

Transfer of Development Rights (TDR) Program in Frederick County, VA

Frederick County Department
of Planning and Development



Farmer – Scenario/Issue

- Farmer has good productive farm land.
- Products of the land support his family and lifestyle.
- Desires to continue farming.
- However, unexpected expenses may be experienced:
 - Medical bills, new equipment needed, repairs
 - Needs to pay bills but their money is tied up in the land.



Farmer - Issue

- Often the farmer's land holdings are the sole source of investment, savings, and retirement.
- Traditionally the sale of that land has been the only way to capture necessary funds to pay bills or offset debt.



Farmer - Issue

- If the farmer sells the farm or even portions of it then that land can no longer contribute to his livelihood.
- Farmer may have to find another way to support his family.
- Land may be taken out of agricultural production.



Developer – Scenario/Issue

- Developer seeks to increase the marketability of a piece of land.
- Wants to increase the site's residential density allowance to enable additional units.
- Recognizes the market can support the new residences today.



Developer - Issue

- Developer does not want to go through a lengthy rezoning process or doesn't have time.
- Business plan – may have tight margins that doesn't support additional costs for infrastructure improvements.
 - Off site transportation improvements.
 - Capital facility mitigation.



County - Reality

- County's Comprehensive Plan strives to direct where growth should occur – the urban areas of the community.
- Traditionally the community has seen 30% of its residential units constructed in the rural areas.
- Units constructed in the rural areas create a greater impact; inefficient distribution of demands for county service; unmitigated fiscal impacts.



County - Reality

- Frederick County utilizes an Urban Development Area (UDA):
 - The UDA is the area designated in Frederick County to accommodate higher density residential growth.
 - Additional county services are provided (and with efficiency) within the UDA:
 - Schools, transportation infrastructure, emergency services
 - And most importantly, public water and sewer



Possible Solution

- **Transfer of Development Rights –TDR**
- A single solution that has the potential to address the needs of the farmer, the developer and the County.



Farmer - Solution

- Farmer doesn't want to sell his land.
- A TDR program would allow him to sever the residential density rights from the land and sell them while still maintaining ownership of the actual land.
- Allows the farmer to obtain needed money while still being able to own and farm the land.



Developer – Solution

- The TDR Program would enable him to buy additional residential density rights from the rural areas and transfer them to proposed residential areas within the community.
- Would provide additional units faster than the traditional costly rezoning process:
 - No TIAs.
 - No offsite transportation improvements.
 - No proffers.



County - Solution

- The County would prefer the majority of residential growth to occur in the UDA where public facilities are more readily available.
- The use of TDR's allows residential units to be severed from the rural areas and transferred to the UDA.
- Houses in the rural areas don't pay proffers or provide transportation improvements – therefore relocating houses to the UDA reduces costs to the County.
- This directs growth away from the rural areas and preserves farm land, open spaces, and minimizes the stress on rural resources.



Frederick County, VA

Transfer of Development Rights (TDR) Ordinance



Frederick County, VA

- Location

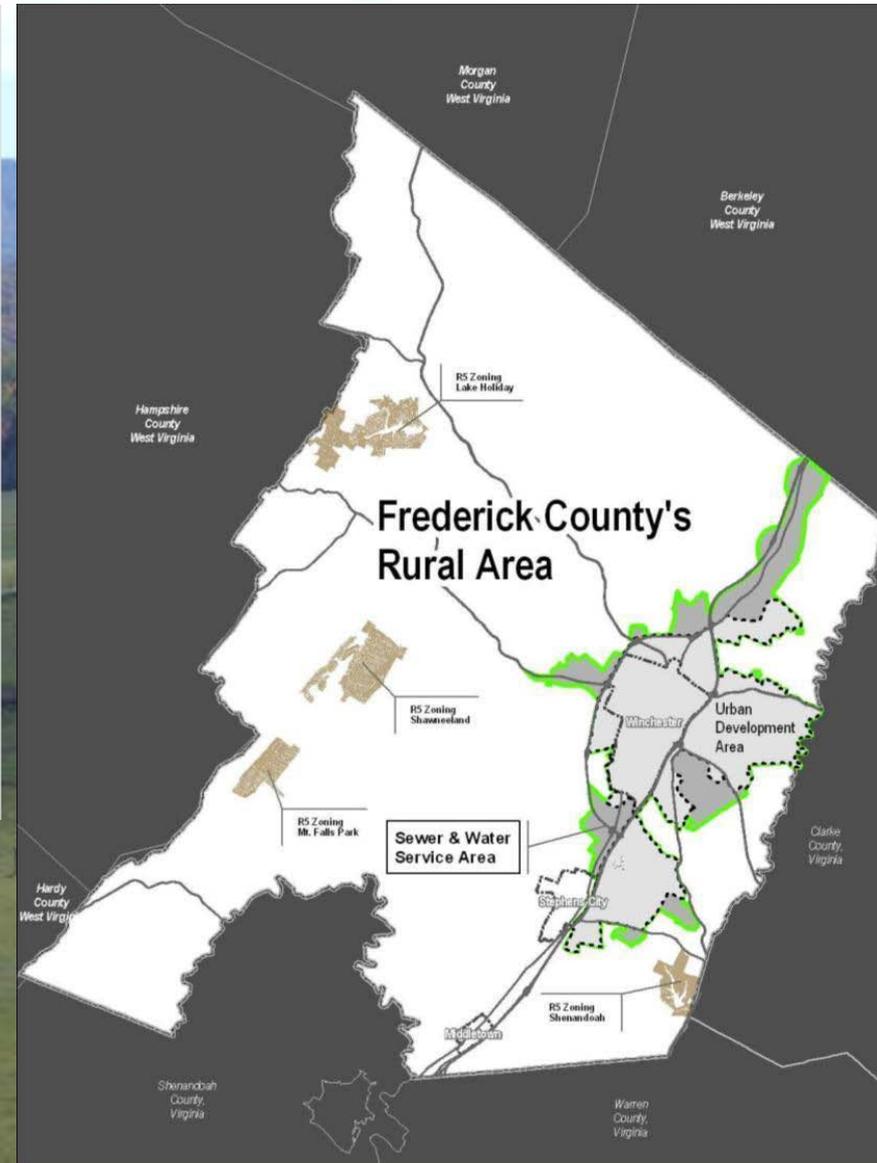


- Land Area – 414.63 square miles
- Population – 75,340 (2009 estimate)



Frederick County, VA

- The Rural Areas make up about 89% of Frederick County's land area.
- 30% of new housing constructed in the rural areas.
- Approximately 12,500 acres of RA land developed residentially since 2000.



Frederick County, VA

- From July 2008-April 2009 Frederick County conducted a study to evaluate its rural areas and the potential tools available.
 - Following downzoning discussion
- The study identified TDRs as a viable tool for management and preservation of agricultural lands in the county.
- Frederick County Board of Supervisors adopted a TDR ordinance on April 28, 2010.



Frederick County, VA – TDR's

Purpose/Goals:

- Providing an effective and predictable incentive process for property owners of rural and agricultural land to preserve lands with a public benefit; and
- Implementing the Comprehensive Policy Plan by directing residential land uses to the Urban Development Area (UDA); and
- Providing an efficient and streamlined administrative 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.



