

Unified Development Code (UDC) – Article 7
Transfer of Development Rights

- Requires a plan to describe and depict the transfer of development rights
 - Establishes permitted densities and number of available development rights
 - Creates a conservation easement on the sending parcel
- Transfer must be between noncontiguous properties
- The properties must be within the same planning district – State Law (Quality of Life Act amendments – S.B. 116). Currently it is not possible to shift density from SNNC to areas north of the canal
- Transfers cannot be from S-zoned properties to SR-zoned properties
- Permitted densities for the receiving parcel within the S-zoning district range from 1.86 to 2.25 du's per acre with open space requirements ranging from 35% to 50%
- Additional bonuses are available for transfers from SR-zoned properties to S-zoned properties – depending on the soil types on the sending parcel – to a maximum of 2 du's per development right
- For historic preservation, development rights may be transferred between any zoning district
- TIS would be required to examine the total density of the receiving parcel after the transfer

Literature Summary

- Policy should require TDRs to increase density in the receiving areas
 - must be a market for the higher density
 - must have adequate infrastructure
 - by-right base density should be lower than the demand

- Downzoning sending areas
 - minimum of 1 to 20
 - protects land and may create a greater demand in the sending areas
 - reduce base zoning below market demand in the sending area
 - rural zoning districts
 - reduce development pressures and sprawl development
 - positives
 - sending area is preserved
 - provides the incentive to transfer development rights
 - negative
 - will the fair market value of land (prior to downzoning) decrease

- TDR without downzoning:
 - provide an incentive to developers to use (TDR) by providing a density bonus in the receiving area
 - negatives
 - farmers may simply choose to develop their land instead of transferring development rights
 - participation may be fragmented – no way to guarantee that a large (contiguous) area is to be preserved
 - too much of a density increase may result in a particular receiving area
 - positive
 - less controversial because it does not involve downzoning

- Sending Areas
 - Protects agricultural activities
 - Fewer people equals fewer nuisance complaints
 - Can purchase farmland at a lower price once TDRs are sold
 - Should have a critical mass of farm, forest, or resource land
 - Value of development rights and residual land should correspond with total fair market value

- Receiving areas
 - what do developers really want to build - make this option only available through TDR
 - should be major difference in the base and TDR density – incremental increase in density may not provide enough incentive – currently

developers may choose from the higher density development options (by right) that are already offered – consider making these options contingent on TDR

- TDR Bank
 - eases costs and hassle associated with transferring development rights – government assistance
 - maintain record of available and extinguished development rights
 - estimate the value of development rights
 - purchase and/or sell development rights
 - support TDR planning costs
 - require a developer to pay a fee into a fund that can be used for purchasing rights

- Any rezonings that will increase density from that of the current zoning designation should require TDRs

- Sending sites should be protected by conservation easements, not deed restrictions

- Make using TDRs quicker and more predictable than other methods of development

- Receiving areas are only where the county wants development to occur

- Base the number of available TDRs on the gross area of the sending parcel, do not exclude resources

- Eliminate arbitrary rules (i.e. same planning district)

- Also should establish a purchase of development rights (PDR) program

- Cost of development rights must be low enough to encourage receiving area developers to buy, but high enough to encourage farmers (sending area) to sell

- Currently – Why would a developer go to the trouble of buying the rights to one (1) five (5) acre lot in the SR zoning district (sending area) to potentially only develop one (1) additional 12,000 square foot lot in the S zoning district (receiving area)

- Calvert County
 - High TDR bonus density compared to base level density
 - No rezonings to increase density – must use TDR
 - Downzoned receiving areas to increase demand for TDR bonus density
 - 1 du per 20 acres in rural areas

- Montgomery County

- 1 du per 25 acres in the Agricultural Preserve zoning district – agriculture should be the primary land use. This area was previous 1 du per 5 acres and the conversion to Ag. Pres. allows for the transfer of 1 unit for each 5 gross acres. Exemptions for properties less than 25 acres upon the date of the revised zoning
- Determined an estimate of the total number of TDRs available from the sending area before determining extent/density of receiving areas
- Provision for ‘children lots’ effective on the date of the downzoning
- County only determined the sending areas, rate of transfer, and receiving areas. The price for the TDRs is set buy the buyer and seller. Need an excess of receiving areas
- TDRs can be purchased by brokers, developers, investors, farms, ect.
- Can establish TDRs for a property but not sell immediately