



Loudoun County

VIRGINIA

WHERE TRADITION MEETS INNOVATION

Transfer of Development Rights

Transportation and Land Use Committee

May 21, 2020

What is Transfer of Development Rights (TDR)?

- Market-based growth management & land conservation tool
- Generally aims to preserve open space or environmental resources by directing growth to planned growth areas
- TDR allows development rights to be separated from a property and sold or otherwise transferred and applied to another property
- TDR programs meet specific needs by stipulating which properties qualify to sever rights and which qualify to receive them

Basic TDR Program Process

1. Locality identifies “sending areas” where limits on development are sought
2. Locality identifies “receiving areas” where additional development is desirable
3. Sending area property owners may voluntarily “sever” development rights (DR) for possible sale or transfer
4. Developers may purchase these rights and apply to receiving area property to achieve a bonus

Virginia Statutory Requirements

- Allow for purchase, sale, and/or transfer of severed rights not yet attached to receiving property
- Rights permitted to be severed from sending areas cannot exceed rights permitted to be attached in receiving area
- Assures “binding restrictions” (e.g., conservation easement or deed covenant) on sending properties subsequent to rights being severed

Virginia Statutory Requirements

- Participation must be voluntary
- Severance or transfer of rights cannot be required as a condition of development
- Approval of TDR application based on “determination of compliance with the ordinance” (Va. Code § 15.2-2316.2(B)(12)
 - Approval is administrative rather than discretionary

Transfer Ratios

Transfer ratio: the numerical relationship between the amount of development potential removed from sending sites and the amount of additional development allowed on receiving sites.

- Higher transfer ratios incentivize participation for sending property owners
- Localities may apply different transfer ratios to different areas in order to achieve particular policy goals
- Programs allowing residential to non-residential conversion use dwelling unit : floor area (square footage)

Hypothetical TDR Sending property

- 105 acres
- Rural North Place Type
- AR-1 zoning allows 1 dwelling unit (du) per 20 acres (base) or 1 du per 5 acres (cluster)
- Assuming cluster density, this property has 21 DRs
- The property owner has elected to sell 20 DRs to a developer
- The property is placed under conservation easement



Hypothetical TDR Receiving Property (residential)

- 20 acres
- Planned Suburban Neighborhood Place Type (4 du/ac)
- R-3 zoning allows 3 du/ac by-right or 60 total units
- The TDR ordinance allows an additional 1 du/ac in bonus density for transferred DRs for a total of 4 du/ac
- The developer has purchased 20 DRs from the sending property owner
- With TDR, the property owner can now develop 80 units



Hypothetical TDR Receiving Property (non-residential)

- 7 acres
- Planned Suburban Employment Place Type (maximum FAR of 1.0)
- PD-IP zoning allows 0.6 FAR by-right (~180k SF non-residential floor area)
- TDR ordinance allows bonus FAR up to 1.0 (additional ~120k SF floor area)
- Each transferred DR = 6k SF floor area
- The developer has purchased 20 DRs
- 20 DRs x 6k SF = 120k SF bonus floor area
- With TDR, the property owner can develop 300k SF of non-residential uses



Purchase and Retire (PAR)

- TDR enabling legislation authorizes a locality to provide for the purchase of DRs for the purpose of retiring them (Va. Code § 15.2-2316.2(C)(1))
- Sometimes referred to as “Purchase and Retire” (PAR)
- Functions much like Purchase of Development Rights (PDR)
- No Virginia localities currently use the PAR provision (both Frederick and Stafford Counties have PDR)
- Several Maryland counties use PAR programs
- PAR purchase prices could help establish benchmarks for private TDR transactions