Frederick County, VA – TDR's

- TDRs are implemented through designated Sending and Receiving Properties.
- “Sending” Properties – Qualification:
 - Agricultural lands zoned RA – also designated to remain rural in the Comprehensive Plan
 - Located outside UDA and SWSA
 - Shown on the sending/receiving area map
 - 20 acres or greater in size
 - Subdividable per the Frederick County Subdivision Ordinance (public road access, etc)



Frederick County, VA – TDR's

- “Sending” Properties:
 - Properties must keep one density right per existing dwelling and (plus) one right/100 ac.
 - Portions of sending properties contained in easements (roads, rail, electric, etc.) must be excluded.
 - Portions of sending properties with submerged land, floodplain, and steep slopes must be excluded.
 - Must be up to date with all taxes and contain no code violations.

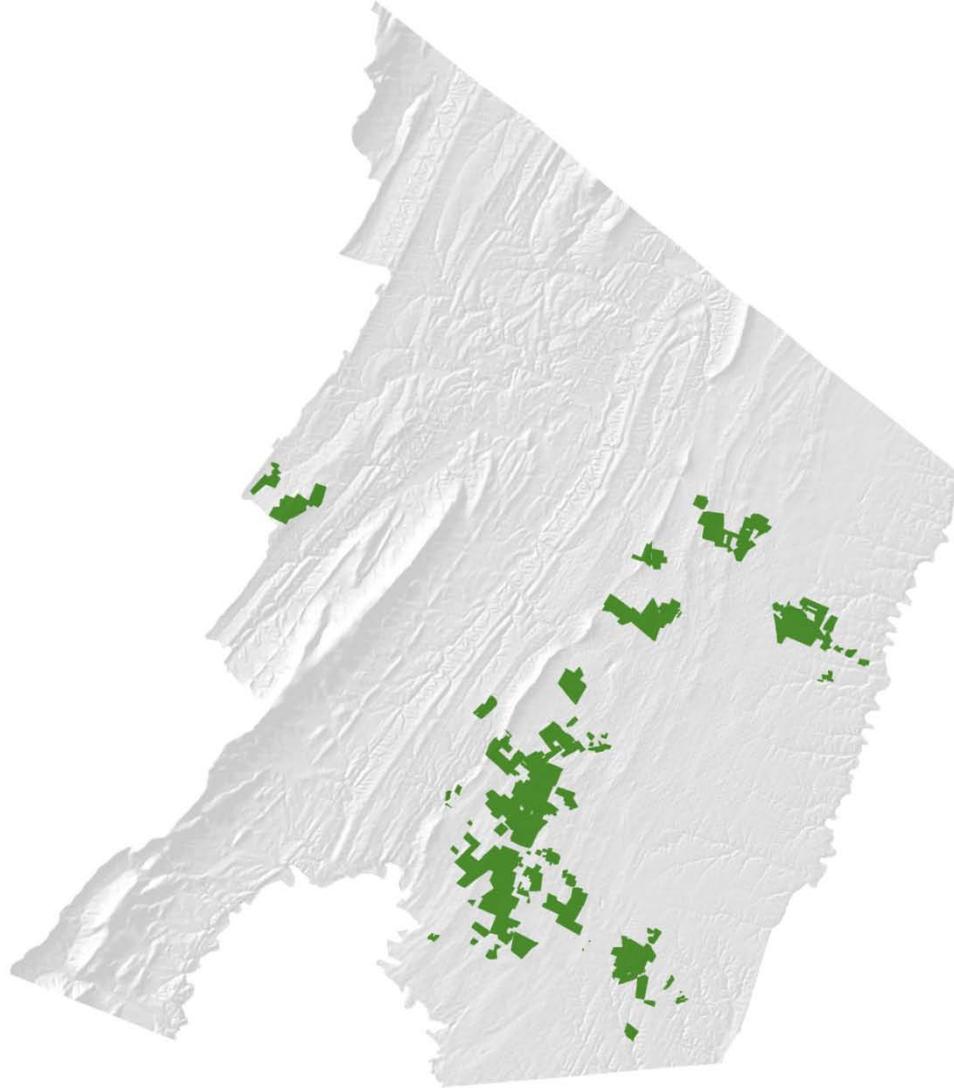


Frederick County, VA – TDR's

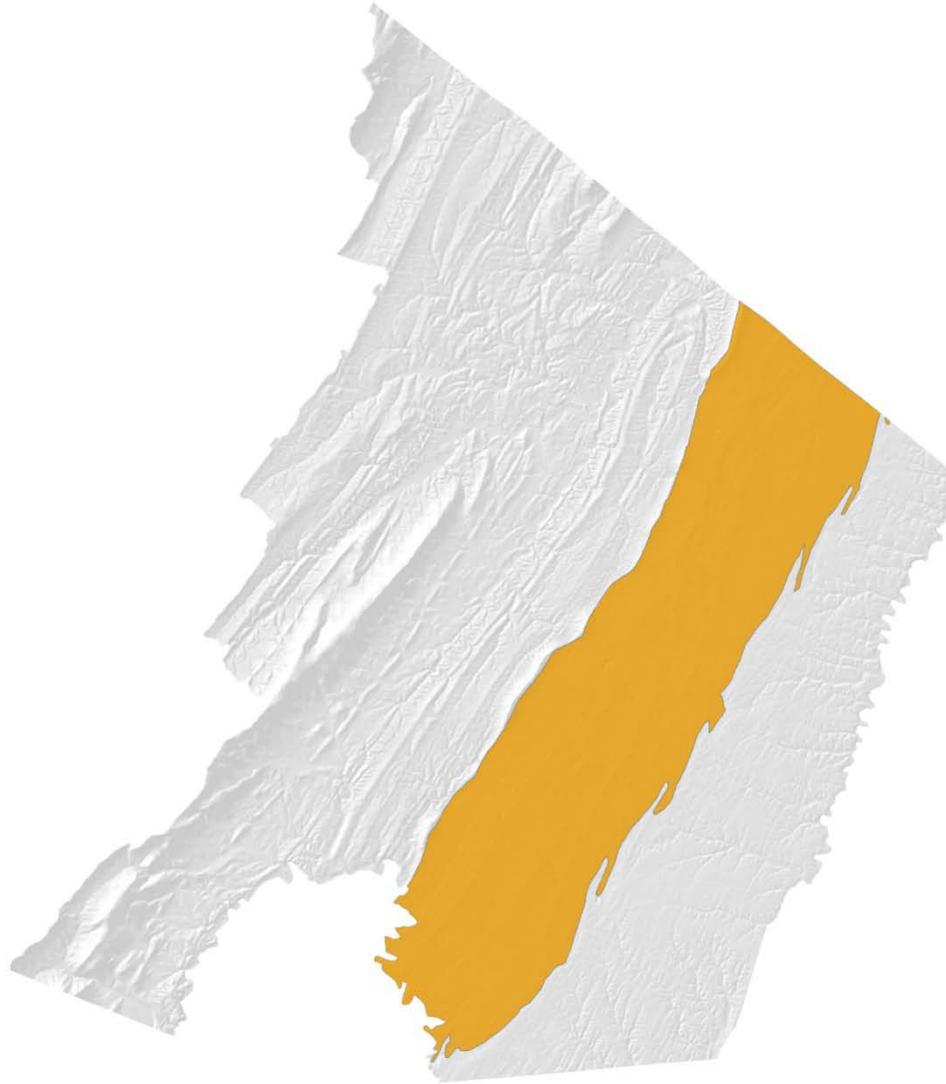
- Sending Properties – Density Bonuses:
 - Sending Area #1 (1TDR Right = 2 Density Units)– Designated Agricultural Districts.
 - Sending Area #2 (1TDR Right = 1.5 Density Units) - Properties located within areas generally associated with prime agricultural soils.
 - Sending Area #3 (1TDR Right = 1 Density Unit) – The remainder of the sending area.



