisition programs and to encourage residential density where it can best be accommodated with the least impact on the natural environment and public services by:

- Providing a predictable incentive process for property owners of rural and agricultural land to preserve lands with a public benefit;
- Creating permanent conservation easements on properties that voluntarily choose to sever their residential development rights;
- Implementing the Comprehensive Plan by directing residential land uses to appropriate receiving areas; and
- Providing a review system to ensure that transfers of development rights to receiving areas are processed in a timely way.

It is the recommendation of staff that the Planning Commission recommend approval of Zoning Text Amendment #DPA2017-00008, Transfer of Development Rights, to the Board of County Supervisors, contingent upon the approval of #CPA2018-00009, Rural Area Plan and #DPA2017-00009, Conservation Subdivision.

## BACKGROUND

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- A. Purpose of the Zoning Ordinance - Under § 15.2-2283 of the Code of Virginia, the zoning ordinances shall be for the general purpose of promoting the health, safety, or general welfare of the public.
- B. Rural Preservation Study - Through DIR 14-82, the BOCS directed staff to review the Zoning Ordinance to implement some of the recommendations of the Rural Preservation Study, including a Transfer of Development Rights Program. The purpose of the rural preservation study was to provide an overview of the County's rural preservation policies and an evaluation of their effectiveness; identify additional rural preservation tools that may be appropriate and effective; and make recommendations regarding possible amendments to the County's land use planning policies. The study was completed and presented to the BOCS on May 6, 2014. Several of the study's recommendations relate directly to elements of the Comprehensive Plan (e.g., land use, open space, infrastructure, etc.).

The Board initiated a zoning text amendment through Res. No. 16-731. The initiation was to amend the Prince William County Zoning Ordinance to create a Transfer of Development Rights Program.

- C. Existing Comprehensive Plan – Numerous existing long-range policies call out for the review and development of polices including the transfer of development rights to support the County's open space, environmental, and land use polices.
- D. Current Zoning Ordinance Language – The current Zoning Ordinance does not provide for the Transfer of Development Rights. The proposed text to adopt a Transfer of Development Rights (TDR) Ordinance in the Zoning Ordinance is offered as an alternative development option/opportunity for the County to support conservation and preservation. This tool would provide an opportunity to permanently preserve open space and farmland in the rural area.
- E. Proposed Recommendation – The Board of County Supervisors directed the Planning Office to bring forward recommendations from the Rural Preservation Study (2014). The first recommendation of the Study was to adopt a vision. Additional recommendations of the 2014 Rural Preservation Study include implementing (existing) policies to incentivize and encourage land preservation through Purchase of Development Rights (PDR), Transfer of Development Rights (TDR), rural cluster with dedication of permanent conservation easements, and policies aimed at studying and stimulating a rural economy. Staff prepared and posted on the Planning Office webpage a draft document and associated draft language entitled, "Summary of Staff Recommendation: Rural Preservation" dated September 17, 2019.
- F. State Code – §15.2-2316.1 and §15.2-2316.2 of the Code of Virginia, addresses the County's authority to implement this program.

Pursuant to state code, TDR program may be established provided mandatory provisions are included in the TDR ordinance which include:

- Recordation of documents necessary for all transactions related to severing, transferring, or affixing development rights;
- Prohibitions against the use and development of the sending property are permanent;
- Severance of development rights from the sending property;
- The purchase/sale/exchange of the development rights;
- Monitoring the severance, ownership, assignment, and transfer of development rights;
- A map showing sending and receiving areas (map must be in the Comprehensive Plan)
- The identification of parcels inappropriate as receiving properties;
- The permitted uses and the maximum increases in density in the receiving area;
- The minimum standards to sever or transfer development rights from a sending property;
- Provide for an equal or higher number of development rights that are eligible to be used in a Receiving Areas than are severable from properties in the Sending Areas;
- An assessment of the infrastructure in the receiving area; and
- A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

G. Major Points of Proposed Text Language – Properties are eligible for the TDR Program if the properties have more than one eligible development right, as determined by this ordinance. Properties are required to keep at a minimum one development right on their property. The transfer of development right creates a private marketplace for landowners in the sending areas and developers in the receiving area to negotiate the value of their development rights. The sending area includes the majority of the Rural Area. Two locations have been identified as receiving areas in the Rural Area and four locations in the Development Area (Regional Activity Centers). The proposed text also provides for other jurisdictions outside of PWC to be receiving areas. Multi-jurisdictional transfers require a mutual agreement. The receiving areas in the Rural Area are limited and can receive far fewer units than the receiving areas in the Development Area.

- a. Receiving areas within the Rural Area are required to develop according to the development standards in the proposed Conservation Residential zoning district and would allow connection to public sewer. They must be single family detached

dwelling units with a minimum acreage of one acre per dwelling unit with 60% of open space dedicated in a permanent conservation easement. A buffer around the entire property must be identified and no sewer easements may cross or traverse the buffer, which provides a permanent barrier for further extension of sewer into the Rural Area.

- b. Receiving areas in the Development Area are required to be developed as multifamily units and must meet the development standards identified in the PMR, Planned Mixed Residential zoning district and develop with a minimum density of 31 dwelling units per acre.

To incentivize utilization of this tool to preserve open space and farmland, properties identified in the Agriculture and Forest Rural Character Area may transfer at a density of one unit per five acres and properties identified in the Estates and Subdivisions Rural Character Area may transfer at a density of one unit per three acres. Staff believes this is a more effective tool to preserve open space because it incentivizes use of the program and allows private citizens to fund the transfer through a development right purchasing process. The parcel transferring the development rights would then be placed in a permanent conservation easement.

## **CURRENT SITUATION**

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- A. Initiation of Comprehensive Plan Update – Under Section 15.2-2229 of the Virginia Code, the Board of County Supervisors may consider amendments to the Comprehensive Plan. On August 3, 2016, the Board approved the proposed scope of work for comprehensive plan amendments which included incorporating recommendations from existing studies such as the Rural Preservations Study. (RES NO. 16-647)
- B. Comprehensive Plan Update Community Conversations – The Planning Office held a series of Community Conversations public meetings on the Comprehensive Plan Update. The meetings were held on October 30, 2018, November 13, 2018, and November 14, 2018. Opportunities for feedback on the development of the Rural Area Plan, which includes the proposed Transfer of Development Rights Program, were made available through direct feedback to staff members and through use of a mobile application designed specifically for public engagement related to the Comprehensive Plan update.

Community Engagement Sessions – The Planning Office held a series of Community Engagement public meetings on the Rural Area Plan. The meetings were held on June 24, 2019, July 30, 2019, and September 24, 2019, to gather stakeholder ideas and thoughts on the Rural Area and to distribute information and answer questions regarding the staff recommendations for rural preservation.

The stakeholders represented a large cross-section of groups with varying interests in the rural policies of Prince William County and provided a broad perspective on the many issues the County faces with planning for rural preservation.

- C. Proposed language – Draft language was published on the project website on September 17, 2019, and notifications were sent to all who subscribe to PWC Alerts.
- A project website was developed and maintained by the Planning Office throughout the project. This website included all project information including meeting materials, maps, survey results, presentations, etc. Notification of the public meetings was provided on the project website, the County's homepage, and through newspaper advertising.
- D. Planning Commission Work Session and Public Meeting – The Planning Commission held work sessions on the proposed language on October 23, 2019, November 13, 2019, and December 2, 2020.
- E. Planning Commission Public Hearing – A public hearing before the Planning Commission has been properly advertised for March 17, 2021, and notifications were sent to all who subscribe to PWC Alerts. The text and maps are also available on the Planning web site [www.pwcgov.org/PlanUpdate](http://www.pwcgov.org/PlanUpdate).

## **STAFF RECOMMENDATION**

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The Planning Office recommends approval of Zoning Text Amendment #DPA2017-00008, Transfer of Development Right Program, contingent upon the approval of #CPA2018-00009, Rural Area Plan and #DPA2017-00009, Conservation Subdivision for the following reasons:

- Providing a predictable incentive process for property owners of rural and agricultural land to preserve lands with a public benefit;
- Implementing the Comprehensive Plan by directing residential land uses to appropriate receiving areas;
- Providing a review system to ensure that transfers of development rights to receiving areas are processed in a timely way; and
- The TDR program creates a voluntary, market-based method of relocating development rights away for environmentally or culturally sensitive areas and directing them toward existing developed areas with existing infrastructure.

### **Community Input**

As required by § 15.2-2204, Code of Virginia, notice of the Zoning Text Amendment has been advertised and the proposed amendment has been published on the Prince William County government web site and has been available in the Planning Office. The Planning Office also received feedback during public meetings held June 24, 2019, July 30, 2019, and September 24, 2019.

The Planning Office has received hundreds of emails (reflected in a 281-page spread sheet posted on the webpage) and received feedback through response cards which were completed by participants at the July 30, 2019 Community Feedback meeting. Copies of the responses received are located on our web page, <https://www.pwcgov.org/government/dept/planning/Pages/Rural-Area-Plan.aspx>.

The comments ranged from strongly agree to strongly disagree where some residents confirmed their desire for no change to current rural policy while others supported a wholesale adoption of the Rural Preservation Study Recommendations. There was significant feedback for “no change” to the rural policies. A majority of participants did not support the TDR zoning text amendment that would increase density within the Rural Area.

