

# 2007

## Tracking Transferable Development Rights



Research and Technology Center

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## Introduction:

In 1980, Montgomery County took a significant step toward the preservation of agricultural land and open space by creating the Agricultural Reserve. The Rural Density Transfer (RDT) zone is the predominant zoning designation within the Agricultural Reserve. The base density in the RDT is set at one dwelling unit per twenty-five acres. At the same time the RDT zone was established, the Transferable Development Rights (TDRs) program was created. The TDR program granted property owners one development right for each five acres of land owned within the Reserve. TDRs can be sold to landowners or developers who can use these rights to develop at a higher density elsewhere in the county.

The TDR program has been in existence now for over 25 years. Over 9,000 TDRs have been severed from the land. More than 64,000 acres are held by TDR program participants. This means that over 64,000 acres are permanently preserved at one dwelling unit per twenty-five acres. In addition, of those who have severed TDRs, 211 are buildable TDRs. This represents more 5,000 acres permanently preserved from future development at any density.

## *Background:*

Tracking Transferable Development Rights, TDRs, involves the recordation of the TDR from the time it is severed from the land by easement, through the sale of the TDR recorded by deed, until the TDR is extinguished by use in a preliminary plan and subsequent recording on a subdivision plat.

The Montgomery County Attorney's Office records all easements and deeds that are created in Montgomery County. This is the primary source of data on TDRs.

TDRs that are severed from the farmland by easement can be held by the landowner, or sold to another party. The buyer of the TDR(s) can also hold the TDR(s), sell the TDR(s), or use the TDR(s) as a means of increasing density elsewhere in the county.

Once a TDR(s) is severed from the land, an easement is recorded. The easement records the date, the TDR serial number, the tax identification number associated with the parcel, the acreage of the parcel, the grantor and grantee of the easement, location of the parcel, number of dwelling units on the parcel, TDR capacity of the parcel, and the number of TDRs being severed. A distinct liber and folio (book and page) for the easement assigned by the county are also recorded.

If the TDR(s) is then sold, a deed will record additional information relevant to tracking the TDR. The deed records the sale date, the buyer and seller of the TDR(s), the number of TDRs sold, the TDR serial number(s), the liber and folio of the easement that severed the TDR(s), the liber and folio of the deed, and

frequently, the location and description of the parcel from which the TDR(s) was severed.

Additional information used to track TDRs comes from the Montgomery County Tax Assessors Office. This information includes current acreage of the parcel, number of dwelling units on the parcel, improvements to the parcel, the tax identification number of any child lots associated with the parcel, as well as the landowners name and address. This data is used as a cross reference to the data supplied by the County Attorney's Office.

Consolidation of the above data creates a data file for all parcels that create/sever a TDR indexed by tax identification number. This data is matched to MNCPPC data on preliminary plan information. If a TDR is extinguished by use on a preliminary plan, the preliminary plan number is attached to the file and recorded for each individual TDR. On the associated Preliminary Plan record, all TDRs used on that Preliminary Plan are recorded along with the plat book and page number.

### *Improved TDR Tracking*

For fiscal year 2007, the County Council directed the Montgomery County Planning Department to develop a comprehensive record of TDRs from creation through final use. Among the objectives: being able to know, at any point in time, how many TDRs have been created, are left to be created, have been used, and other statistics; to be able to look up TDR-related information about any parcel; and to be able to verify that TDRs are being created, sold, and used in accordance with the provisions of the TDR program.

The Department's analysis shows that since 1981, Montgomery County's TDR program has severed by easement approximately 9,630 TDRs. Of the 9,630 TDRs that have been severed, 6,148 have been transferred to receiving areas by recording a subdivision plat. Conversely, 3,482 TDRs have been severed and perhaps changed ownership, but for various reasons have not been attached to a receiving area by recording a subdivision plat.