Sending Area #1



Sending Area #2



Sending Area #3



Sending/Receiving Area Map

Receiving Areas

○ NonQualified (swsa)

● Receiving (uda)

Sending Areas

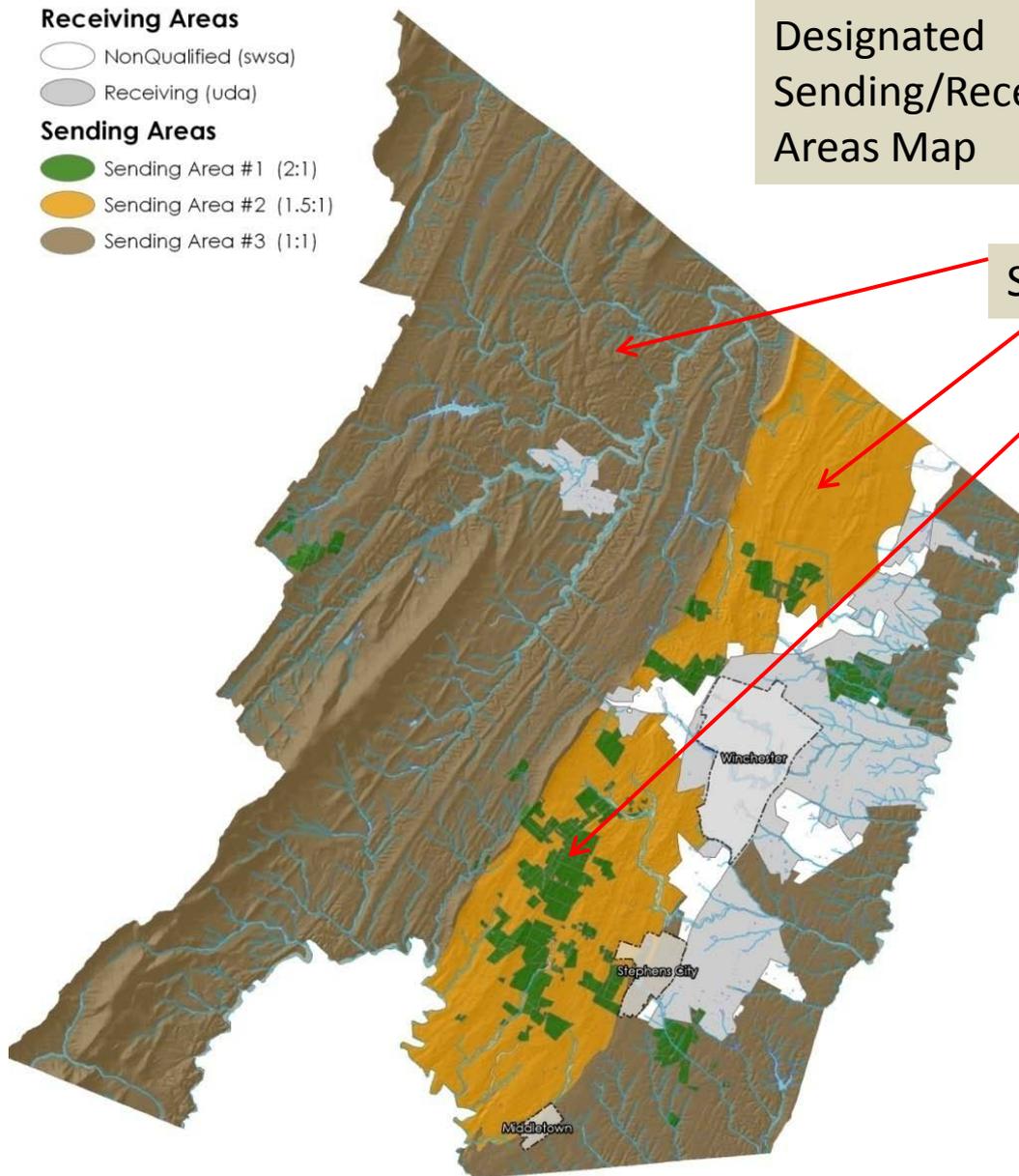
● Sending Area #1 (2:1)

● Sending Area #2 (1.5:1)

● Sending Area #3 (1:1)

Designated
Sending/Receiving
Areas Map

Sending Areas



Sending/Receiving Area Map

Eligible Sending Area Parcels

Receiving Areas

NonQualified (swsa)

Receiving (uda)

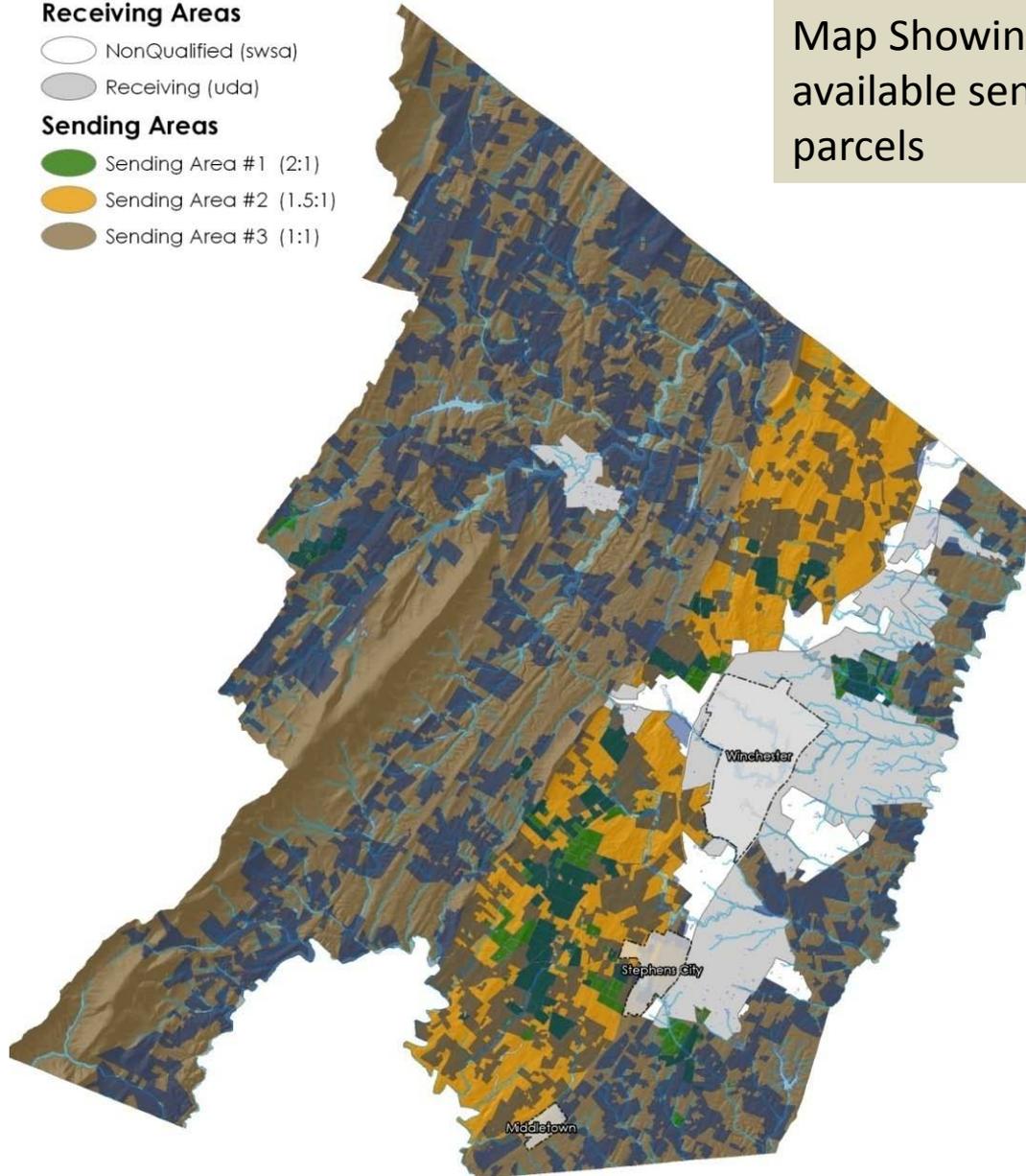
Sending Areas

Sending Area #1 (2:1)