### **Legal Issues**

Legal issues, if any, are appropriately addressed through the County Attorney’s Office.

### **Timing**

The Planning Commission has until June 15, 2021, 90 days from the first public hearing, to take action on this proposal. A recommendation to adopt the Zoning Text Amendment would meet the 90-day requirement.

**STAFF CONTACT INFORMATION**

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**ATTACHMENTS**

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Transfer of Development Rights Ordinance [Clean]  
Transfer of Development Rights Ordinance [Strikethrough/Underline]  
TDR Sending Areas Map  
TDR Receiving Areas Map  
Staff Analysis  
BOCS Initiating Resolution

## Article XI. Transfer of Development Rights (TDR) Program

### **Sec. 32-1100.01. - Purpose**

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

Providing a predictable incentive process for property owners of rural and agricultural land to preserve lands with a public benefit;

Implementing the Comprehensive Plan by directing residential land uses to appropriate receiving areas; and

Providing a review system to ensure that transfers of development rights to receiving areas are processed in a timely way and balanced with other county goals and policies and are adjusted to the specific conditions of each receiving area.

### **Sec. 32-1100.02. - Applicability**

The procedures and regulations in this Chapter apply to the transfer of development rights from land qualifying as sending properties to land qualifying as receiving properties and/or to a transferee. Land utilizing transferred development rights may be developed in receiving areas at the maximum density, above the base density for the applicable zoning district, as identified in county code sec. 32-1100.06 and sec. 32-1100.07 of this article. All development utilizing transferred development rights must conform to the requirements, defined further in this article, applicable to the receiving property.



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### **Sec. 32-1100.03. - Right to Transfer of Development Rights: general provisions.**

1. A development right shall only be transferred by means of the recordation of a TDR certificate and a covenant to which the county is a party, or a permanent conservation easement granted to a "qualified holder" as that term is defined in Code of Virginia §10.1-1009, that restricts further development of the sending property and joins all lien holders, who must execute any necessary releases for the transfer of development rights to take place.
  - (a) The covenant or permanent conservation easement must limit the future construction of residential dwelling units on a sending property to the total number of development rights established by the zoning ordinance provisions applicable to the property, minus:
    - i. The development rights severed and extinguished from the sending property by the TDR certificate and thereby transferred under this article;
    - ii. Any development rights previously severed and extinguished or limited as a result of an earlier recorded covenant or conservation easement against the property; and
    - iii. The number of existing single-family detached dwelling units located on the sending property, if any, as of the date the TDR certificate is recorded.
2. The county attorney must review and approve any such covenants and permanent conservation easements, and related document(s) for form and legal sufficiency.
3. Each transferor must have the right to sever all or a portion of the development rights from a sending property and to sell, trade, and/or barter all or a portion of those development rights to a transferee consistent with the purposes of the County Code so long as the requirements of subsection (a) of this section are met.
4. Any transfer of development rights under this article only authorizes the use and density transfer as specified in this article. It does not alter or waive the County's Development Construction Standards Manual (DCSM) requirements for any property in the receiving area.
5. No development rights may be transferred from a sending property if those rights are materially restricted from development by covenant, easement, and/or deed restriction.

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6. Any transfer of development rights must be recorded among the land records of Prince William County, Virginia.
7. No transfer of development rights will be effective until the director has recorded the TDR certificate and its related covenant or permanent conservation easement in the land records of Prince William County, Virginia.
8. The monetary or other value of transferred development rights is determined by the seller and buyer.
9. Any proposed transfer of development rights may be initiated only upon application by the property owners of the sending properties of the severed development rights, or of the receiving properties.
10. Development rights from a sending property may be allocated to more than one receiving property and/or transferee.
11. A receiving property and/or transferee without relation to any property may accept development rights from more than one sending property.

### **Sec. 32-1100.04. - Sending Properties**

1. For the purposes of this article, a sending property must be an entire tax parcel or lot that complies with all the requirements of this article. Sending areas may only be located within the Rural Area the Comprehensive Plan and shown in a "TDR-S" classification on the Long Range Land Use Map. A sending property shall be maintained in a condition that is consistent with the criteria in this section under which the sending was qualified.
2. A sending property must comply with all of the following criteria:
  - (a) A sending property must be designated in a sending area on the "TDR-S" sending areas map.
  - (b) A sending property must be at least 20 acres in size.
  - (c) A sending property must be qualified for development of residential uses without further legislative approval by the Board of County Supervisors.
3. If a sending property has any outstanding code violations and/or unpaid taxes, the owner(s) must completely resolve all of these violations, including any required abatement.

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restoration, and/or payment of penalties or taxes, before the property may be made the subject of a TDR certificate by the planning director or designee.

### **Sec. 32-1100.05. - Receiving Properties**

1. In order for a property in a receiving area to qualify as a receiving property eligible for a transfer of development rights to said property, such property must be:
  - (a) Located in areas designated as receiving areas on the Long-Range Land Use Map of the Comprehensive Plan in one of the following classifications, "TDR-R" or "TDR-D".
  - (b) Served by public sewer and water.
  - (c) Served by state-maintained roads or have the ability to utilize private roads as permitted by the County.
  - (d) Be equal to or less than the maximum allowed dwelling units, as identified in county code sec. 32-1100.06 and sec. 32-1100.07 of this article, which may be transferred to the designated receiving area, inclusive of all other dwelling units that have been transferred through a TDR.
2. A receiving property may accept development rights from one or more sending properties, but the units allowed to be transferred to the receiving property may not exceed the maximum applicable dwelling units as specified on the "TDR-R" or "TDR-D" designation of the Long-Range Land Use Map in the Comprehensive Plan.
3. Receiving properties shall meet the development standards of the TDR-R or TDR-D, as identified in county code sec. 32-1100.06 and sec. 32-1100.07 of this article.
4. Should the governing body choose to designate new receiving areas or amend its designations of receiving areas, the development rights permitted to be attached in the receiving areas shall be determined at the time of designation of new receiving areas and shown on the Long-Range Land Use Map of the Comprehensive Plan.

### **Sec. 32-1100.06. - TDR-R Development Standards**

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1. Receiving properties designated in the TDR-R receiving areas shall meet all development and density standards as set forth in the Conservation Residential, CR zoning districts of this chapter.

<u>TDR-R Location</u>	<u>Maximum Cumulative Units Received</u>	<u>Zoning Designation</u>	<u>Unit Type</u>
<u>Location A</u>	<u>58</u>	<u>A-1</u>	<u>Single Family</u>
<u>Location B</u>	<u>94</u>	<u>A-1</u>	<u>Single Family</u>

### **Sec. 32-1100.07. - TDR-D Development Standards**

1. With the exception of the minimum density requirement and unit type allowances, receiving properties designated as TDR-D on the Long Range Land Use Map of the Comprehensive Plan shall meet the development standards of the Planned Mixed Residential (PMR) per, zoning district, per county code sec. 32.306.12, and the following:

<u>TDR-D Location</u>	<u>Maximum Cumulative Units Received</u>	<u>Planned Mixed Residential Designation</u>	<u>Unit Type</u>
<u>Innovation</u>	<u>1,500 Dwelling units</u>	<u>Urban High</u>	<u>Multifamily</u>
<u>Jurisdictions outside of PWC*</u>	<u>Determined by Receiving Jurisdiction</u>	<u>Determined by Receiving Jurisdiction</u>	<u>Determined by Receiving Jurisdiction</u>
<u>Potomac Mills</u>	<u>1,500 Dwelling Units</u>	<u>Urban High</u>	<u>Multifamily</u>
<u>Potomac Shores</u>	<u>500 Dwelling Units</u>	<u>Urban High</u>	<u>Multifamily</u>
<u>Virginia Gateway</u>	<u>1,500 Dwelling Units</u>	<u>Urban High</u>	<u>Multifamily</u>

\*As permitted by § 15.2-2316.2 Code of Virginia, subject to the other jurisdiction's agreement.

2. Residential units may be developed in a mixed-use building.

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3. Receiving properties may contain other structures and uses as otherwise allowed in the base zoning district of the receiving properties. The standards set forth in this section shall supersede the base zoning.

### **Sec. 32-1100.08. - Calculation of Development Rights.**

1. The number of residential development rights that a sending property is eligible to send to a receiving property and/or transferee shall be determined by applying the sending property base density established in this article to the area of the sending property after deducting all the following:
  - (a) Development rights previously transferred in accordance with this article;
  - (b) Development rights previously extinguished or limited as a result of a recorded conservation easement or similar covenant against the property;
  - (c) The number of existing single-family dwellings on the sending property;
  - (d) The amount of any Resource Protection Area, submerged land (i.e., lakes, ponds, streams), floodplains, and steep slopes as determined by Prince William County GIS Data;
  - (e) The amount of any land contained within easements (including, but not limited to, easements of roads, railroads, electrical transmission lines, gas or petroleum pipelines) in favor of governmental agencies, utilities and nonprofit corporations.
2. If a sending property contains no dwelling units, a development right equal to that for one single-family detached dwelling units must be maintained for the property.
3. For the purposes of calculating the amount of development rights a sending property can transfer, the square footage or acreage of land contained within a sending property shall be determined by a valid recorded plat or survey, submitted by the applicant property owner that has been prepared and stamped by a land surveyor licensed in the Commonwealth of Virginia.