A quality assurance check of all TDRs that have been recorded on a subdivision plat has been completed. Consequently, if it exists, for each TDR information on the originating parcel, as well as information on the receiving parcel is now linked and recorded. The Planning Department is currently creating a GIS layer of land under TDR easement as well as one of all receiving area parcels linked to TDR(s).

A detailed dataset resulting from the TDR tracking project (referred to as the Hansen dataset) is supplemented with GIS data for parcels not participating in the TDR program. The summary statistics in Table 1 represent these two groups

of data, the Hansen data of all parcels that have ever severed TDRs, and the GIS data of parcels in the RDT zone that do not link to the Hansen dataset.

Estimates are made regarding TDR sending supply and TDR receiving capacity. Following Table 1 are detailed calculations underlying the summary data.

It should be noted that the figures presented in this report are subject to change as additional information on parcels within the Agricultural Reserve becomes available. The GIS mapping project has identified several noncontiguous parcels whose information regarding TDRs and acreage is incomplete. Updates to the data are made regularly. Should new information change the figures presented here, it is unlikely this change would significantly impact the relationship of these numbers to one another.

*Table 1: Transferable Development Rights: Summary Data*

<b>Section A</b>		2007			
	Theoretical Maximum Supply	14,837			
	Minus public/protected properties	3,703			
	= Sending Area Supply*	11,134			
<b>Section B</b>	Sending Area Supply	11,134			
	Minus TDRs severed through easement	9,630			
	= Remaining Sending Area TDRs	1,504			
<b>Section C</b>	Total TDRs Severed through Easement	9,630			
	Minus TDRs recorded on a subdivision plat	6,148			
	= TDRs Severed, Remaining to be Sent	3,482			
<b>Section D</b>	Maximum Receiving Area Capacity	15,986			
	Minus loss through development	5,213			
	= Available Receiving Area Capacity*	10,773			
<b>Section E</b>	Available Receiving Area Capacity	10,773			
	Minus TDRs recorded on a subdivision plat	6,148			
	= Remaining TDR Receiving Area Capacity	4,625			
<b>Section F</b>	Total Number of TDRs Remaining to be Sent (Total Section B + Total Section C)		4,986		
	Use Rates:		40%	50%	60%
	Total Receiving Area Capacity Needed to Meet Supply		12,465	9,972	8,310
	Current TDR Receiving Capacity		4,625	4,625	4,625
	Additional Receiving Capacity Needed to Absorb all TDRs		7,840	5,347	3,685

\*Calculation follows

Given a TDR supply equal to 11,134 and 9,630 severed TDRs, there remains approximately 1,504 excess TDRs in the RDT that can be placed under easement. The number of TDRs that have been severed and not recorded on a subdivision plat equals approximately 3,482. Therefore, there are almost 5,000 TDRs that can be sent to record plat at some point in the future, excluding buildable TDRs.

An available receiving area capacity of 10,773 minus 6,148 TDRs that have been recorded on various subdivision plats leaves a remaining receiving area capacity of 4,625 TDRs. With a possible 4,986 TDRs still to send to available receiving sites, a deficit of at least 361 TDRs exists. This deficit is likely be even larger if the ratio of sending area TDRs to receiving area TDRs is not one to one. Past experience has shown that approximately only 40 to 60% of the available receiving area capacity is used. This would result in a capacity deficit of between 3,685 and 7,840 TDRs.

It is important to note that this deficit does not include buildable TDRs. If the buildable TDRs are included in the TDR supply calculation – an additional 2,452 TDRs would be added to the sending supply.

### ***Table 1:***

#### ***Section A***

Reliable data exist regarding the overall supply of land zoned Rural Density Transfer (RDT) as well as land preserved in parks and TDRs held by preservation programs. Therefore, the estimate of the sending area supply of potential TDRs is based on the total land supply and total activity of preservation programs to date.