Discussion Points

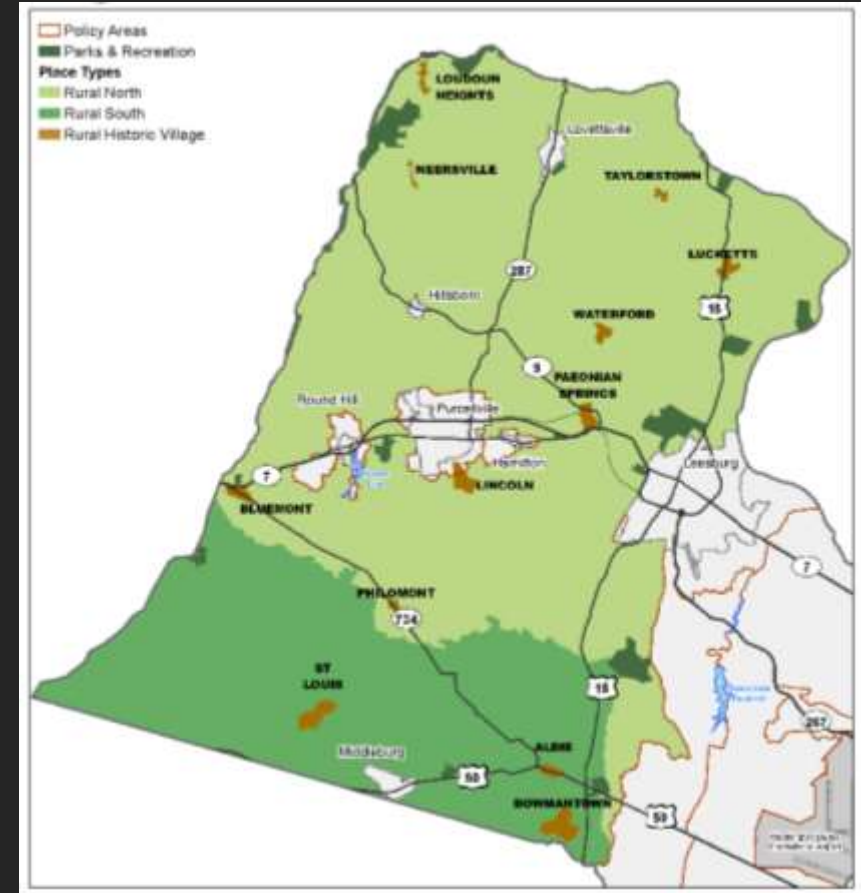
- Sending areas
- Receiving areas
- Options for transferring development rights
 - Residential to commercial rights conversion
- Proffer implications
- Competing policy goals
- Establishing a TDR bank

Sending Areas

- Typically areas where land conservation is most desirable
- Rural Policy Area (RPA) provides logical opportunities
- Committee/Board direction needed to guide their designation