For the purposes of the transfer of development rights program only, transferrable density shall be determined by the character areas shown on the Rural Character Area Map of the Comprehensive Plan and calculated as follows:

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<u>Zoning District and Land Use</u>	<u>Character Area</u>	<u>Maximum Density in Dwelling Units per acre (without TDR)</u>	<u>Maximum Density for Dwelling Units per acre with TDR Transfers</u>
<u>A-1</u>	<u>Agriculture and Forest</u>	<u>1 unit per 10 acres</u>	<u>1 unit per 5 acres</u>
<u>A-1</u>	<u>Estates and Subdivisions</u>	<u>1 unit per 10 acres</u>	<u>1 unit per 3 acres</u>
<u>A-1</u>	<u>Older Lot Enclaves</u>	<u>1 unit per 10 acres</u>	<u>1 unit per 10 acres</u>
<u>A-1</u>	<u>Gateway Corridor</u>	<u>1 unit per 10 acres</u>	<u>1 unit per 10 acres</u>
<u>A-1</u>	<u>Bull Run Mountainside</u>	<u>1 unit per 10 acres</u>	<u>1 unit per 10 acres</u>

4. Any fractions of development rights that result from the calculations in subsection 1 of this section shall not be included in the final determination of total development rights available for transfer.
5. Development rights from one sending property may be allocated to more than one receiving property and/or transferee and one receiving property and/or transferee may accept development rights from more than one sending property.
6. The determination of the number of residential development rights a sending property has available for transfer to a receiving property and/or transferee shall be documented in a TDR Letter of Intent to issue a Transfer of Development rights Certificate issued by the Director of Planning or their designee, pursuant to the provisions of this article, and shall be considered a final determination, not subject to revision. Such a determination shall be valid only for purposes of the transfer of development rights program and for no other purpose. Any changes to the proposed sending property shall void any issued letters of intent.
7. A sending property transferee may extinguish TDR development rights, sever and hold TDR density rights, sever and sell TDR density rights, or apply TDR rights to a receiving property in a receiving area in order to obtain approval for development at a residential density greater than would otherwise be allowed on the land in the receiving area, up to the maximum density outlined above.

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### **Sec. 32-1100.09. - Transfer of development rights sending property development limitations.**

1. Following the transfer of residential development rights, a sending property that has retained a portion of its development rights may subsequently accommodate remaining residential dwelling units on the sending property consistent with the requirements of the applicable zoning district and all other applicable County Code requirements. A sending property that retains a portion of its development rights may also transfer the remainder of those development rights through the TDR program; provided, however, that fractional development rights must not be transferred.
2. On sending properties with environmental features defined as Resource Protection Area (RPA), the development rights must be severed from the areas outside of the specified environmental features, and any such areas on the sending property that have either hydric soils or steep slopes exceeding twenty-five (25) percent must not be eligible for any consideration regarding the transfer of development rights. If development rights are retained on the sending property, future subdivision and development cannot occur on the areas where any development rights have already been severed and those areas cannot be considered as a portion of any buildable lot.
3. The limitations in this section must, when development rights are severed from a sending property, be included in a covenant or permanent conservation easement applicable to the sending property which must be recorded in the land records of Prince William County, Virginia. The county attorney must review and approve the covenant or permanent conservation easement as to form and legal sufficiency. A plat must accompany, and be recorded with, the deed delineating and describing the location of the portion of the property to be conserved.
4. Unless otherwise specified in this article, or unless expressly provided in the related covenant or permanent conservation easement, the severance of development rights from a sending property shall not deprive the owner of such sending property of the right to use that portion of the property from which development rights have been severed for any agricultural or forestal uses or structures.

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### **Sec. 32-1100.10. - Sending Property Certification.**

1. The Director of Planning or their designee shall be responsible for determining that a proposed sending property meets the qualifications of this article. The Director of Planning or their designee shall render a determination or denial under this subsection within sixty (60) days of the date of submittal of a completed sending property determination application. If the determination is that a property meets the qualifications of this article, the Director of Planning or their designee shall issue the determination in the form of a Letter of Intent to issue a Transfer of Development rights Certificate. Letter of Intent issued under this subsection shall be valid until the development rights are severed and extinguished through the transfer process, or unless applicable zoning changes are approved that would affect the sending property, or unless the property is developed.
2. Determinations of sending property qualifications under this article are appealable to the Board of Zoning Appeals, as provided by law, by filing a notice of appeal with the Director of Planning or their designee within thirty (30) days of the date of the determination.
3. The Director of Planning shall be responsible for maintaining permanent records of action taken pursuant to the transfer of development rights program under this Article including records of letters of intent issued, certificates issued, deed restrictions and covenants known to be recorded, and development rights retired, otherwise extinguished, or transferred to specific properties and/or transferees.
4. Responsibility for preparing a completed application for a determination that a proposed sending property meets the qualifications of this article rests exclusively with the applicant/property owner. An application for a transfer of development rights to issue a transfer of development rights Letter of Intent shall contain:
  - (a) A certificate of title for the sending property dated no more than thirty (30) days before the date that a complete TDR application is submitted; said certificate to be prepared by an attorney admitted to practice law in the Commonwealth of Virginia;
  - (b) Five (5) copies of a valid recorded plat or survey of the proposed sending parcel and a legal description of the sending property prepared by a land surveyor licensed in the Commonwealth of Virginia;
  - (c) A plan showing the area of request and existing and proposed dwelling units and any areas already subject to a conservation easement or other similar encumbrance;



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- (d) A completed density calculation worksheet for estimating the number of available development rights;
  - (e) The application fee as established by the Board of County Supervisors; and
  - (f) Such additional information required by the Director of Planning or their designee as necessary to determine the number of development rights that qualify for transfer.
5. A transfer of development rights Letter of Intent issued by the Director of Planning or their designee shall state the following information:
- (a) The name of the transferor;
  - (b) The name of the transferee, if then known;
  - (c) A legal description of the sending property on which the calculation of development rights is based;
  - (d) A statement of the size, in acres, of the sending property on which the calculation of development rights is based;
  - (e) A statement of the number of development rights, stated in terms of number of dwelling units, eligible for transfer;
  - (f) If only a portion of the total development rights are being transferred from the sending property, a statement of the number of remaining development rights, stated in terms of number of dwelling units, remaining on the sending property;
  - (g) The date of issuance;
  - (h) The signature of the Director of Planning or their designee; and
  - (i) A serial number assigned by the Director of Planning or their designee.
6. No transfer of development rights under this article shall be recognized by Prince William County as valid unless the instrument of transfer contains the transfer of development rights certificate issued under this section.

### **Sec. 32-1100.11. - Instruments of Transfer**

1. Upon receipt of a determination of development rights document for a sending property, the TDR applicant may request the planning director or designee to issue a TDR certificate to sever all or some of the development rights from the sending property that is the subject of the application. If such an applicant wishes to transfer development rights, the applicant must request a TDR certificate in writing from the planning director or designee and file with

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the planning director or designee a covenant to which Prince William County is a party and that restricts the development of the sending property to the extent the applicant desires to sever and extinguish development rights from the sending property for the purpose of transferring those development rights to a receiving property or a transferee without regard to a particular property.

2. Upon receipt from an applicant of a request for the issuance of a TDR certificate, the planning director or designee must determine whether his decision to issue a determination of development rights document has been appealed to the board of zoning appeals (BZA). If the planning director or designee's decision to issue a determination of development rights document to an applicant has been appealed to the BZA, then the planning director or designee must withhold the issuance of a TDR certificate to that applicant until the issues raised in that appeal have been finally decided by the BZA and/or the courts.
3. If the planning director or designee's decision to issue a determination of development rights document to an applicant has not been appealed to the BZA, then the planning director or designee must proceed with the issuance of a TDR certificate. In this regard, the planning director or designee must submit the covenant filed by the applicant to the county attorney for approval as to form and legal sufficiency. If the county attorney reviews the covenant and approves it as to form and legal sufficiency, the planning director or designee must prepare and record the TDR certificate and the related covenant(s) in the land records of Prince William County, Virginia, and must provide a copy to the finance director. Upon such recordation, the development rights that are the subject of the TDR certificate must be deemed severed and extinguished from the sending property, and the director must notify the applicant of the applicable deed book, page number, instrument number, and plat book where the recorded documents may be found in the land records.
4. The instruments recorded for the purpose of transferring development rights must comply with the requirements of this section and must consist of the following:
  - (a) The names of the transferor and the transferee;
  - (b) The number of residential development rights that are being transferred;

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- (c) A legal description and plat of the sending property prepared and certified by an engineer or land surveyor licensed in the Commonwealth of Virginia;
  - (d) The TDR certificate(s);
  - (e) A plat showing the portion of the sending property that is restricted from development as a result of the transfer of development rights;
  - (f) A covenant(s) to which the county is a party, approved by the county attorney as to form and legal sufficiency, specifying the number of development rights severed from the sending property and the number of development rights remaining on the sending property, and stating that the sending property may not be subdivided or developed to a greater density than permitted by the development rights remaining on the sending property;
  - (g) A covenant that the transferor grants and assigns to the transferee, its heirs, assigns, and successors, a specified number of development rights from the sending property to a receiving property and/or a transferee without relation to any particular property;
  - (h) A covenant by which the transferor acknowledges that he has no further use or right to use the development rights being transferred; and
  - (i) A covenant that all provisions of the TDR certificate and related covenants must run with and bind the sending property in perpetuity and may be enforced by the county.
5. The covenants recorded as part of instruments transferring development rights must be endorsed and approved by all lien holders.
6. The instruments of transfer of development rights must be recorded prior to the approval of any development permits for the receiving property, including, but not limited to, building permits.

