

**BOARD OF SUPERVISORS
BUSINESS MEETING
BOARD MEMBER INITIATIVE**

SUBJECT: Transfer of Development Rights Program

ELECTION DISTRICTS: Countywide

STAFF CONTACTS: Stacy Carey, Chief of Staff to Supervisor Geary Higgins
Shevaun Hochstetler, Chief of Staff to Supervisor Tony
Buffington

PURPOSE: To direct staff to develop an information item related to the establishment of a voluntary, market driven Transfer of Development Rights (TDR) program for Loudoun County and to bring the information item to a future Transportation and Land Use Committee for further discussion.

RECOMMENDATION: Supervisor Higgins and Supervisor Buffington recommend that the Board of Supervisors direct staff to develop an information item related the establishment of a Transfer of Development Rights (TDR) program for Loudoun County including answers to the questions and issues outlined in the issues section and to bring the information item to a future Transportation and Land Use Committee for discussion.

BACKGROUND: First established in 2006 by the General Assembly [Virginia Code 15.2-2316.2](#) and [Virginia Code 15.2-2316.1](#) permits a locality by ordinance to establish procedures, methods, and standards for an ordinance for the Transfer of Development Rights (TDR) within its jurisdiction.

TDR programs are a market-based land preservation tool, which afford localities the opportunity to encourage protection of rural lands and open space through the use of private rather than public funds. TDRs create a private marketplace for development rights that does not require government funds. The program involves the severance of development rights from a “sending” property and the transfer of such rights to a “receiving” property, which typically is located in an area targeted for growth that has access to existing public amenities or services, such as roads, water and sewer. The receiving property may either be residential, to gain higher density, or commercial or industrial, for rezoning or to attain a higher FAR. The purchase of TDRs may serve as part of a proffer condition for rezoning to uses contemplated by the Loudoun 2040 Comprehensive Plan or otherwise deemed desirable by the Board of Supervisors. Likewise, the sending property can continue to be used in its current state, subject to an open-space easement restricting its development.

Benefits of the program are the preservation of land and open space in the Rural Policy Area for rural economy uses, farmland, wetlands, and open space while adding development rights to certain areas where the Board of Supervisors concludes that additional density is desirable.

ISSUES: Supervisor Higgins and Supervisor Buffington present the following issues for staff to address in the future information item at the Transportation and Land Use Committee:

1. [Frederick County TDR Program](#)– Frederick County established a voluntary, incentive-based, market driven land preservation TDR program in 2010 (revised in 2013). The program is currently active. Approximately 80 units have been designated as sending and receiving areas under the program. A number of applications have been received to sever development rights. Applications are currently pending under the program. Frederick County does not provide a TDR bank for the program. Instead the County keeps a list of all recorded properties. What is the feasibility of adopting an ordinance/process for Loudoun County that is similar to Frederick County?
2. [Sending and Receiving Areas](#) – Under a TDR program development rights are transferred from one parcel to another parcel. These parcels are referred to as a sending property and as a receiving property. The transfer of development rights protects the sending parcel from further development while allowing the receiving parcel to increase density in the form of more building area, more units or a combination of both. TDRs can apply to residential, industrial or commercial development. Can a Loudoun County TDR program specifically designate sending and receiving properties to assure that only appropriate parcels are designated as sending properties for preservation and appropriate parcels are designated as receiving properties? What criteria does Frederick County use for sending and receiving properties? What criteria would be appropriate for determining a sending area and a receiving area in Loudoun County?
3. [TDR Bank](#) - A TDR bank is an entity operated by a local jurisdiction, regional government, or private nonprofit organization for the purpose of buying, selling, and holding development rights for facilitating private TDR transactions. By providing a single point of contact, a TDR bank can streamline the process for buyers and sellers of development rights.¹ Frederick County operates its program without a TDR bank but keeps a list of all recorded available sending and receiving properties. Is it feasible to create a Loudoun County TDR program that functions without a TDR bank similar to Frederick County? Are there advantages or disadvantages to creating or enabling a TDR bank?
4. [Easement Holder](#) – When a landowner (sending property) sells TDRs a permanent open-space easement is placed on the land. Easements could be held by Loudoun County or by designated land trusts (Virginia Outdoors Foundation, the Land Trust of Virginia or Old Dominion Land Conservancy). A third party holder would allow the County to avoid the cost of monitoring protected properties for compliance with the terms of the easements. The County currently holds conservation easements proffered as a condition of development approvals. [The Loudoun County Conservation Easement Stewardship Program](#), administered by the Loudoun County Office of Mapping, was established to work with owners of property with conservation easements to ensure that the terms of the easements continue to be met. Would the designated land trusts operating in Loudoun be willing to hold these easements? What are the impacts (positive or negative) of holding TDR open-space easements under the current Conservation Easement Stewardship Program?

5. Proffer Impacts – Generally, commercial and residential development attributed to TDRs are able to have monetary proffers reduced by the cost of TDRs. Is this feasible for a Loudoun County TDR program? How would implementation of a TDR program affect the County’s ability to accept proffers in the TDR Receiving Area?
6. County-City Boundaries – Virginia’s statewide enabling legislation was amended in 2007 to allow TDRs to cross county-city boundaries thereby recognizing the independence between cities and counties. Cross jurisdictional issues complicated the TDR policy discussion between James City County and the City of Williamsburg and between Albemarle County and the City of Charlottesville. However, Frederick County, which surrounds the City of Winchester was successfully able to adopt a TDR ordinance. Are cross jurisdictional issues a concern for a Loudoun County TDR program? How did Frederick County address this issue with the City of Winchester when establishing their ordinance?
7. Comprehensive Plan – The Virginia enabling statute, [Virginia Code 15.2-2316.1](#), defines permitted sending and receiving areas as those “areas identified by an ordinance and designated by the comprehensive plan,” suggesting that the sending and receiving areas have to be at least “designated” in the comprehensive plan. In addition to this provision are there any other interactions or requirements between a TDR program and Loudoun’s Comprehensive Plan?

FISCAL IMPACT: The information item for the Transportation and Land Use Committee can be prepared with existing staff resources.

DRAFT MOTIONS:

1. I move that the Board of Supervisors direct staff to develop an information item related to the feasibility of establishing a Transfer of Development Rights (TDR) program for Loudoun County including discussion on issues outlined in the issues section and to bring the information item to a future Transportation and Land Use Committee for further discussion.

OR

2. I move an alternate motion.

ATTACHMENTS: (Linked Web Pages)

1. [Transfer of Development Rights Overview – Frederick County, Virginia](#)
2. [Transfer of Development Rights Program -Frederick County, Virginia](#)
3. [Transfer of Development Rights Process -Frederick County, Virginia](#)
4. [Transfer of Development Rights Ordinance -Frederick County, Virginia](#)
5. [Transfer of Development Rights Application -Frederick County, Virginia](#)
6. [Transfer of Development Rights Fee Schedule – Frederick County, Virginia](#)

ⁱ The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs, Arthur C. Nelson, Rick Pruetz and Doug Woodruff, 2012, p.286