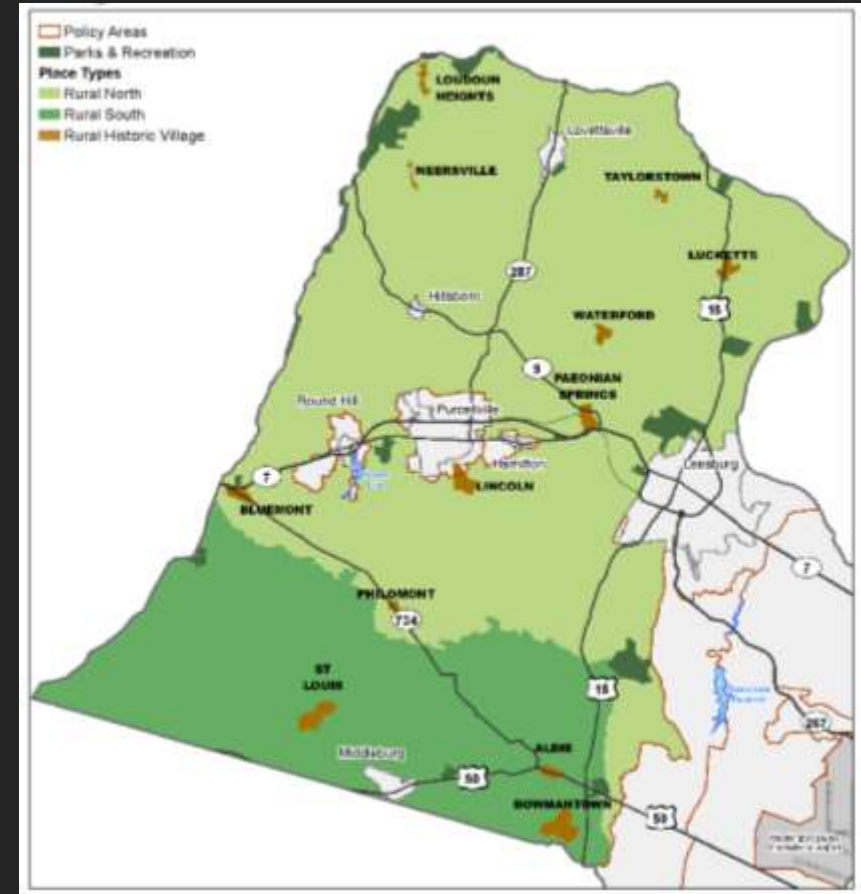
Designating Sending Areas

- Rural Policy Area (RPA)
 - Rural North Place Type
 - Rural South Place Type
- Board direction will guide implementation
 - How DRs are calculated
 - Transfer ratios



Sending Area Properties: Possible Criteria

- Location within an agricultural zoning district (i.e., AR-1, AR-2)
- Property must have development rights to retire:
 - Subdividable or
 - Comprising multiple, contiguous undeveloped parcels



Sending Areas: Transfer Ratios

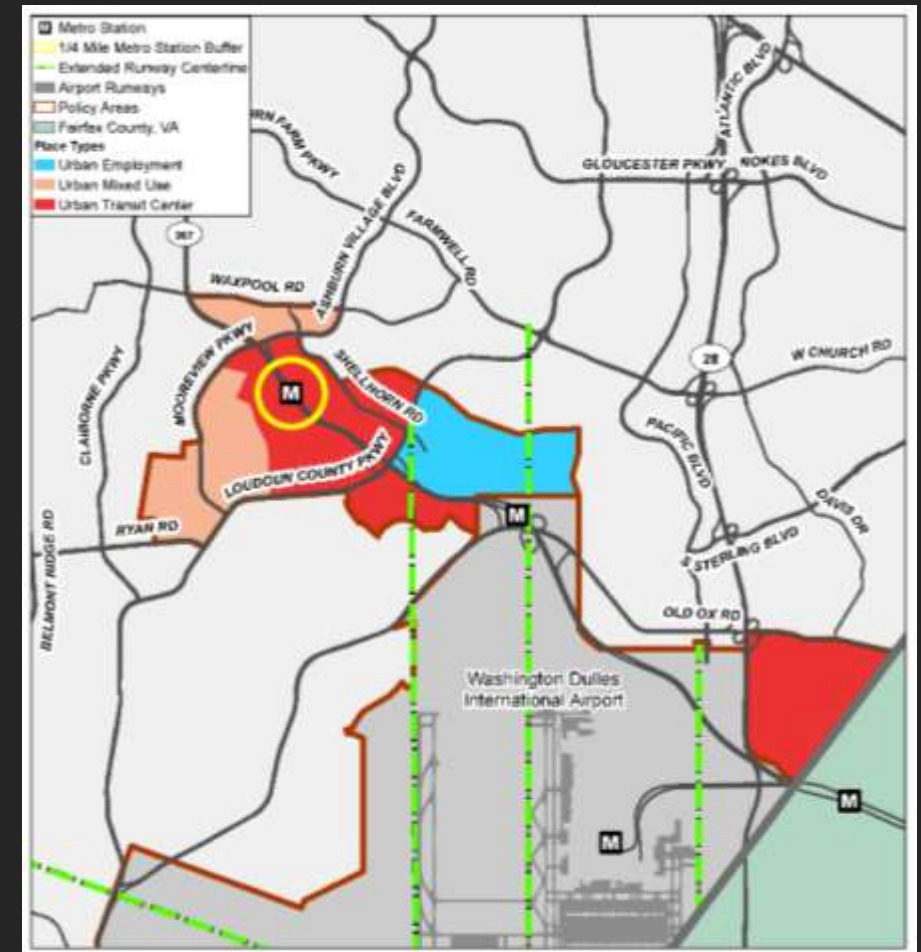
- Certain areas may be prioritized through enhanced transfer ratios, for example:
 - Location within an Agricultural and Forestal District
 - Proximity to drinking water supplies
 - Location within sensitive environmental areas (e.g., Mountainside OD, Limestone OD)
 - Location within Historic District

