TRANSFER OF DEVELOPMENT RIGHTS OVERVIEW

What is a TDR Program?

What is a TDR?

- Land ownership consists of a “bundle of rights” that together make up “fee simple” ownership of property.
- Residential development rights are one of the “sticks” in the bundle.
- Transfer of Development Rights takes the residential density “stick” and separates them from a particular property and allows for its sale and use on a separate property.

What is a TDR?

- Through a TDR Program the separated right(s) become a commodity that can be bought and sold on the open market.
- When a property owner chooses to sever density rights their property can be preserved through a conservation easement or deed restriction (as in the case of Frederick County).
- Property owners *can* retain density rights on their property for future use and the land remains in private ownership.

What is a TDR?

- Rural property owners are able to realize economic returns through the sale of density rights to private developers who are able to build more units within designated urban areas.
- TDR's are a voluntary, incentive-based, and market-driven approach to preserve land and relocate development growth away from rural areas and into urban areas.
- **Most Important: **<u>TDRs use PRIVATE rather than PUBLIC funds to protect land…</u>**

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Virginia State Code

TDR – VA State Code

- Enabled by § 15.2-2316.2 of the Code of Virginia.
- Allows for localities to adopt a TDR Ordinance.
- State Code provides mandatory provisions that must be included in a TDR Ordinance if adopted by a locality.
- The enabling legislation also provides localities with some optional provisions.

Recent Enabling Enhancements

- HB882- Del. Athey
  - Enables localities to include a density bonus in their TDR ordinance.
  - "The development rights permitted to be attached in the receiving areas shall be equal to or greater than the development rights permitted to be severed from the sending areas"

VA Code Mandatory Features

A TDR Ordinance must include:

- Designation one or more sending and receiving area.
- Allowance for the severance of transferable density rights from the sending property.
- Allowance for the purchase/sale/exchange of the density rights.
- Assurance that the sending property will have binding restrictions on future development.

VA Code Mandatory Features

A TDR Ordinance must include:

- Recordation of documents to sever density rights from sending properties.
- Requirement that the sending property owner must submit an application to the locality for the proposed transfer of development rights.
- Outline the permitted uses and the maximum increases in density in the receiving area.
- A map showing sending and receiving areas (map must be in the Comprehensive Plan).

VA Code Mandatory Features

A TDR Ordinance must include:

- Permitted maximum increases in density in the receiving area.
- Number of density rights severed from sending areas must be </= the number of density rights allowed in receiving areas.
  - Example: 1 sending area density right = 2 receiving area density rights.

VA Code Mandatory Features

A TDR Ordinance must include:

- Provide for a system to monitor the severed density rights.
- Identification of parcels inappropriate as receiving areas.
- A locality may not require property owners to sever or transfer development rights as a condition of the development of any property.

VA Code TDR Optional Features

- A localities TDR Ordinance may include:
  - The purchase of <u>all or part</u> of a sending property's density rights.
  - The severance of development rights from zoned/subdivided properties.
  - Allowance for the residential density to be converted to bonus density on the receiving property:
    - Increase in the residential density
    - Increase in the square feet of commercial/industrial uses.

VA Code TDR Optional Features

A localities TDR Ordinance may include:

- The receiving areas to include UDA's.
- The sending properties use to generate one or more forms of renewable energy.
- The sending properties use to produce agricultural or forestal products.
- Tax abatement for up to 25 years for the owner of the development rights.

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How Do TDR’s Work?

How Do TDR's Work?

- Landowner can sell unused development rights on his property (sending property).
  - Permanent easement/covenant restricts future development of that sending property.
- Buyer transfers development rights to other private property in specifically designated areas (receiving areas):
  - Areas that have utilities & services to support higher density growth.
  - Buyer enjoys the financial benefit from more intensive development.
- Buyer can also hold or "bank" density rights for later use.