Sending Area #2 (1.5:1)

Sending Area #3 (1:1)

Map Showing
available sending
parcels



Eligible Sending Properties

Available Sending
Parcels



Frederick County, VA – TDR's

- “Receiving” Properties - Qualification:
 - Zoned RA, RP, R4 (residential zoning) located within Urban Development Area and Planned for residential land use.
 - Located in defined Rural Community Centers.
 - Located on the adopted sending/receiving area map
 - Served by Public Water and Sewer, state roads/private roads if allowed by ordinance.



Sending/Receiving Area Map

Receiving Areas

○ NonQualified (swsa)

● Receiving (uda)

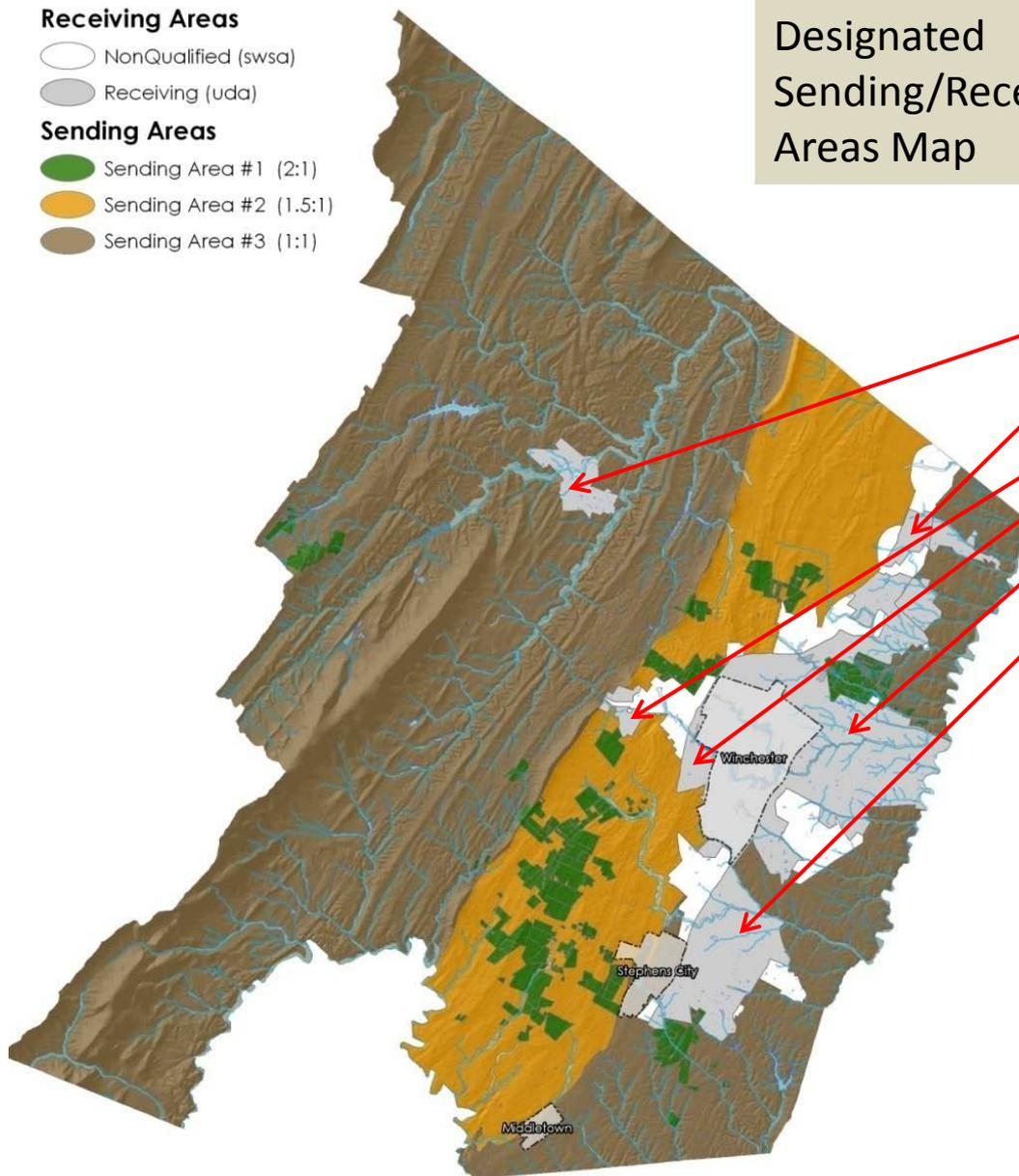
Sending Areas

● Sending Area #1 (2:1)

● Sending Area #2 (1.5:1)

● Sending Area #3 (1:1)