Designating Receiving Areas

- Receiving areas are areas where the locality wishes to direct growth
- Per state code, the locality must demonstrate the receiving areas have the capacity to accommodate all transferable DRs from the sending area
- The process of affixing DRs to receiving properties is subject to administrative review for compliance with a locality's TDR ordinance

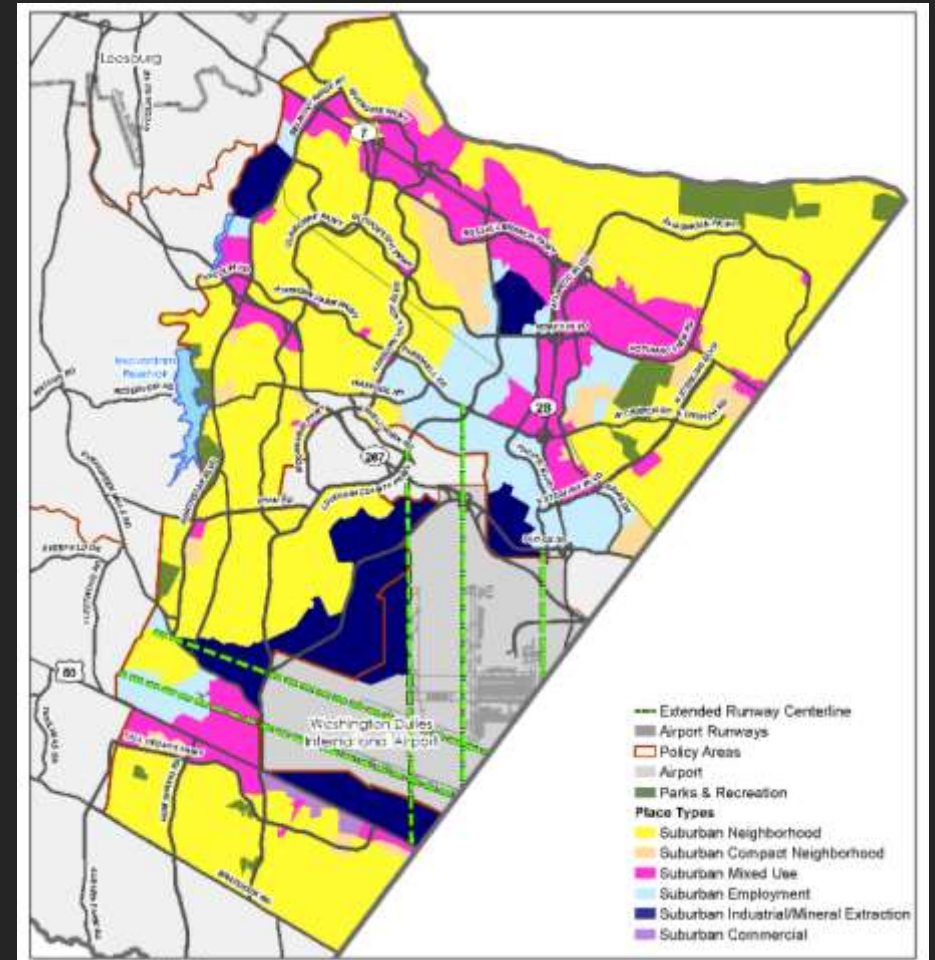
Receiving Area Analysis: Urban Policy Area

- Constrained viability as a receiving area
- 2019 GP policies seek to maximize growth potential
- Tax revenue generation considerations
- Infrastructure not yet in place; proffers especially important
- PD-TRC Zoning District standards recently amended to remove density caps