Methodology used in creating the sending supply estimate (based on the 2005 report):

1. All land in the RDT zone was identified using State Department of Assessments and Taxation (SDAT) data and the MNCPPC GIS zoning layer.
2. From this, all publically-owned land based on the existing parks features within the GIS parks layer and parcels identified in the Agricultural Services Division data from 2003 identifying parcels as “public lands” were subtracted from the data set.
3. Next, parcels under ten acres with no existing dwelling unit were removed from the data set under the assumption that these parcels would not sever and sell their only TDR, but would use that development right on site. The updated Hansen dataset of all parcels severing TDRs, supports this assumption. Of the 698 parcels severing TDRs, only 7 parcels under ten acres without an existing dwelling unit, severed their only TDR.

4. Finally, all parcels under five acres with an existing dwelling unit built in 1980 or earlier were removed from the dataset, as none of these parcels have the ability to create TDRs.

These steps identified 2,276 parcels and 78,781 acres that constitute the TDR sending area.

<b>Table 2: TDR Sending Area Supply Calculations</b>	<b>TDRs</b>
Calculate one TDR per five acres for each parcel within the 78,781 acre area	14,837
Subtract one TDR per twenty-five acres (not including those necessary for retention due to existing dwelling units)	-2,452
Subtract one TDR for each existing dwelling unit	-1,401
TDRs severed from parkland prior to acquisition	172
MALPH easements	-22
<b>Total Sending Area Supply</b>	<b>11,134</b>

Factors affecting the sending supply estimate:

- Subtract one TDR per twenty-five acres for each parcel – The 2005 TDR study assumed that landowners would not sever and sell their buildable TDRs; that program participants were urged to retain their buildable TDRs and thus these TDRs should be excluded from the sending supply calculation. Here, the data has been separated into two groups. One group is the parcels that have severed at least one TDR. This data is the end product of the TDR tracking project and it provides information on the number of TDRs severed and the types of TDRs severed. The second dataset is comprised of the acreage not represented by the TDR participants. Therefore, this data is based on estimation of TDR activity.

The TDR tracking dataset records transactions involving 698 parcels that comprise 64,566 acres. Through these transactions 9,630 TDRs have been severed. Two hundred and eleven of these are buildable TDRs – indicating that not every landowner retains these rights. Of the parcels severing TDRs, 1,785 buildable TDRs remain. An estimate of the number of buildable TDRs held by non-TDR severing parcels is approximately 667 TDRs.

- Subtract one TDR for each existing dwelling unit - A TDR must be retained for each dwelling unit in the RDT zone built in 1981 or later. A few of these may have been built on lots in existence prior to the RDT rezoning on January 6, 1981 and may not consume any development rights. For parcels severing TDRs, approximately 585 TDRs must be

retained for existing dwelling units. For those parcels not severing TDRs, approximately 816 additional TDRs are required to be retained.

- Parkland acquisition – Parkland acquisition in the RDT zone has been on a limited scale. Some of the more significant parcels affecting the sending supply estimate are:
  1. Woodstock Special Park. The acquisition involved 772 acres, all of which are zoned RDT. The park retained 14 TDRs and the seller kept 70 TDRs. An additional 70 TDRs were severed and sold from the land prior to acquisition. Therefore this park adds 140 TDRs to the sending supply estimate.
  2. Two properties were sold to the Commission by Mr. William Rickman in recent years. One is now the Rickman Farm Horse Park and the other is Sugarland Special Park. Total size of the properties is around 200 acres. The parks hold 8 TDRs at one per 25 acres and the seller retained 32 TDRs that are included in the sending supply estimate.
- AEP and RLP Easements – Under the County’s Agricultural Easement Program (AEP) 717 TDRs are held by the easement owners or trustees. Under the State’s Rural Legacy Program (RLP) 323 TDRs are held by the easement owners or trustees. All of these easements are included in the Hansen TDR dataset as serialized, severed TDRs.
- MALPH Easements – About 90% of MALPH easements have been created on parcels that have also created TDRs. These easements have generally worked to prevent development in the sending areas at 1 unit per 25 acre densities by buying up these “excess” rights. Therefore, this program has not substantially affected the sending supply. As of 2003, the data show 137 acres under MALPH protection that is not also covered by TDR easements. Removing this acreage from the sending supply calculation reduces the sending TDR supply by 22.
- Maryland Environmental Trust (MET) Easements – Most, if not all, MET easements were established without clearly addressing the TDR program. The courts have ruled that the rights remain with the landowners. All available TDRs have been severed and sold. The parcels and acreage under MET easement will be included in the calculations of the sending supply.
- The County’s Legacy Open Space Program (LOS) – LOS acquisitions are not intended to affect the potential of landowners to sell their TDRs and thus are assumed to have no affect on sending area supply.