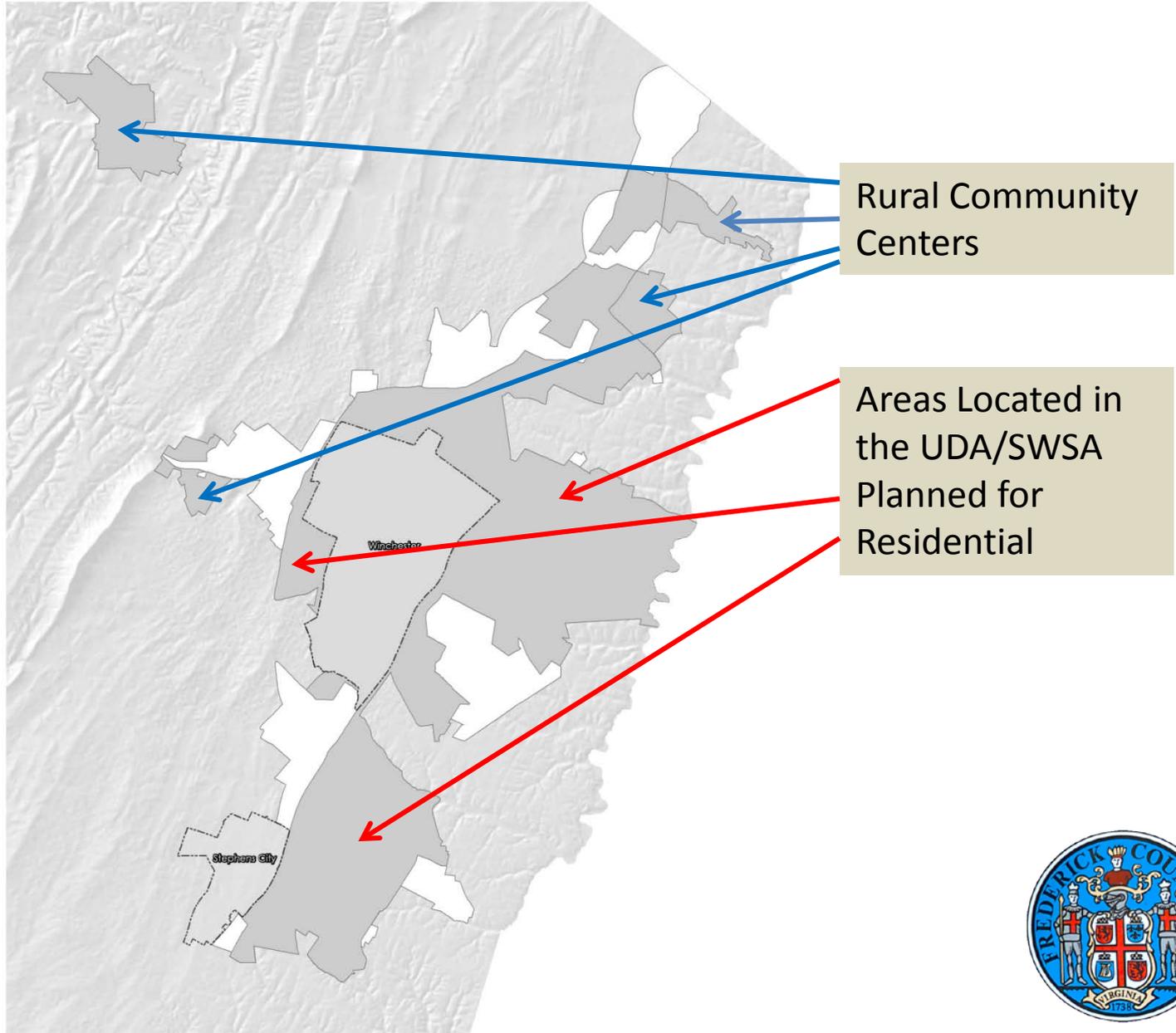
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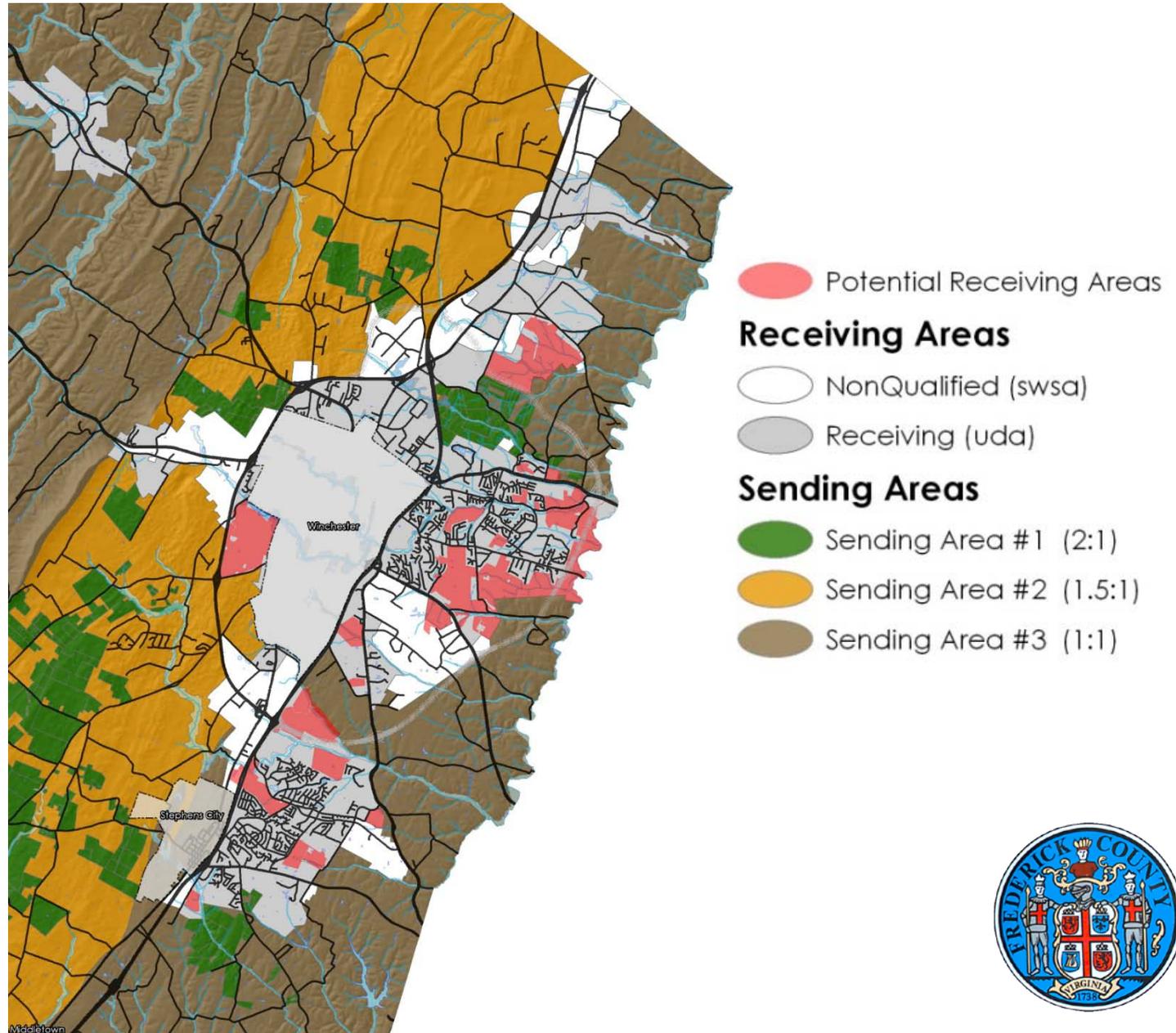
Receiving Areas



Receiving Areas



Potential Receiving Properties



Potential Receiving Properties

Available Receiving Properties



Frederick County, VA – TDR's

- TDR Implementation Process (Sending Property Perspective)
- Calculation of density rights and certification process:
 1. TDR Letter of Intent. Letter from County that determines the number of development rights available for transfer to a receiving property or transferee. Preliminary document to show number of transferable rights.
 - Letter of Intent issued after property owner submits completed application to Frederick County.



Frederick County, VA – TDR's

- To obtain a TDR Letter of Intent the applicant must provide:
 - Name of the transferor and transferee;
 - Legal description of the sending property and calculation of development rights;
 - Number of dwelling rights available for transfer and the number to remain with the property;
 - Approval date of the application, approval by the Planning Department and a tracking number.



Frederick County, VA – TDR's

- TDR Implementation Process (Sending Property Perspective)
- Calculation of density rights and certification process:
 2. TDR Certificate. Letter from County that agrees to transfer a specified number of development rights from a sending property to a receiving property or transferee in exchange for a restrictive deed covenant on the sending property that restricts future development.
 - Issued once a sending property is ready to sever development rights and transfer to a receiving property or transferee.



Frederick County, VA – TDR's

- TDR Transfer Process (Receiving Property Perspective)
 - TDR Certificate issued for the sending property.
 - Receiving Property approval - the receiving property or transferee would provide to the County a TDR Certificate and a signed option to purchase development rights.
 - Extinguishment document prepared for the sending property.



Frederick County, VA – TDR’s

- TDR Transfer Process (Receiving Property Perspective):
 - Proceed through development process. Transferred rights represents additional residential dwelling units that may be developed.
 - When TDR’s are used in a receiving area the density may be increased per the ordinance.