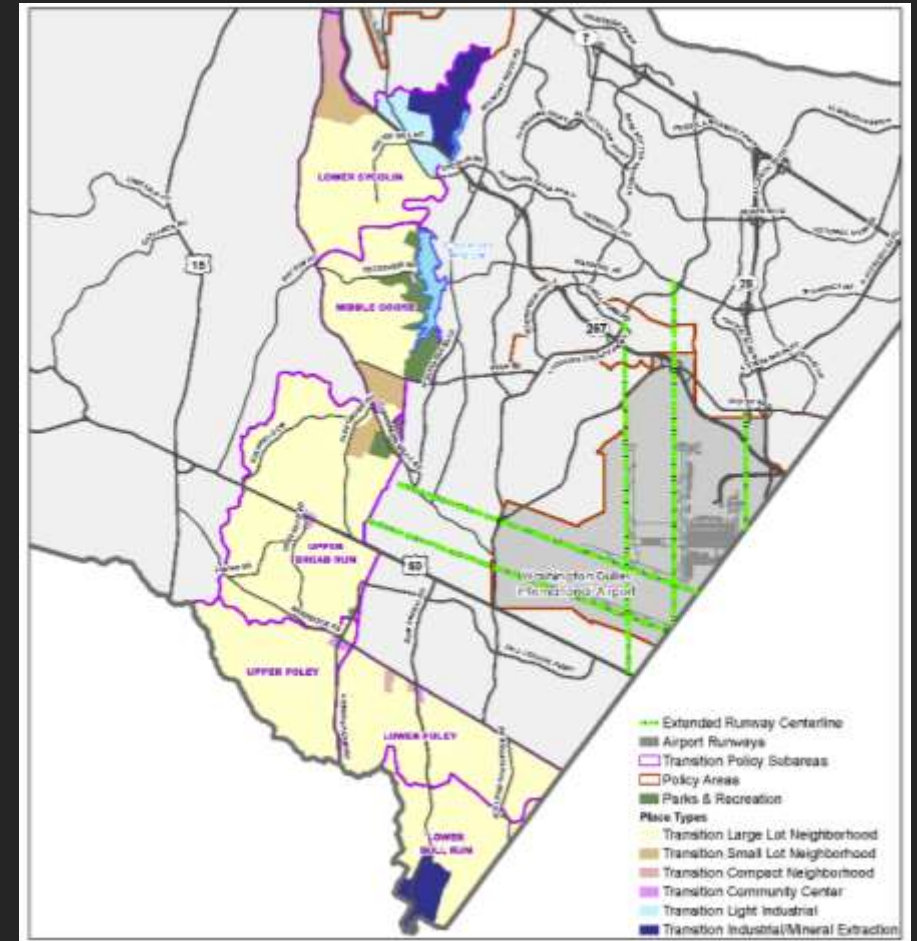
Receiving Area Analysis: Suburban Policy Area

- Some areas planned for additional residential growth
- Existing utilities and infrastructure; capacity varies
- Established neighborhoods with limited undeveloped areas
- Transfer opportunities are limited
- Significant areas entitled
- Requires nuanced approach to receiving area designation



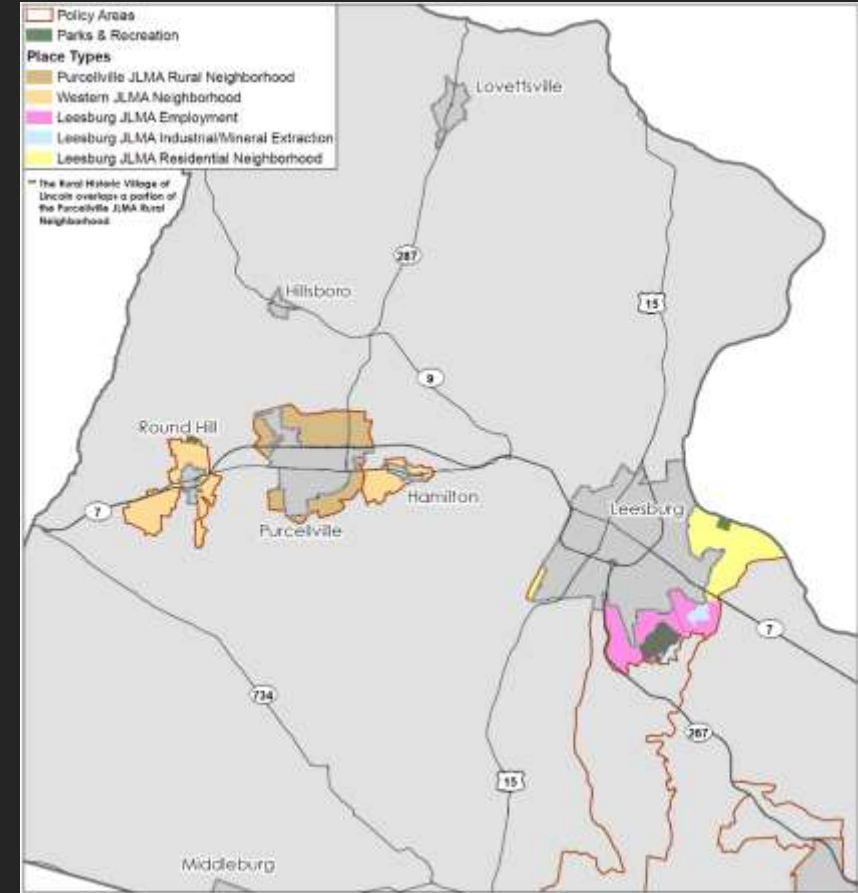
Receiving Area Analysis: Transition Policy Area