### **Sec. 32-1100.12. - Transfer process.**

Development rights must be transferred using the following processes:

## Transfer of Development Rights [Clean]

1. Following the issuance of a determination of development rights document, and the filing by the applicant of a request for a TDR certificate with all other required documents and information, and compliance with all other provisions of this Article, the planning director or designee issues a TDR certificate agreeing to a transfer of development rights in exchange for the required covenant(s), to which the county is a party, restricting development on the sending property.
2. The applicant at whose request a determination of development rights document has been issued may, if all other requirements of this article are satisfied, request that the planning director or designee issue the TDR certificate to said applicant or to another person or legal entity specified by the applicant, who may transfer those development rights to an eligible receiving property or may hold those development rights without relation to any particular property.
3. The owner of development rights severed from a sending property may transfer those rights to a receiving property or to another person, who may hold those development rights without relation to any particular property. In applying for the transfer of development rights to a receiving property or a transferee without relation to any particular property, the applicant must provide the director with the following:
  - (a) A TDR certificate issued in the name of the applicant or another person or legal entity and an option to purchase the development rights covered by the certificate signed by the applicant and the owner(s) of the receiving property or to a transferee without relation to any particular property; and
  - (b) Proof satisfactory to the planning director or designee that there are no delinquent taxes or penalties owed on the development rights being transferred.
4. If development rights that are the subject of a TDR certificate are transferred to another person or legal entity who wishes to hold those rights without relation to any particular property, the planning director or designee must invalidate, in whole or in part, the TDR certificate that created those rights, and must issue a new TDR certificate in the name of the new owner of those rights. The planning director or designee records the new TDR certificate in the land records of Prince William County, Virginia, upon payment to the

## Transfer of Development Rights [Clean]

planning director or designee of any applicable fees by the party requesting the transfer of development rights.

- (a) If development rights that are the subject of a TDR certificate are approved by the planning director or designee to attach to a receiving property, then the planning director or designee must invalidate in perpetuity, in whole or in part, the TDR certificate that created those rights to the extent those rights are transferred to the receiving property.
- (b) Development rights from a sending property must be considered severed and extinguished from the sending property and transferred to a receiving property or a transferee without relation to any particular property when the director records the TDR certificate and the applicable covenant(s) to which the county is a party and any other required documents in the land records of Prince William County, Virginia.

### **Sec. 32-1100.13. - Development approval procedures.**

1. A request to utilize transferred development rights on an eligible receiving property must be in the form of a subdivision plan or final site plan submitted to the Department of Development Services in accordance with the requirements of Chapter 32 Article VIII and Chapter 25 of the County Code and meeting all development standards of this article. Prior to approval of such plan, the applicant must provide the planning director or designee proof that the transfer of the development rights has been completed.
2. A final recorded plat for a subdivision or site plan using transferred development rights must contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance.

## Transfer of Development Rights [Strikethrough/underline]

### ~~32-601~~ Article XI. Transfer of Development Rights (TDR) Program

#### Sec. 32-1100.01. - Purpose

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

Providing a predictable incentive process for property owners of rural and agricultural land to preserve lands with a public benefit;

Implementing the Comprehensive Plan by directing residential land uses to appropriate receiving areas; and

Providing a review system to ensure that transfers of development rights to receiving areas are processed in a timely way and balanced with other county goals and policies and are adjusted to the specific conditions of each receiving area.

#### Sec. 32-1100.02. - Applicability

The procedures and regulations in this Chapter apply to the transfer of development rights from land qualifying as sending properties to land qualifying as receiving properties and/or to a transferee. Land utilizing transferred development rights may be developed in receiving areas at the maximum density, above the base density for the applicable zoning district, as ~~specified by Table 1 in this ordinance~~ identified in county code sec. 32-1100.06 and sec. 32-1100.07 of this article. All development utilizing transferred development rights must conform to the requirements, defined further in this ~~ordinance~~ article, applicable to the receiving property.

## Transfer of Development Rights [Strikethrough/underline]

### Sec. 32-1100.03. - Right to Transfer of Development Rights; general provisions.

1. A development right shall only be transferred by means of the recordation of a TDR certificate and a covenant to which the county is a party, or a permanent conservation easement granted to a “qualified holder” as that term is defined in Code of Virginia §10.1-1009, that restricts further development of the sending property and joins all lien holders, who must execute any necessary releases for the transfer of development rights to take place.
  - (a) The covenant or permanent conservation easement must limit the future construction of residential dwelling units on a sending property to the total number of development rights established by the zoning ordinance provisions applicable to the property, minus:
    - i. The development rights severed and extinguished from the sending property by the TDR certificate and thereby transferred under this article;
    - ii. Any development rights previously severed and extinguished or limited as a result of an earlier recorded covenant or conservation easement against the property; and
    - iii. The number of existing single-family detached dwelling units located on the sending property, if any, as of the date the TDR certificate is recorded.
2. The county attorney must review and approve any such covenants and permanent conservation easements, and related document(s) for form and legal sufficiency.
3. Each transferor must have the right to sever all or a portion of the development rights from a sending property and to sell, trade, and/or barter all or a portion of those development rights to a transferee consistent with the purposes of [the](#) County Code so long as the requirements of subsection (a) of this section are met.
4. Any transfer of development rights under this article only authorizes the use and density transfer as specified in this article. It does not alter or waive the County's Development Construction Standards Manual (DCSM) requirements for any property in the receiving area.
5. No development rights may be transferred from a sending property if those rights are materially restricted from development by covenant, easement, and/or deed restriction.

## Transfer of Development Rights [Strikethrough/underline]

6. Any transfer of development rights must be recorded among the land records of Prince William County, Virginia.
7. No transfer of development rights will be effective until the director has recorded the TDR certificate and its related covenant or permanent conservation easement in the land records of Prince William County, Virginia.
8. The monetary or other value of transferred development rights is ~~completely~~ determined by the seller and buyer.
9. Any proposed transfer of development rights may be initiated only upon application by the property owners of the sending properties of the severed development rights, or of the receiving properties.
10. Development rights from a sending property may be allocated to more than one receiving property and/or transferee.
11. A receiving property and/or transferee without relation to any property may accept development rights from more than one sending property.

### Sec. 32-1100.04. - Sending Properties

1. For the purposes of this ~~chapter~~article, a sending property must be an entire tax parcel or lot that complies with all the requirements of this article. Sending areas may only be located within the ~~R~~rural ~~A~~areas outside of the Development Area as described in the Comprehensive ~~Policy~~ Plan and shown in a "TDR-S" classification on the Long Range Land Use Map. A sending property shall be maintained in a condition that is consistent with the criteria in this section under which the sending was qualified.
2. ~~Qualification of a~~ A sending property must comply with ~~demonstrate that the site contains a public benefit such that the preservation of that benefit by transferring residential development rights to another site is in the public interest, according to~~ all of the following criteria:
  - (a) A sending property must be designated in a sending area on the "TDR-S" sending areas map.
  - (b) A sending property must be at least 20 acres in size.



## Transfer of Development Rights [Strikethrough/underline]

- (c) A sending property must be qualified for development of residential uses without further legislative approval by the Board of County Supervisors.
- 3. If a sending property has any outstanding code violations and/or unpaid taxes, the owner(s) must completely resolve all of these violations, including any required abatement, restoration, and/or payment of penalties or taxes, before the property may be made the subject of a TDR certificate by the planning director or designee.

### Sec. 32-1100.05. - Receiving Properties

- 1. In order for a property in a receiving area to qualify as a receiving property eligible for a transfer of development rights to said property, such property must be:
  - (a) Located in areas designated as receiving areas on the Long-Range Land Use ~~Map~~ of the Comprehensive Plan in one of the following classifications, "TDR-R" or "TDR-D".
  - (b) Served by public sewer and water.
  - (c) Served by state-maintained roads or have the ability to utilize private roads as permitted by the County.
  - (d) Be equal to or less than the maximum allowed dwelling units, as identified in county code sec. 32-1100.06 and sec. 32-1100.07 of this article, which may be transferred to the designated receiving area, inclusive of all other dwelling units that have been transferred through a TDR.
- 2. A receiving property may accept development rights from one or more sending properties, but the units allowed to be transferred to the receiving property may not exceed the maximum applicable dwelling units as specified on the "TDR-R" or "TDR-D" designation of the Long-Range Land Use Map in the Comprehensive Plan.
- ~~3. A property is not eligible as a receiving property if the transfer of development rights to the property would adversely impact regionally or locally significant historical resources, Resource Protection Areas, or naturally sensitive areas as specified in the Comprehensive Plan.~~

## Transfer of Development Rights ~~[Strikethrough/underline]~~

4. Receiving properties shall meet the development standards of the TDR-R or TDR-D, as ~~shown in Tables 1 and 2, set forth in~~ [identified in county code sec. 32-1100.06 and sec. 32-1100.07](#) of this article.
5. Should the governing body choose to designate new receiving areas or amend its designations of receiving areas, the development rights permitted to be attached in the receiving areas shall be determined at the time of designation of new receiving areas and shown on the Long-Range Land Use Map of the Comprehensive Plan.