**Section B**

TDR tracking has produced a complete dataset of all parcels that have severed TDRs from their land. Given the estimate of sending supply, and the 9,630 TDRs that have been placed under easement, approximately 1,504 TDRs remain in the RDT zone. As noted above, this does not include buildable TDRs – only excess TDRs.

**Section C**

Through the TDR tracking process, all TDRs that have been recorded on a record plat have been documented. The number of TDRs recorded totals 6,148. Subtracting the number of TDRs recorded on a record plat from the total number of severed TDRs leaves the number of “floating” TDRs. These are TDRs that have been severed from the land, may or may not have been sold, but have not been used in a receiving area to date. These TDRs are available for future use in receiving areas.

**Section D**

Receiving Area Capacity - Receiving areas and their estimated TDR capacity are identified in Master Plans. The 2005 TDR Status Update revised estimates for receiving capacity established in the January 1997 Status Report. The 2005 update reported several new receiving sites created between 1997 and 2005. These include one in Friendship Heights (capacity 102), three in Potomac (capacity 252), one site in Olney (capacity 425), and areas in Eastern Montgomery County (capacity 130). Total added capacity equaled 909 TDRs. Offsetting this increase was a noted decrease in remaining capacity of about 500 TDRs in eight Eastern County areas through Master Plan changes.

Since July 2005, two Master Plan revisions have added additional receiving area capacity: the Damascus Master Plan added 372 TDRs, and the Shady Grove Master Plan has the potential to accommodate approximately 278 TDRs (93 of these TDRs are conditional on the County Service Park relocation).



<b>Table 3: Summary of Receiving Area Data</b>				
Planning Area	2005 Capacity	Added Capacity	TDRs Sent	Remaining Capacity
Aspen Hill	53		18	35
Bethesda/Chevy Chase	200		57	143
Clarksburg	1,670		315	1355
Damascus	426	372	405	393
Darnestown	270		197	73
Fairland	978		978	0
Friendship Heights	102		0	102
Gaithersburg	868		284	584
Germantown	1,139		1,031	108
Kensington/Wheaton	63		37	26
North Bethesda	244		108	136
Olney	2,514		1,704	810
Potomac	773		401	372
Shady Grove	0	278	0	278
Silver Spring/Wheaton CBD	21		7	14
Travilah	802		606	196
<b>Totals</b>	<b>10,123</b>	<b>650</b>	<b>6,148</b>	<b>4,625</b>

The 2005 receiving area capacity figures represent available capacity adjusted for diminished capacity resulting from development without the use of TDRs.

### *Conclusion:*

Since its creation in 1980, the TDR program has been successful in placing tens of thousands of acres of farmland under easement. Currently, over 9,000 TDRs have been severed from the land. Once a TDR is transferred or severed from the property, the current zoning density designation is then frozen or “locked in” at one unit per twenty-five acres in perpetuity. Over 64,000 acres are held by TDR program participants. This means that over 64,000 acres are permanently preserved at one dwelling unit per twenty-five acres, the current zoning in most of the Agricultural Reserve.