Table 1
Maximum Density Allowed in Zoning Districts through Transfer of Development Rights (TDR) Program

Zoning District	Property Size In Acres	Maximum Density in Dwelling Units per Acre	Maximum Density in Dwelling Units per Acre with TDR Transfers
RA (Rural Areas)	RA Receiving Property	1 Unit Per 5 Acres	Maximum Density allowed in the RP District within the UDA per § 165-402.05 1 Unit Per Acre in Designated Rural Community Centers served by Community Septic Systems
RP (Residential Performance)	<10 10-100 >100	10 5.5 4	15 8 6
R4 (Residential Planned Community)	>100	4	6

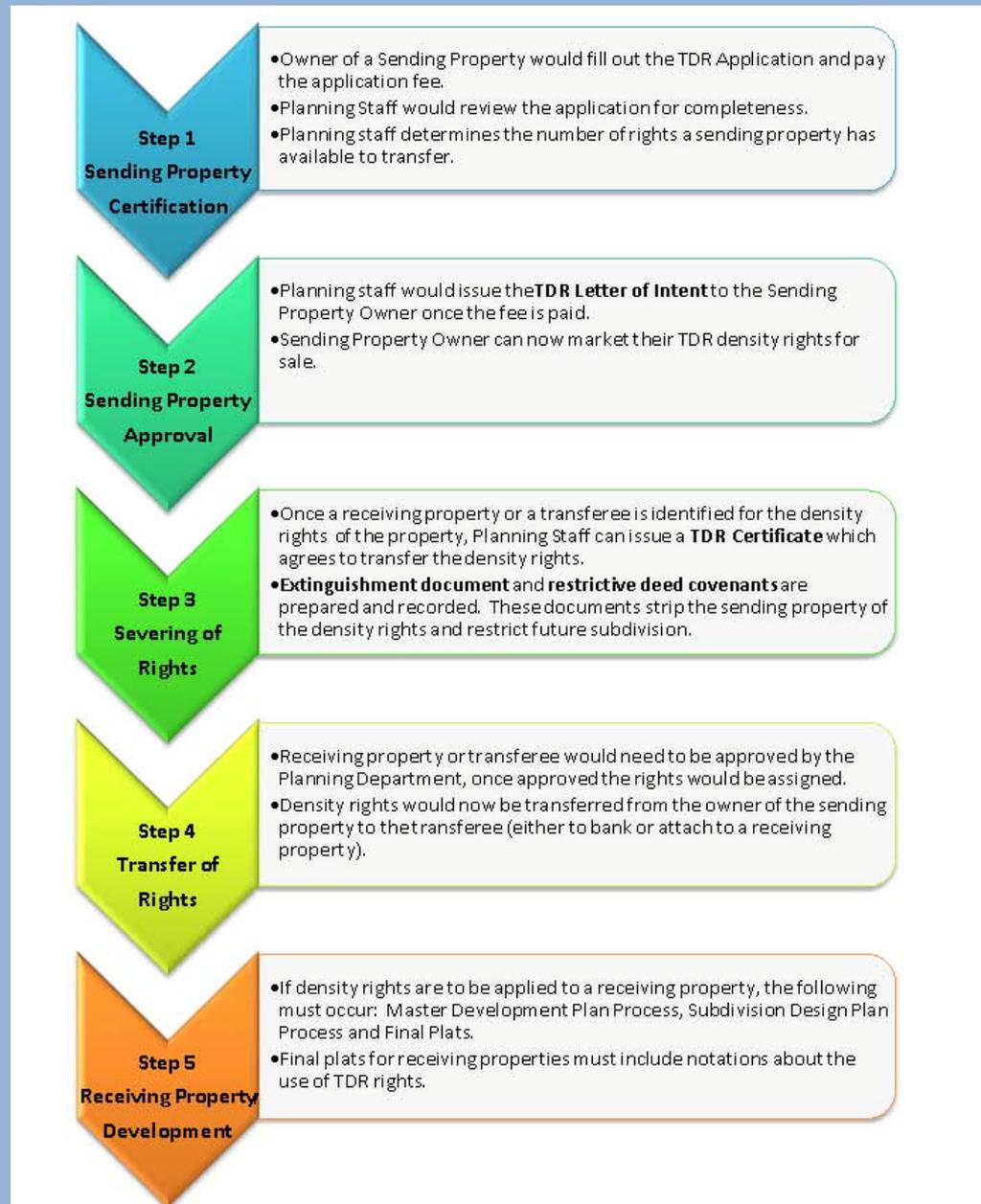


Frederick County, VA – TDR's

- TDR Transfer Process (Receiving Property Perspective):
 - Development rights from a sending property shall be considered transferred to a receiving property and/or a transferee and extinguished when the extinguishment document (instrument of transfer) for the sending property has been recorded.



Basic Steps of the TDR Process



Basic Steps of the TDR Process

Step 1 Sending Property Certification

- Owner of a Sending Property would fill out the **TDR Application** and pay the application fee.
- Planning Staff would review the application for completeness.
- Planning staff determines the number of rights a sending property has available to transfer.



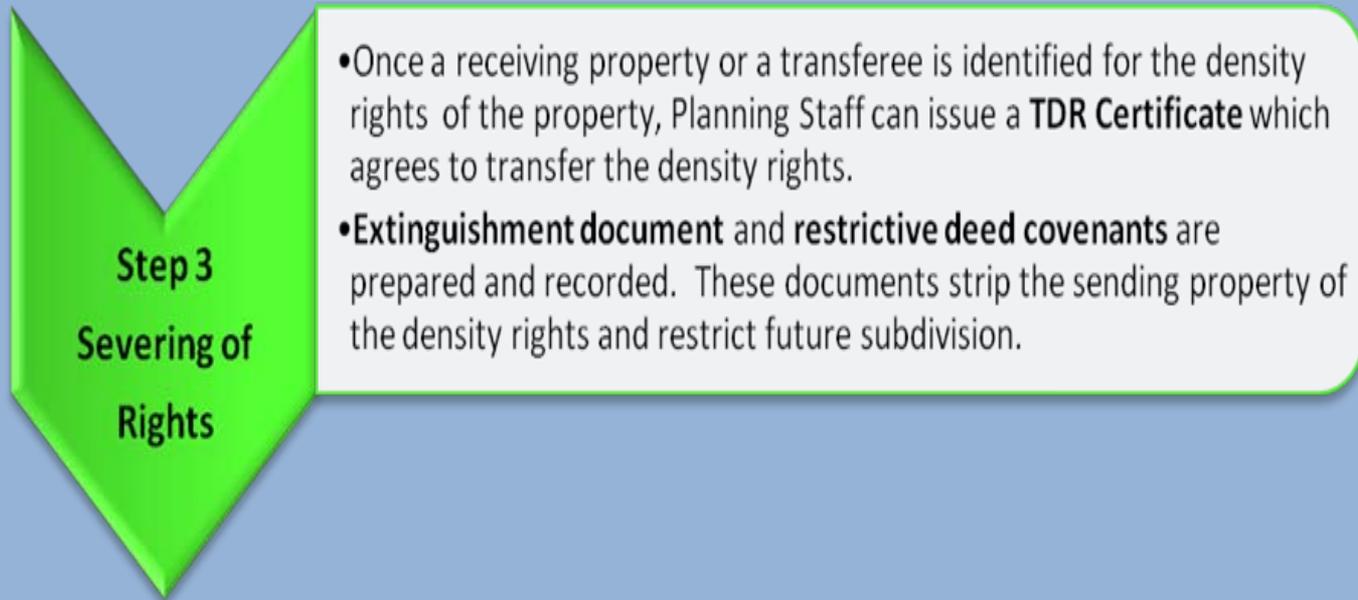
Basic Steps of the TDR Process

Step 2 Sending Property Approval

- Planning staff would issue the **TDR Letter of Intent** to the Sending Property Owner once the fee is paid.
- Sending Property Owner can now market their TDR density rights for sale.