### Sec. 32-1100.06. - TDR-R Development Standards

1. Receiving properties designated in the TDR-R receiving areas shall meet all development and density standards as set forth in the Conservation Residential, CR-~~1~~ zoning districts of this chapter.

TDR-R Location	Maximum Cumulative Units Received	Zoning Designation	Unit Type
Location A	58	A-1	Single Family
Location B	94	A-1	Single Family

### Sec. 32-1100.07. - TDR-D Development Standards

1. With the exception of the minimum density requirement and unit type allowances, receiving properties designated as TDR-D [on the Long Range Land Use Map of the Comprehensive Plan](#) shall meet the development standards of the Planned Mixed Residential (PMR) per ~~Section 32.306.12,~~ zoning district, [per county code sec. 32.306.12,](#) of this chapter as ~~shown~~ and the following:

TDR-D Location	Maximum Cumulative Units Received	Planned Mixed Residential Designation	Unit Type
Innovation	1,500 Dwelling units	Urban High	Multifamily

## Transfer of Development Rights ~~[Strikethrough/underline]~~

Jurisdictions outside of PWC*	Determined by Receiving Jurisdiction	Determined by Receiving Jurisdiction	Determined by Receiving Jurisdiction
Potomac Mills	1,500 Dwelling Units	Urban High	Multifamily
Potomac Shores	500 Dwelling Units	Urban High	Multifamily
Virginia Gateway	1,500 Dwelling Units	Urban High	Multifamily

\*As permitted by § 15.2-2316.2 Code of Virginia, [subject to the other jurisdiction's agreement](#).

- ~~2. Development of residential units within a TDR-D shall provide recreation and park space at a rate of ¼ acre per 100 dwellings and include a tot lot, internal sidewalk/trails connecting into existing and proposed external sidewalk/trail infrastructure, in addition to either a swimming pool, exercise facilities, sports courts, or other recreation facility as appropriate for the residents as determined by the land developer. Swimming pool and sports courts may be located wholly within the residential development.~~
3. Residential [units](#) may be developed in a mixed-use building.
4. Receiving properties may contain other structures and uses as otherwise allowed in the base zoning district of the receiving properties. The standards set forth in this section shall supersede the base zoning district ~~through the overlay designation~~.

### **Sec. 32-1100.08. - Calculation of Development Rights.**

1. The number of residential development rights that a sending property is eligible to send to a receiving property and/or transferee shall be determined by applying the sending property base density established in this article to the area of the sending property after deducting all the following:
  - (a) Development rights previously transferred in accordance with this article;
  - (b) Development rights previously extinguished or limited as a result of a recorded conservation easement or similar covenant against the property;
  - (c) The number of existing single-family dwellings on the sending property;
  - (d) The amount of any Resource Protection Area, submerged land (i.e., lakes, ponds, streams), floodplains, and steep slopes as determined by Prince William County GIS Data;

## **Transfer of Development Rights [~~Strikethrough~~/underline]**

- (e) The amount of any land contained within easements (including, but not limited to, easements of roads, railroads, electrical transmission lines, gas or petroleum pipelines) in favor of governmental agencies, utilities and nonprofit corporations.
2. If a sending property contains no dwelling units, a development right equal to that for one single-family detached dwelling units must be maintained for the property.
  3. For the purposes of calculating the amount of development rights a sending property can transfer, the square footage or acreage of land contained within a sending property shall be determined by a valid recorded plat or survey, submitted by the applicant property owner that has been prepared and stamped by a land surveyor licensed in the Commonwealth of Virginia.

For the purposes of the transfer of development rights program only, transferrable density shall be determined by the character areas shown on the ~~TDR overlay district map~~ [Rural Character Area Map of the Comprehensive Plan](#) and calculated as follows:

Zoning District and Land Use	Character Area	Maximum Density in Dwelling Units per acre (without TDR)	Maximum Density for Dwelling Units per acre with TDR Transfers
A-1	Agriculture and Forest	1 unit per 10 acres	1 unit per 5 acres
A-1	Estates and Subdivisions	1 unit per 10 acres	1 unit per 3 acres
A-1	Older Lot Enclaves	1 unit per 10 acres	1 unit per 10 acres
A-1	Gateway Corridor	1 unit per 10 acres	1 unit per 10 acres
A-1	Bull Run Mountainside	1 unit per 10 acres	1 unit per 10 acres

4. Any fractions of development rights that result from the calculations in subsection 1 of this section shall not be included in the final determination of total development rights available for transfer.
5. Development rights from one sending property may be allocated to more than one receiving property and/or transferee and one receiving property and/or transferee may accept development rights from more than one sending property.

## Transfer of Development Rights [Strikethrough/underline]

6. The determination of the number of residential development rights a sending property has available for transfer to a receiving property and/or transferee shall be documented in a TDR ~~LETTER OF INTENT~~Letter of Intent to issue a ~~TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE~~Transfer of Development rights Certificate issued by the Director of Planning or their designee, pursuant to the provisions of this article, and shall be considered a final determination, not subject to revision. Such a determination shall be valid only for purposes of the transfer of development rights program and for no other purpose. Any changes to the proposed sending property shall void any issued letters of intent.
7. A sending property transferee may extinguish TDR ~~density~~ development rights, sever and hold TDR density rights, sever and sell TDR density rights, or apply TDR rights to a receiving property in a receiving ~~area~~district in order to obtain approval for development at a residential density greater than would otherwise be allowed on the land in the receiving ~~area~~district, up to the maximum density outlined above.

### **Sec. 32-1100.09. - Transfer of development rights sending property development limitations.**

1. Following the transfer of residential development rights, a sending property that has retained a portion of its development rights may subsequently accommodate remaining residential dwelling units on the sending property consistent with the requirements of the applicable zoning district and all other applicable County Code requirements. A sending property that retains a portion of its development rights may also transfer the remainder of those development rights through the TDR program; provided, however, that fractional development rights must not be transferred.
2. On sending properties with environmental features defined as Resource Protection Area (RPA), the development rights must be severed from the areas outside of the specified environmental features, and any such areas on the sending property that have either hydric soils or steep slopes exceeding twenty-five (25) percent must not be eligible for any consideration regarding the transfer of development rights. If development rights are retained on the sending property, future subdivision and development cannot occur on the areas where any development rights have already been severed and those areas cannot be considered as a portion of any buildable lot.

## **Transfer of Development Rights [Strikethrough/underline]**

3. The limitations in this section must, when development rights are severed from a sending property, be included in a covenant or permanent conservation easement applicable to the sending property which must be recorded in the land records of Prince William County, Virginia. The county attorney must review and approve the covenant or permanent conservation easement as to form and legal sufficiency. A plat must accompany, and be recorded with, the deed delineating and describing the location of the portion of the property to be conserved.
4. Unless otherwise specified in this article, or unless expressly provided in the related covenant or permanent conservation easement, the severance of development rights from a sending property shall not deprive the owner of such sending property of the right to use that portion of the property from which development rights have been severed for any agricultural or forestal uses or structures ~~the County deems appropriate to further the vision of the Rural Area as defined by the Comprehensive Plan.~~

### **Sec. 32-1100.10. - Sending Property Certification.**

1. The Director of Planning or their designee shall be responsible for determining that a proposed sending property meets the qualifications of this article. The Director of Planning or their designee shall render a determination or denial under this subsection within sixty (60) days of the date of submittal of a completed sending property determination application. If the determination is that a property meets the qualifications of this article, the Director of Planning or their designee shall issue the determination in the form of a ~~LETTER OF INTENT~~Letter of Intent to issue a ~~TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE~~Transfer of Development rights Certificate. A ~~LETTER OF INTENT~~Letter of Intent issued under this subsection shall be valid until the development rights are severed and extinguished through the transfer process, or unless applicable zoning changes are approved that would affect the sending property, or unless the property is developed.
2. Determinations of sending property qualifications under this article are appealable to the Board of Zoning Appeals, as provided by law, by filing a notice of appeal with the Director of Planning or their designee within thirty (30) days of the date of the determination.
3. The Director of Planning shall be responsible for maintaining permanent records of action taken pursuant to the transfer of development rights program under this Article including records of letters of intent issued, certificates issued, deed restrictions and covenants known

## Transfer of Development Rights [~~Strikethrough~~/underline]

to be recorded, and development rights retired, otherwise extinguished, or transferred to specific properties and/or transferees.