One key to preserving the Agricultural Reserve is the marketability of TDRs. Additional receiving area TDRs are still needed to accommodate “floating” TDRs (those that have been severed but have not yet transferred) and remaining excess TDRs. In recognition of this problem, over 600 TDRs have been added to receiving sites in the past two years, but more are needed.

Another key to preservation is the Building Lot Termination (BLT) program. The goal of this program is the severing of buildable TDRs. To date, approximately 211 buildable TDRs have been severed from the land. This represents over 5,000 acres permanently preserved from future development at any density.

The estimation of buildable TDRs (2,452 TDRs) represents the potential for permanent preservation without development. If these buildable TDRs were severed from the land, over 61,000 acres would switch from a development density of one unit per twenty-five acres to zero. While it is not realistic that all possible building lots will be preserved, a program that successfully severs 50% of these TDRs will permanently preserve an additional 30,000 acres.

### *Summary of Data Sources:*

*County Attorney's Record* – All information pertaining to the creation of an easement for the purpose of severing TDRs is contained in the County Attorney's Record. This includes: the name of the person(s) or corporation severing TDRs, the date, the tax account number of the parcel from which the TDRs are being severed, the acreage of said parcel, the number of existing dwelling units, the number of and serial numbers assigned to the severed TDRs.

*Maryland Land Records* – The easement recording severed TDRs is eventually scanned into an online database maintained by the Maryland Land Records office.

*MNCPPC Hansen Database* – The Research and Technology Center, MNCPPC, maintains a database of all parcels severing TDRs in the Rural Density Transfer zone. When an easement is recorded with the County Attorney's office, a duplicate of this information is sent to the Planning Department, Research and Technology Center. A record is created containing all of the information from the County Attorney's Record. This record is checked against the online Maryland Land Records data and the filing Liber and Folio for each easement are recorded. The TDR parcel record is linked to other identifying information associated with the parcel, such as, address, zoning and land use codes, as well as County Assessor's data on number of dwelling units (a cross reference to the County Attorney's Record). In addition, preliminary plan data is added to the TDR parcel record for any TDRs recorded on subdivision plats. The preliminary plan number is linked to the sending parcel by tax account number and TDR serial number. This provides a record of all sending parcel information, and if it exists, relevant receiving area data.

### *Glossary of Terms*

***Transferable Development Right (TDR)*** – Inchoate rights established under Section 59-C-9 of the Montgomery County Zoning Ordinance that grants a landowner one TDR for every five acres of land in a parcel owned in the Rural Density Transfer (RDT) zone. These rights, once serialized through the easement process, may be transferred to receiving areas and used for development above the base density.

***Buildable Transferable Development Right*** – A transferable development right retained by a property owner in the Rural Density Transfer zone for the purpose of being able to build a dwelling according to the base density of the RDT zone (1:25). Sometimes referred to as the 5<sup>th</sup> TDR, Development TDR, or Super TDR.

***Excess Transferable Development Right*** – Transferable development rights that can be sold to another party without impacting the landowner's ability to develop in accordance with the base density of the RDT zone.

***Severed Transferable Development Right*** – A transferable development right that is no longer attached to a sending property by virtue of an easement recorded in the land records of the County.

***Extinguished Transferable Development Right*** – A transferable development right that has been severed, conveyed to a developer, and the serialized numbers have been recorded on a subdivision plat in a receiving area or conveyed to Montgomery County under the Building Lot Termination Program.

***Transferable Development Right Receiving Capacity*** - The potential number of transferable development rights that can be used to create more houses on land designated as a transferable development right receiving area via the application of transferable development right zoning. The Zoning Ordinance regulates the maximum number of transferable development rights that can be used.

***Transferable Development Right Sending Capacity*** – The potential number of transferable development rights that can be used from a particular parcel of land zoned Rural Density Transfer. This is the number of acres of the parcel divided by 5, as transferable development rights are assigned based on the 1:5 ratio. This capacity figure does not distinguish between transferable development rights necessary for houses, buildable transferable development rights, or excess transferable development rights.