

MOTION:

**May 4, 2021
Regular Meeting
Ord. No. 21-**

SECOND:

RE: ZONING TEXT AMENDMENT #DPA2017-00008 TRANSFER OF DEVELOPMENT RIGHTS – COUNTYWIDE

ACTION:

WHEREAS, on September 20, 2016, the Prince William Board of County Supervisors (Board) in Resolution Number (Res. No.) 16-731 initiated an amendment to the Zoning Ordinance to create a Transfer of Development Rights (TDR) Program; and

WHEREAS, this zoning text amendment would allow the transfer of residential density from eligible sending areas within the Rural Area to eligible receiving areas transferred through a voluntary process for permanently conserving agricultural and forestry uses of lands and preserving rural open spaces, and natural and scenic resources; and

WHEREAS, on June 24, July 30, and September 24, 2019, the Planning Office held public meetings to discuss a Transfer of Development Rights (TDR) Program as well as other recommendations from the Rural Area Study; and

WHEREAS, on October 23, 2019, November 13, 2019, and December 2, 2020, the Planning Commission held work sessions for the Transfer of Development Rights Program at which the zoning text amendment was available for review and input; and

WHEREAS, the Prince William County Planning Commission held a public hearing on the Zoning Text Amendment on March 17, 2021, recommending denial as stated in Res No. 21-031; and

WHEREAS, the Board duly ordered, advertised, and held a public hearing on May 4, 2021, at which time all interested members of the public were heard and the merits of the above-referenced zoning text amendment were considered; 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 ORDAINED that the Prince William Board of County Supervisors hereby adopts Zoning Text Amendment #DPA2017-00008, Transfer of Development Rights.

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ATTACHMENT: Text Amendment

Votes:

Ayes:

Nays:

Absent from Vote:

Absent from Meeting:

ATTEST: _____

Clerk to the Board

Prince William County Conservation Residential District

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.

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

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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/or 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 1(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.
6. Any transfer of development rights must be recorded among the land records of Prince William County, Virginia.

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7. No transfer of development rights will be effective until the Planning Director or their designee 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 property was qualified as a sending property.
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, 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 their designee.

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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, 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 Board of County Supervisors 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 the new or amended 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 CR-3 and CR-5, Conservation Residential, zoning districts.

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<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 PMR, Planned Mixed Residential, zoning district, pursuant to 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>Multi-family</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>Multi-family</u>
<u>Potomac Shores</u>	<u>500 Dwelling Units</u>	<u>Urban High</u>	<u>Multi-family</u>
<u>Virginia Gateway</u>	<u>1,500 Dwelling Units</u>	<u>Urban High</u>	<u>Multi-family</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.
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 district standards.

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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 easement or covenant on/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; and
 - (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:

<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>

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<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 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 development 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 in this section.

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 base 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

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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 percent (25%) 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.

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. A letter of intent issued under this subsection shall be valid until the development rights are severed and extinguished through

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- 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 or their designee 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, TDR 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;
 - (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;

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- (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 their 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 their designee and file with the planning director or their 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 their 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 their designee's decision to issue a determination

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of development rights document to an applicant has been appealed to the BZA, then the planning director or their 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 their 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 their designee must submit the covenant or conservation easement filed by the applicant to the county attorney for approval as to form and legal sufficiency. If the county attorney reviews the covenant or conservation easement and approves it as to form and legal sufficiency, the planning director or their designee must prepare and record the TDR certificate and the related covenant(s) or conservation easement(s) in the land records of Prince William County, Virginia, and must provide a copy to the finance director or their designee.. 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 planning director or their designee must notify the applicant of the applicable deed book, page number, instrument number, and/or plat book where the recorded documents may be found in the county 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;

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- (f) A covenant(s) to which the county or a qualified "holder" 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:

- 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 their designee issues a TDR certificate agreeing to a transfer of development rights in exchange for the required covenant(s), to which the county or a qualified holder 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

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director or their 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 planning director or their designee 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 their 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 development rights without relation to any particular property, the planning director or their 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 development rights. The planning director or their designee records the new TDR certificate in the land records of Prince William County, Virginia, upon payment to the planning director or their 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 their designee to attach to a receiving property, then the planning director or their 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.

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- (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 planning director or their designee records the TDR certificate and the applicable covenant(s) to which the county or a qualified holder 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 their 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 base zoning classification of the property, the number of development rights used, and a notation of the recordation of the transfer/conveyance.