4. Responsibility for preparing a completed application for a determination that a proposed sending property meets the qualifications of this article rests exclusively with the applicant/property owner. An application for a transfer of development rights to issue a transfer of development rights ~~LETTER OF INTENT~~Letter of Intent shall contain:
  - (a) A certificate of title for the sending property dated no more than thirty (30) days before the date that a complete TDR application is submitted; said certificate to be prepared by an attorney admitted to practice law in the Commonwealth of Virginia;
  - (b) Five (5) copies of a valid recorded plat or survey of the proposed sending parcel and a legal description of the sending property prepared by a land surveyor licensed in the Commonwealth of Virginia;
  - (c) A plan showing the area of request and existing and proposed dwelling units and any areas already subject to a conservation easement or other similar encumbrance;
  - (d) A completed density calculation worksheet for estimating the number of available development rights;
  - (e) The application fee as ~~set forth in the County Code~~established by the Board of County Supervisors; and
  - (f) Such additional information required by the Director of Planning or their designee as necessary to determine the number of development rights that qualify for transfer.
5. A transfer of development rights ~~LETTER OF INTENT~~Letter of Intent issued by the Director of Planning or their designee shall state the following information:
  - (a) The name of the transferor;
  - (b) The name of the transferee, if then known;
  - (c) A legal description of the sending property on which the calculation of development rights is based;
  - (d) A statement of the size, in acres, of the sending property on which the calculation of development rights is based;
  - (e) A statement of the number of development rights, stated in terms of number of dwelling units, eligible for transfer;

## Transfer of Development Rights [~~Strikethrough~~/underline]

- (f) If only a portion of the total development rights are being transferred from the sending property, a statement of the number of remaining development rights, stated in terms of number of dwelling units, remaining on the sending property;
  - (g) The date of issuance;
  - (h) The signature of the Director of Planning or their designee; and
  - (i) A serial number assigned by the Director of Planning or their designee.
6. No transfer of development rights under this ~~ordinance~~-article shall be recognized by Prince William County as valid unless the instrument of transfer contains the transfer of development rights certificate issued under this section.

### Sec. 32-1100.11. - Instruments of Transfer

1. Upon receipt of a determination of development rights document for a sending property, the TDR applicant may request the planning director or designee to issue a TDR certificate to sever all or some of the development rights from the sending property that is the subject of the application. If such an applicant wishes to transfer development rights, the applicant must request a TDR certificate in writing from the planning director or designee and file with the planning director or designee a covenant to which Prince William County is a party and that restricts the development of the sending property to the extent the applicant desires to sever and extinguish development rights from the sending property for the purpose of transferring those development rights to a receiving property or a transferee without regard to a particular property.
2. Upon receipt from an applicant of a request for the issuance of a TDR certificate, the planning director or designee must determine whether his decision to issue a determination of development rights document has been appealed to the board of zoning appeals (BZA). If the planning director or designee's decision to issue a determination of development rights document to an applicant has been appealed to the BZA, then the planning director or designee must withhold the issuance of a TDR certificate to that applicant until the issues raised in that appeal have been finally decided by the BZA and/or the courts.
3. If the planning director or designee's decision to issue a determination of development rights document to an applicant has not been appealed to the BZA, then the planning



## Transfer of Development Rights [Strikethrough/underline]

director or designee must proceed with the issuance of a TDR certificate. In this regard, the planning director or designee must submit the covenant filed by the applicant to the county attorney for approval as to form and legal sufficiency. If the county attorney reviews the covenant and approves it as to form and legal sufficiency, the planning director or designee must prepare and record the TDR certificate and the related covenant(s) in the land records of Prince William County, Virginia, and must provide a copy to the ~~commissioner of the revenue~~ finance director. Upon such recordation, the development rights that are the subject of the TDR certificate must be deemed severed and extinguished from the sending property, and the director must notify the applicant of the applicable deed book, page number, instrument number, and plat book where the recorded documents may be found in the land records.

4. The instruments recorded for the purpose of transferring development rights must comply with the requirements of this section and must consist of the following:
  - (a) The names of the transferor and the transferee;
  - (b) The number of residential development rights that are being transferred;
  - (c) A legal description and plat of the sending property prepared and certified by an engineer or land surveyor licensed in the Commonwealth of Virginia;
  - (d) The TDR certificate(s);
  - (e) A plat showing the portion of the sending property that is restricted from development as a result of the transfer of development rights;
  - (f) A covenant(s) to which the county is a party, approved by the county attorney as to form and legal sufficiency, specifying the number of development rights severed from the sending property and the number of development rights remaining on the sending property, and stating that the sending property may not be subdivided or developed to a greater density than permitted by the development rights remaining on the sending property;

## **Transfer of Development Rights [Strikethrough/underline]**

- (g) A covenant that the transferor grants and assigns to the transferee, its heirs, assigns, and successors, a specified number of development rights from the sending property to a receiving property and/or a transferee without relation to any particular property;
  - (h) A covenant by which the transferor acknowledges that he has no further use or right to use the development rights being transferred; and
  - (i) A covenant that all provisions of the TDR certificate and related covenants must run with and bind the sending property in perpetuity and may be enforced by the county.
5. The covenants recorded as part of instruments transferring development rights must be endorsed and approved by all lien holders.
  6. The instruments of transfer of development rights must be recorded prior to the approval of any development permits for the receiving property, including, but not limited to, building permits.

### **Sec. 32-1100.12. - Transfer process.**

Development rights must be transferred using the following processes:

1. Following the issuance of a determination of development rights document, and the filing by the applicant of a request for a TDR certificate with all other required documents and information, and compliance with all other provisions of this Article, the [planning](#) director [or designee](#) issues a TDR certificate agreeing to a transfer of development rights in exchange for the required covenant(s), to which the county is a party, restricting development on the sending property.
2. The applicant at whose request a determination of development rights document has been issued may, if all other requirements of this article are satisfied, request that the [planning](#) director [or designee](#) issue the TDR certificate to said applicant or to another person or legal entity specified by the applicant, who may transfer those development rights to an eligible receiving property or may hold those development rights without relation to any particular property.

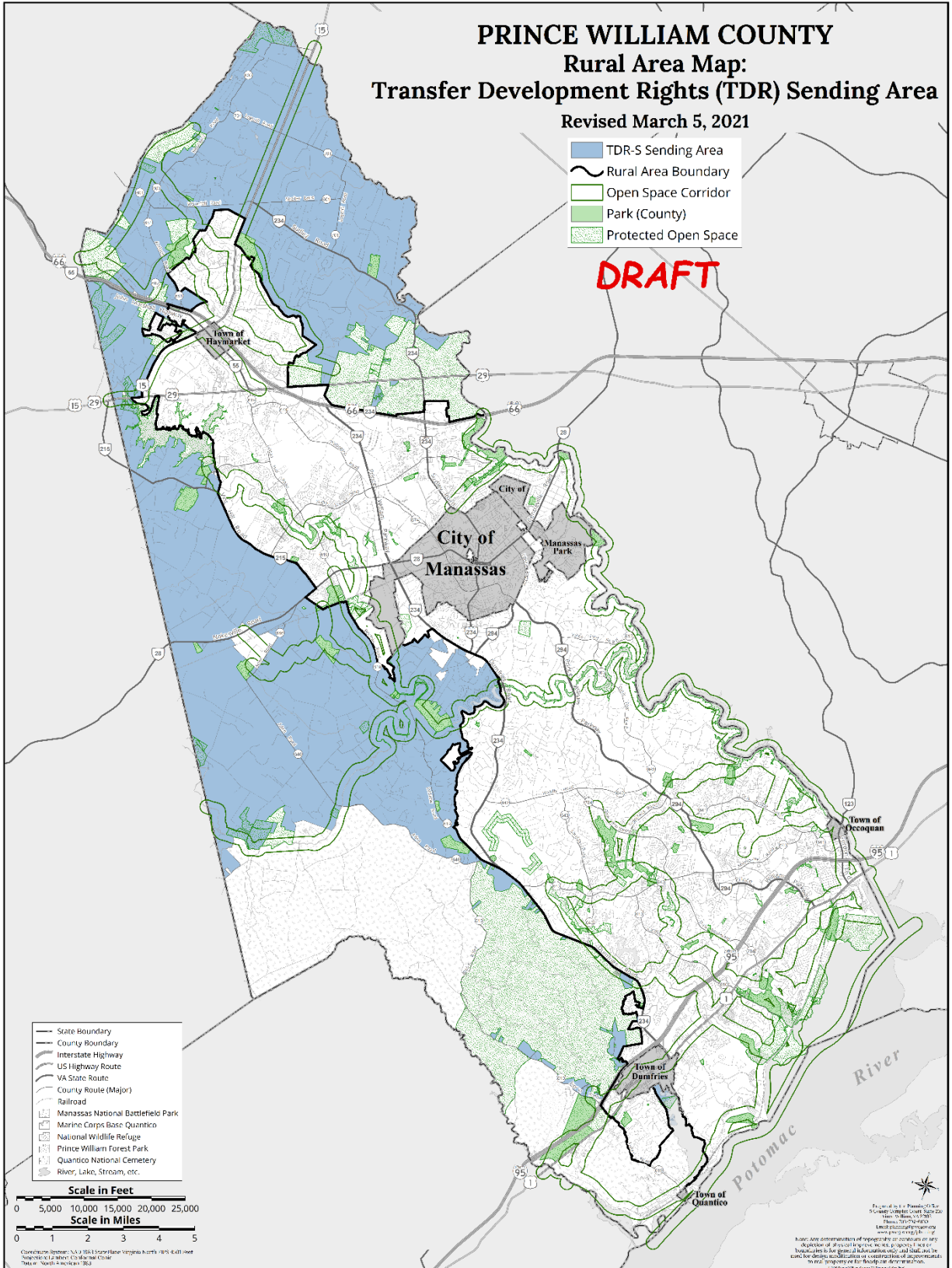
## Transfer of Development Rights ~~[Strikethrough/underline]~~