Basic Steps of the TDR Process



Basic Steps of the TDR Process

Step 4 Transfer of Rights

- Receiving property or transferee would need to be approved by the Planning Department, once approved the rights would be assigned.
- Density rights would now be transferred from the owner of the sending property to the transferee (either to bank or attach to a receiving property).



Basic Steps of the TDR Process



- If density rights are to be applied to a receiving property, the following must occur: Master Development Plan Process, Subdivision Design Plan Process and Final Plats.
- Final plats for receiving properties must include notations about the use of TDR rights.





APPLICATION FOR TRANSFER OF DEVELOPMENT RIGHTS PROGRAM CERTIFICATE

RETURN TO:

Eric R. Lawrence Director of Planning and Development Frederick County Department of Planning & Development 107 North Kent Street, Suite 202 Winchester, VA 22601 Phone: 540-465-5651 elawrence@co.fredrick.va.us

FOR COUNTY USE ONLY:

Date Received: Completed Application Date: Director of Planning and Development Approval Date:

This is an application for landowners interested in participating in a Transfer of Development Rights (TDR) Program offered through Frederick County. The purpose of the TDR Program is to promote the protection of agricultural lands and open spaces located within the County's sending areas by transferring residential dwelling units to the County's designated receiving areas that are capable of accommodating planned residential growth.

Along with this application form, please submit the following:

Deed: A copy of the original deed with the deed book and page number stamp, under which the owner acquired the property. Survey/Plat: A survey or plat must accompany the deed.

If there is a lien held on any of the parcels included in this application (including, without limitation, holders of deed of trust liens and judgment liens) if yes, please attach all lien information with this application. Deeds of Trust: If there are any deeds of trust (including mortgages) on the property, a copy of the original deed of trust with deed book and page number stamp.

What is the type of ownership? Sole Owner, Husband & Wife, Partnership, Corporation, Limited Liability Company, Other.

Transfer of Development Rights Application Frederick County Department of Planning & Development

Owner's Full Name, Mailing Address, Street, City, State, Zip, Email, Phone

Additional Owner's Full Name, Mailing Address, Street, City, State, Zip, Email, Phone

Additional Owner's Full Name, Mailing Address, Street, City, State, Zip, Email, Phone

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Transfer of Development Rights Application Frederick County Department of Planning & Development

PROPERTY INFORMATION

If you need help filling any of this information out, please contact the Planning Department, 540-465-5651

Below, please list the Property Identification Numbers and acreage for each contiguous parcel.

How many contiguous parcels are part of this application? 1st, 2nd, 3rd, 4th Property's Tax Map Identification, Acreage

Zoning District Classification(s) for Parcels 1-4, Are the parcels or parcel currently in Land Use?, What is the current use of the property(s)?

If the parcel(s) have an assigned address, list to the right. Are there any existing dwelling units located on the property? Are there any other buildings on the property(s)?

Are there any existing easements or deed restrictions affecting this property? How many density rights (number of dwelling units) do you plan on retaining on the site for existing or future development? Other Comments

Transfer of Development Rights Application Frederick County Department of Planning & Development

PROPERTY QUALIFICATION

If you need help filling any of this information out, please contact the Planning Department, 540-465-5651

SENDING SITE CRITERIA:

- I believe the property would qualify as a sending site because it contains one or more of the following public benefits as defined in Chapter 145, Article II - Transfer of Development Rights Program: Zoned RA (Rural Areas), Located outside of the Urban Development Area (UDA) and the Sewer and Water Service Area (SWSA), Designated in the Frederick County Comprehensive Policy Plan as Rural Areas, Designated as an authorized sending property on the Frederick County Sending Areas Map, Consist of at least twenty (20) acres of land under common ownership, Be subdivisible in accordance with Chapter 144 of the Frederick County Code, including but not limited to state road and access requirements.

Transfer of Development Rights Application Frederick County Department of Planning & Development

ESTIMATED DENSITY CALCULATION

We ask that you complete this worksheet to assist yourself and the Planning Department with evaluating the property. This is not a binding determination of the number of development rights a particular parcel may qualify to transfer.

To estimate the number of development rights that can be transferred from a sending site, the total area available for transfer must first be determined. The area available for transfer is the total sending site area minus a number of possible deductions (listed in Step 1). Then the transfer area is multiplied by the base density for the zoning district of the sending site.

Any fractions of development rights that result from these calculations shall not be included in the final determination of total development rights available for transfer.

Step 1. Deductions:

square feet in existing conservation easements or similar encumbrances, square feet in submerged lands (i.e. lakes, rivers), square feet of land area required by the zone for existing or proposed development (existing dwelling units and proposed dwelling units)

Total Deductions (in square feet)

Step 2. Sending Site Area Calculation:

total area of sending site (in square feet), subtract total deductions (in square feet), Total available sending site area (in square feet)

Step 3. Convert Area to Acres:

total available sending site area (in square feet) from Step 2, Divide by 43,560 square feet per acre, Total sending site area in acres

Transfer of Development Rights Application Frederick County Department of Planning & Development

Step 4. Estimate Available Development Rights:

To determine the development rights available for transfer, multiply the total sending site acreage from Step 3 by the base density of the zoning district. The base density listed is for transfer purposes only and does not imply actual development potential of a parcel.

Table with 2 columns: Sending sites zoned, RA (Rural Areas) District, Permitted Bonus Density, Sending Area #1, Sending Area #2, Sending Area #3. Base density: 1 right / 5 acres, 2 rights / 5 acres, 1.5 rights / 5 acres, 1 right / 5 acres

Estimated Available Development Rights

Any fractions of development rights that result from these calculations shall not be included in the final determination of total development rights available for transfer. Total available development rights calculated shall be rounded down to the nearest whole number.

The estimated number of available development rights calculation is provided to assist you with evaluating the property and developing your management goals. This is not a binding determination of the number of development rights a particular parcel may qualify to transfer.

APPLICATION CHECKLIST: Is the following information attached?

- Legal Description of the Property, Valid Survey, Title Report, Property Sketch or Site Plan - showing all existing and proposed residential units and other buildings, and any existing easements on the property, Verification of Taxes Paid (receipts from the Treasurer's Office), Zoning Ordinance Violation Inspection from the Planning Department, Application Fee *

* Note: A \$50 review fee payable to the Treasurer of Frederick County will be required when the application is submitted Frederick County Department of Planning & Development. Once the application has been deemed complete by the Director of Planning and Development an additional fee of \$250 will be assessed to complete the application process.

Transfer of Development Rights Application Frederick County Department of Planning & Development

PROPERTY OWNER CERTIFICATION

I hereby certify that the information furnished on this application and the attachments are true, that I am the legal owner of the property described above, that I have marketable title to the property, and that I have the legal right to restrict the use of the property. I grant permission to Frederick County to seek an update from the Title Company prior to its issuance of a Development Credit Transfer Certificate.