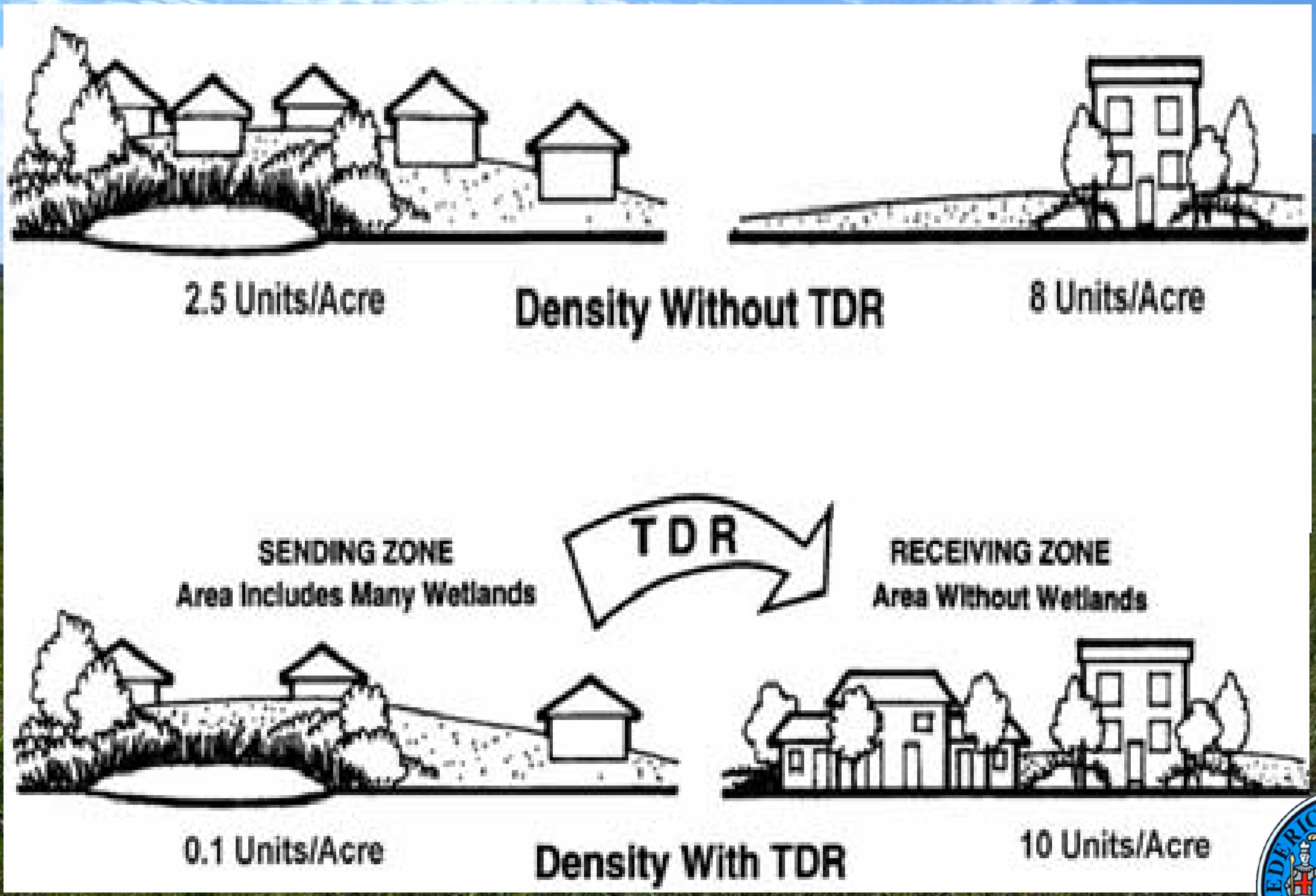
How Do TDR's Work?

- Receiving areas are to be located within the locality's Urban Development Areas (UDAs).
- Adjacent city or town may be designated as the county's receiving area if they revise their zoning ordinance.
- After density rights are severed, sending properties may used to generate renewable energy, or produce agricultural or forestal products.

Tax Impact of TDR's

- Severed development rights are interests in real property and shall be considered as such for purposes of conveyance and taxation.
- Upon severance from the sending property and recordation as a distinct interest in real property, the transferable development right shall be assessed at its fair market value.
- Until attached, severed density rights are assessed at FMV in the same manner as mineral rights
- The assessed value of the sending property is reduced after the density rights are severed – similar to a conservation easement.
- Assessed value of receiving property increased after DRs attached.

TDR Concept



2.5 Units/Acre
Density Without TDR
8 Units/Acre
SENDING ZONE
Area Includes Many Wetlands
TDR
RECEIVING ZONE
Area Without Wetlands
0.1 Units/Acre
Density With TDR
10 Units/Acre

Success Factors for TDR's

- Strong market support:
  - TDRs make economic sense to developers.
  - Demand for higher density development is present.
  - Demand for bonus density.
  - TDRs have sufficient value to sellers & buyers to sustain an active market.
- Strong public support.

Success Factors for TDR's

- Counties can maintain a demand for TDR's by:
  - Downzoning farmland to preserve agricultural & forestal lands.
  - Upzoning developed or developing areas to receive TDRs.
  - Carefully balancing total TDR supply & demand.

Success Factors for TDR's

- County actions that support TDRs:
  - Plans & policies require the use of TDRs for increasing density in receiving areas
  - Bonus density for using TDRs in receiving areas significantly exceeds base zoning density
  - TDRs are combined with other land preservation tools, such as:
    - Ag & Forestal Districts
    - Land Use Taxation
    - PDRs
    - Agricultural Zoning Districts
    - Cluster Zoning

Potential Obstacles to TDR's

- Developing a functioning market is difficult.
- Insufficient demand for additional density in the receiving areas:
  - County tries to force additional density into existing high density areas.
  - Developers already happy with existing density – County already gives sufficient density allowances through cluster zoning and PUD's.
- Outcomes are uncertain.

Potential Obstacles to TDR's

- Receiving areas must allow for increased density by-right:
  - Since no rezoning is involved, county cannot accept cash and/or non-cash proffers on increased density to help provide additional capital facilities.
  - Successful TDR programs in other states are coupled with impact fees.
- Increased by-right density in receiving area can = NIMBY problems.