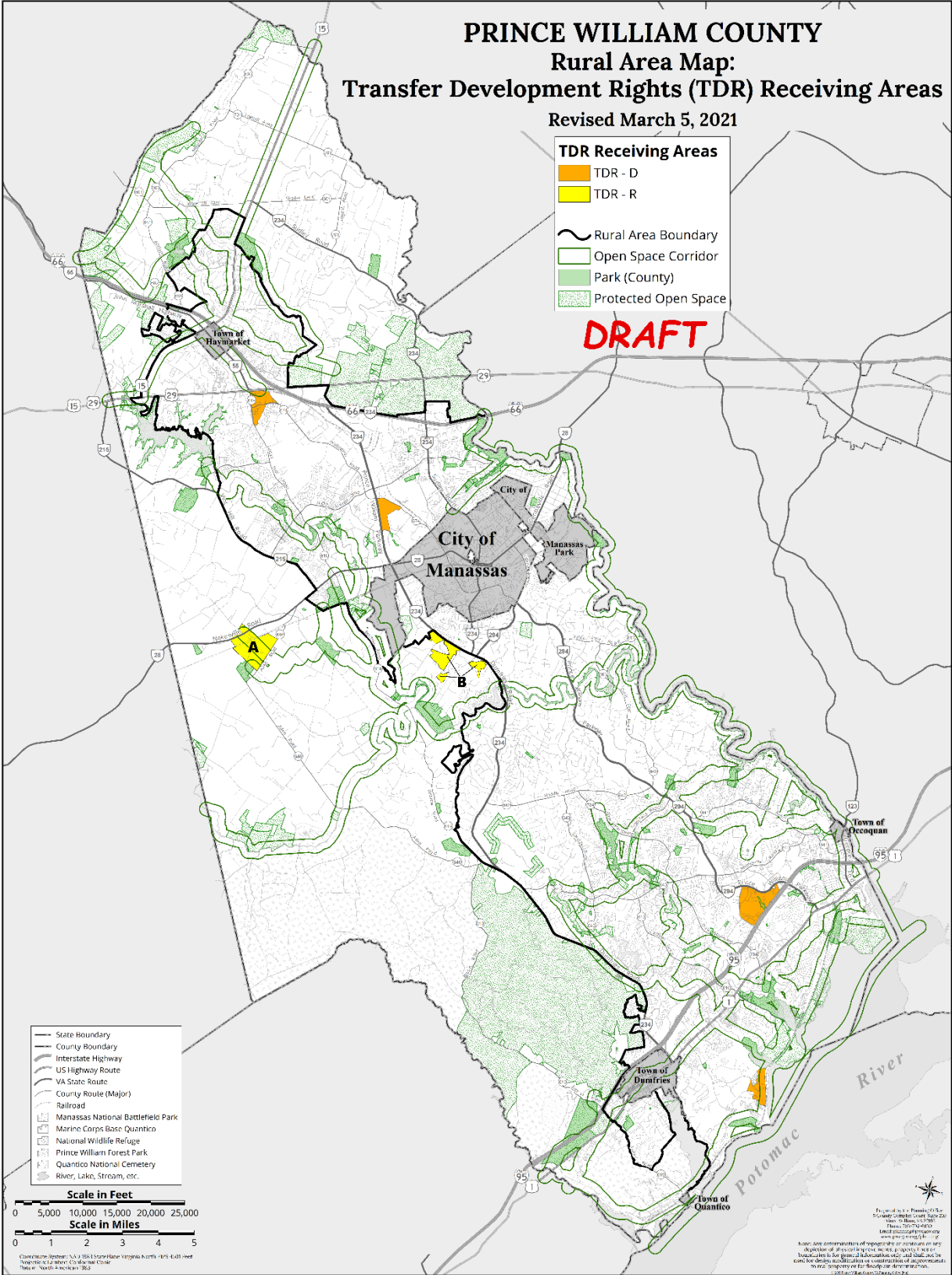
3. The owner of development rights severed from a sending property may transfer those rights to a receiving property or to another person, who may hold those development rights without relation to any particular property. In applying for the transfer of development rights to a receiving property or a transferee without relation to any particular property, the applicant must provide the director with the following:
  - (a) A TDR certificate issued in the name of the applicant or another person or legal entity and an option to purchase the development rights covered by the certificate signed by the applicant and the owner(s) of the receiving property or to a transferee without relation to any particular property; and
  - (b) Proof satisfactory to the [planning](#) director [or designee](#) that there are no delinquent taxes or penalties owed on the development rights being transferred.
4. If development rights that are the subject of a TDR certificate are transferred to another person or legal entity who wishes to hold those rights without relation to any particular property, the [planning](#) director [or designee](#) must invalidate, in whole or in part, the TDR certificate that created those rights, and must issue a new TDR certificate in the name of the new owner of those rights. The [planning](#) director [or designee](#) records the new TDR certificate in the land records of Prince William County, Virginia, upon payment to the [planning](#) director [or designee](#) of any applicable fees by the party requesting the transfer of development rights.
  - (a) If development rights that are the subject of a TDR certificate are approved by the [planning](#) director [or designee](#) to attach to a receiving property, then the [planning](#) director [or designee](#) must invalidate in perpetuity, in whole or in part, the TDR certificate that created those rights to the extent those rights are transferred to the receiving property.
  - (b) Development rights from a sending property must be considered severed and extinguished from the sending property and transferred to a receiving property or a transferee without relation to any particular property when the director records the TDR certificate and the applicable covenant(s) to which the county is a party and any other required documents in the land records of Prince William County, Virginia.

## Transfer of Development Rights [Strikethrough/underline]

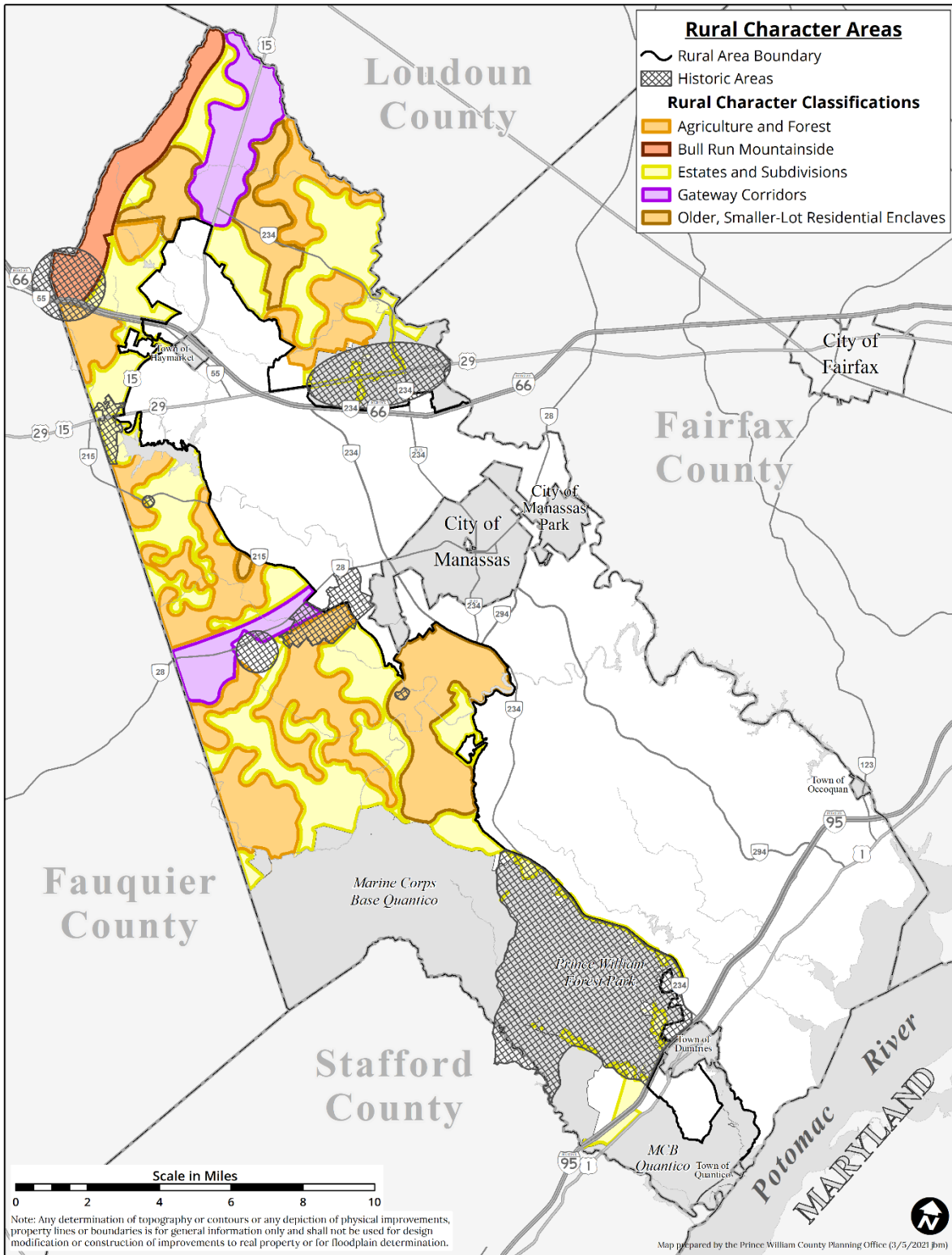
### Sec. 32-1100.13. - Development approval procedures.