Signature of Owner (Applicant), Date

Signature of Co-Owner (Co-Applicant), Date



Frederick County, VA – TDR's TDR Statistics

- Total Sending Area Acreage – 97,209
 - Sending Area #1 – 6,916 acres (2:1 transfer rate)
 - Approximately 2,766 dwelling units available for transfer
 - Sending Area #2 – 25,096 acres (1.5:1 transfer rate)
 - Approximately 7,528 dwelling units available for transfer
 - Sending Area #3 – 71,781 (1:1 transfer rate)
 - Approximately 14,356 dwelling units available for transfer
 - Approximately 24,650 dwelling units available for transfer into the UDA.

*(Discrepancy based on sending area #1 overlay and GIS data)



Frederick County, VA – TDR's TDR Statistics

- Total Receiving Area Acreage – 4,629
 - 93 Total Eligible Parcels Identified
- 25,459 Dwelling Units possible (5.5 units/acre)
- Plus 24,650 Dwelling Units possible from TDR transfers.
- Up to 50,109 Dwelling Units possible in the designated Receiving Areas.
- Potential overall density of 10.8 units/acre.
- State Code UDA requirement strives for 4-12 units/acre.



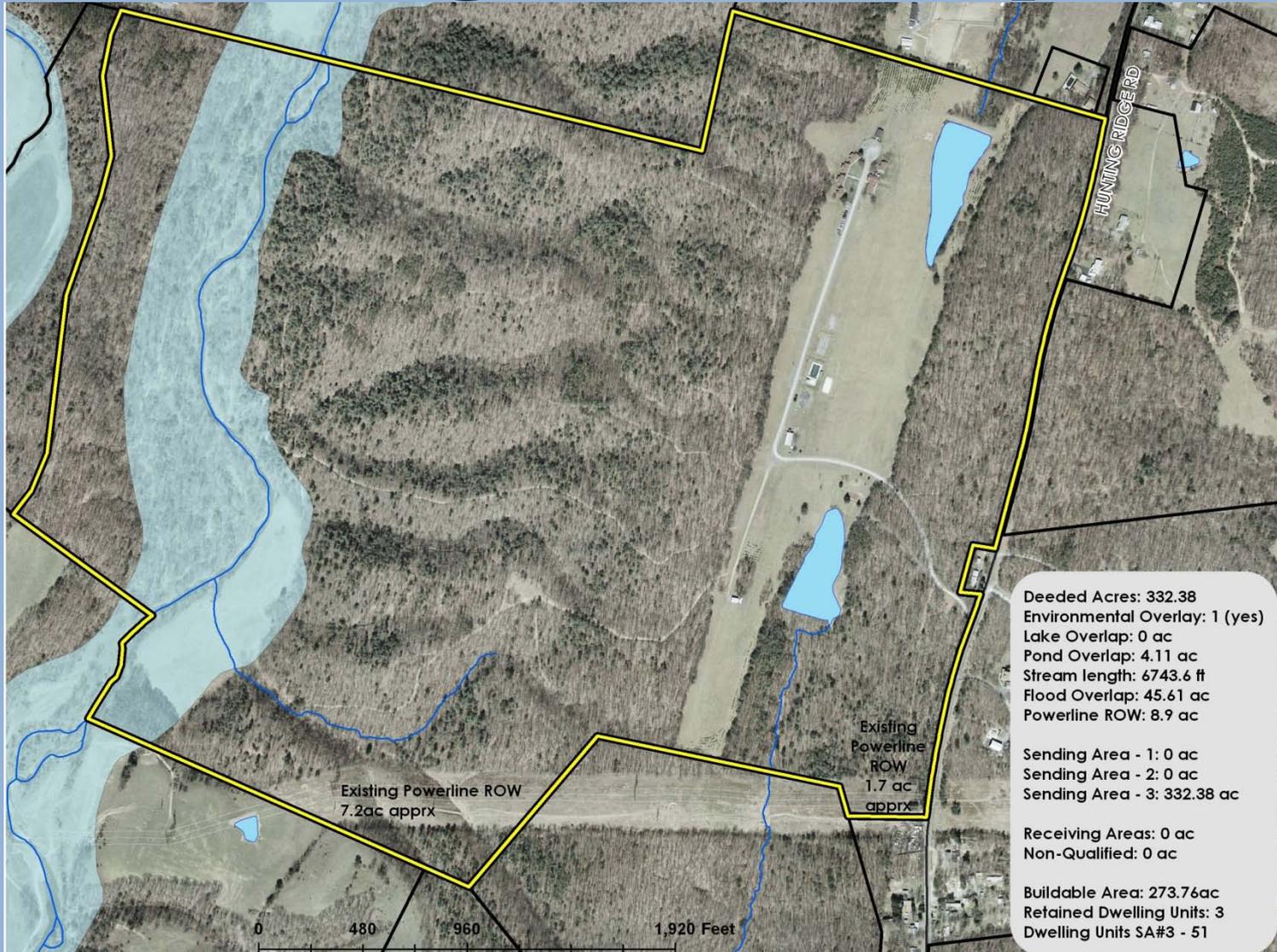
Frederick County, VA – TDR's

Potential Scenario:

- Farmer has a 332.38 acre farm with one dwelling (farmhouse).
- Farm located within Sending Area #3 (1:1 transfer)
- Area in environmental features/easements – 58.68 acres
- Area available for transfer – 273.7 acres
- Has the potential for 54 units (1 dwelling/5ac)
- Farmer would have to keep three dwelling units
- Farmer could sell 51 dwelling units.
- The 51 units could be sold to a developer or a transferee.
- The units could be held/banked or transferred and developed on a receiving property.



Frederick County, VA – TDR's Sending Area Example



Frederick County, VA – TDR's Receiving Area Example #1



- Property Size – 2.8 acres
- Zoned Rural Areas
- Standard Density – 1 unit per 5 acres
-Would Allow 1 unit
- Density with TDR's – 10 units per acre
-Would allow up to 28
- Developer could buy 27 Density Rights from the farmer
- 4,000 sq ft lots



Frederick County, VA – TDR's Receiving Area Example #2



- Property Size – 10.25 acres
- Zoned Residential
- Standard Density – 5.5 units per acre
-Would Allow up to 56 units
- Density with TDR's – 8 units per acre
-Would allow up to 82
- Developer could buy 26 Density Rights from the farmer



Frederick County, VA – TDR's Receiving Area Example #3



- Property Size – 25 acres
- Zoned Residential
- Standard Density – 5.5 units per acre
-Would Allow up to 137 units
- Density with TDR's – 8 units per acre
-Would allow up to 200
- Developer could buy all 51 available Density Rights from the farmer and 12 from another property to get the maximum yield with TDR's.



Future Changes to Frederick County's TDR Ordinance

- Inclusion of a new Traditional Neighborhood Development (TND) District which would have higher density allowance (by right – 8 units/acre, with TDR up to 24 units/acre).
- New zoning districts for the County's Rural Community Centers to enhance the use of TDR's.



Conclusion

- TDR's are a good tool to help preserve agricultural and forestal land and direct growth to the UDA.
- Ultimately the success or failure of a TDR program is mostly up to the marketplace.
- Locality can enable TDRs, but marketplace will dictate its success.



Information on TDRs

Frederick County, VA TDR Website:

<http://www.co.frederick.va.us/planning/TDR/TDR.aspx>

State TDR Model Ordinance link:

<http://www.vaco.org/LegPublications.html>

King County Washington TDR Website:

<http://www.kingcounty.gov/environment/stewardship/sustainable-building/transfer-development-rights.aspx>

Montgomery County, MD – Agricultural Services Division:

<http://www.montgomerycountymd.gov/agstmpl.asp?url=/content/DED/AgServices/agservicesdiv.asp>