1. A request to utilize transferred development rights on an eligible receiving property must be in the form of a subdivision plan or final site plan submitted to the Department of Development Services in accordance with the requirements of Chapter 32 Article VIII and Chapter 25 of the County Code and meeting all development standards of this article. ~~P~~rior to approval of such plan, the applicant must provide the planning director or designee proof that the transfer of the development rights has been completed.
2. A final recorded plat for a subdivision or site plan using transferred development rights must contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance.





# Rural Character Area Map



**Long-Range Land Use**

The Transfer of Development Rights (TDR) Program is a zoning tool Intended to implement multiple policies and action strategies in #CPA2018-00009, Rural Area Plan. (LR Policy 1, 2, and 3) TDR relocate residential development rights from areas that may not be best suited for residential development and transfers them to areas identified as appropriate for increased residential density. The TDR ordinance incentivizes this transfer of development rights by providing a density multiplier for severed development rights. This will lead to an overall increase in the total units that could be built by right in the county, however this will locate dwelling units closer to infrastructure in areas already intended for growth.

Transfers of development rights are a by-right process and will not require Board action to approve.

The following table summarizes the maximum potential changes in residential development in the TDR Sending areas and the TDR Receiving Areas:

<b>TDR Sending Areas</b>					
	Total Potential Acreage to be Developed	Potential Protected Open Space Acreage	Remaining Acreage to be Developed	Severable By-Right Dwelling units	Maximum Transferable Development Rights
Agricultural and Forest	13,821	11,741	2,080	1,154	2,252
Estates and Subdivisions	4,256	2,926	1,330	349	985
Bull Run Mountainside	411	351	60	36	33
Gateway Corridors	3,811	3,291	520	333	307
Older, Smaller Lot Residential Enclaves	872	532	340	34	28
<b>Total</b>	<b>23,171</b>	<b>18,841</b>	<b>4,330</b>	<b>1,906</b>	<b>3,605</b>

\*As of July 2019



<b>TDR-Rural Receiving Area</b>					
	Total Potential Acreage to be Developed	Potential Protected Open Space Acreage	Remaining Acreage to be Developed	By-Right Dwelling units	Maximum Transferable Development Rights
Area A	174	104	70	17	58
Area B	282	169	113	28	94
Total	456	273	182	45	152

\*As of July 2019

### **Environment**

The TDR-D, Transfer of Development Rights-Development Area Receiving Areas enables the transfer of over 1,500 by-right single family detached dwelling units out of the Rural Area and into areas already developed and places a permanent conservation easement on those properties in the Rural Area. The TDR-R, Transfer of Development Rights-Rural Area Receiving Areas enables the transfer of 152 dwelling units to other areas located in the rural area but establishes a higher level of development standards, including development standards requiring the permanent protection of 60% open space. Adoption and implementation of the TDR program will help to achieve numerous existing Comprehensive Plan Policy Goals: Open Space Policy 4, Open Space Policy 5, and Environment Policy 3.

### **Sanitary Sewer**

PS 1.1 Extension of public sewer in the TDR-R areas are permitted through an approved TDR process.

Individual applicants will be responsible to bear the cost of onsite and offsite public sewer improvements necessary to their proposed developments and will be required to pay any and all fees associated with those connections.

### **Schools**

Direct impacts to the TDR program are a net negative in overall student enrollment. This net change is facilitated by the change in unit type. The student generation factors provided by the Prince William County School Division (PWCS) show a lower generation rate for multi-family dwelling unit when compared to single family detached dwelling units. A marginal increase in the projection elementary students is also related to the change in unit type. The 2020-21 Office Student Enrollment documents produced by PWCS show the only available existing capacity in the school system in at the elementary school level.

Potential Level of Service Impact						
		Severable By-Right Single Family Detached	Tansferred Rural Single Family Detached	Transferred Multi-Family	Total Transferred	Net Change
Dwelling Units Generated		1,906	152	3,453	3,605	+1,699
Students Generated	ES	534	43	580	623	+89
	MS	298	24	249	273	-25
	HS	410	33	282	315	-95
	Total	1,242	100	1,111	1,211	-31
Percentage of School Facility Needed	ES	58%	5%	63%	67%	+10%
	MS	20%	2%	17%	19%	-2%
	HS	16%	1%	11%	12%	-4%

\*As of July 2019

### Rural Area Plan Policies/Tools

The Rural Area Plan policies and tools are connected and interdependent. No individual policy can achieve the overall goals of the Rural Area Plan. The Rural Area Plan provides a suite of tools to help implement and achieve the policies of the the Rural Area Plan.

Should the Planning Commission wish to recommend, in part, the adoption of the Rural Area Policies, Staff has provided guidance on how the policies are linked, interconnected, and dependent on one another.

As currently drafted adoption of #DPA2017-00008, Transfer of Development Rights requires the adoption of #CPA2018-00009, Rural Area Plan and #DPA2017-00009, Conservation Residential. #CPA2018-00009, Rural Area Plan provides a designated sending and receiving areas as required by state code for a TDR program. #DPA2017-00009, Conservation Residential is required for the implementation of the TDR-R receiving area. As drafted, the TDR-R receiving areas development standard is the CR-1 zoning district which will be established if #DPA2017-00009, Conservation Residential, is approved by the Board.

## BOCS Initiating Resolution

**MOTION: PRINCIPI**

**September 20, 2016  
Regular Meeting  
Res. No. 16-731**

**SECOND: NOHE**

**RE: INITIATE A ZONING TEXT AMENDMENT TO CREATE A  
TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**

**ACTION: APPROVED**

**WHEREAS**, in accordance with Sections 15.2-2285 and 15.2-2286 of the Code of Virginia, Ann., the Board of County Supervisors may amend the Zoning Ordinance whenever it determines that public necessity, convenience, general welfare, and good zoning practice require such change; and

**WHEREAS**, in 1998, Prince William County's Comprehensive Plan was amended as such that the County was divided into two main areas: the Development Area and the Rural Area (also known as the Rural Crescent); and

**WHEREAS**, the Prince William County Rural Preservation Study was completed in 2014, the purpose of this study was to be able to review the County's current preservation policies, to determine the effectiveness of these policies, and to provide the Board of County Supervisors with recommendations on how to improve the County's land use planning policies in relation to preserving open spaces; and

**WHEREAS**, on July 8, 2014, Supervisor Nohe (DIR 14-82) requested that staff provide additional information regarding implementation of the Rural Preservation Study, review the Zoning Ordinance to look for opportunities to eliminate barriers or create new incentives for more rural economic development, look for remedies for farmers who raise and slaughter livestock specifically for religious events, and further investigate opportunities to purchase property development rights and how that relates to other elements of the Study's recommendations; and

**WHEREAS**, rural preservation is important in Prince William County to address loss of farmland, reduce sprawl and focus growth in the development area, encourage environmental preservation, protect the Prince William Forest and Manassas National Battlefield Park, protect Marine Corps Base Quantico's training mission, and protect historic and cultural resources; and

**WHEREAS**, the amendment would allow transfer of development rights in the County to allow the creation of a market in development credits for the purpose of permanently protecting the land from being developed. The County gives development credits to landowners in a designated sending area from which the development credits will be sent and the land is preserved by a deed of easement (conservation easement). The development credits can be purchased by developers and landowners for use in designated receiving areas, and proposed developments are allowed to be built at a higher than normal density; and

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**WHEREAS**, this resolution will authorize the staff time and resources necessary for research, analysis and to conduct public hearings with the Planning Commission and the Board of County Supervisors; and

**WHEREAS**, amending the Zoning Ordinance for the above-referenced issue is required by public necessity, convenience, general welfare and good zoning practice, and is consistent with Section 15.2-2283 of the Code of Virginia, Ann.;

**NOW, THEREFORE, BE IT RESOLVED** that the Prince William Board of County Supervisors does hereby initiate an amendment to the Prince William County Zoning Ordinance to create a Transfer of Development Rights Program.

**Notes:**  
**Ayes:** Anderson, Caddigan, Jenkins, Lawson, Nohe, Principi, Stewart  
**Nays:** None  
**Absent from Vote:** None  
**Absent from Meeting:** Candland

**For Information:**  
Planning Director  
County Attorney

ATTEST: \_\_\_\_\_  
*Phillip J. Campbell*  
Clerk to the Board