- Significant areas of unentitled, undeveloped land
- Some areas lack existing services and infrastructure
- Limited areas planned for additional growth
- Current zoning largely implements planned residential densities



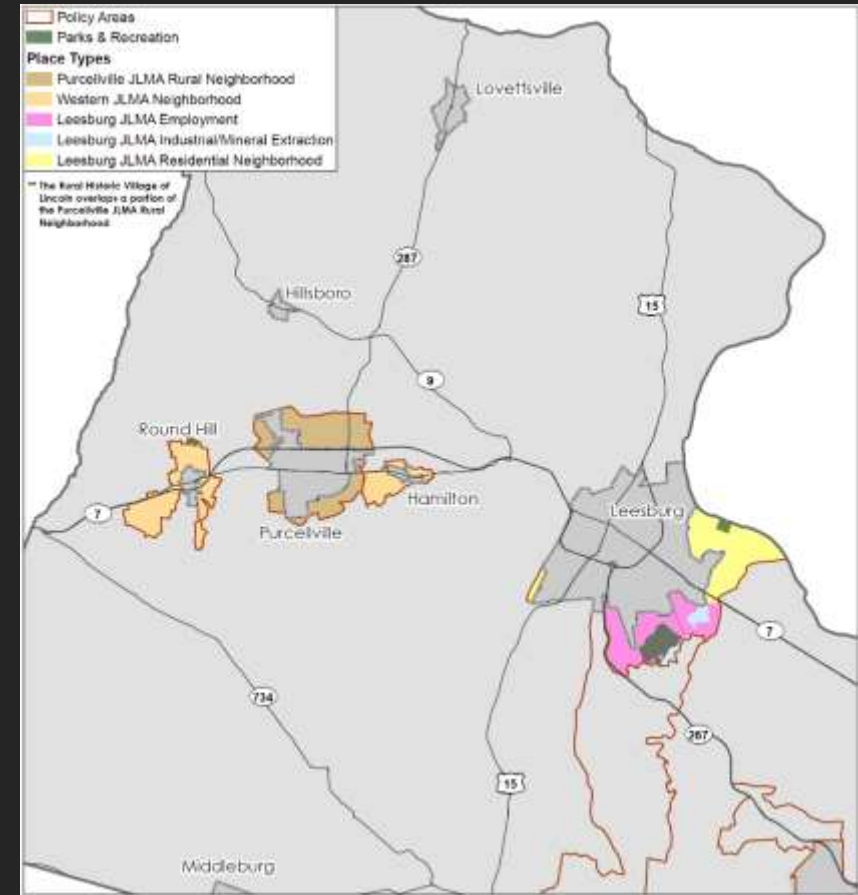
Receiving Area Analysis: JLMAs

- Planned for greater densities than RPA
- Proximate to services and infrastructure
- Largely built out to planned densities
- Warrants additional coordination with Towns



Receiving Area Analysis: Towns

- Services and infrastructure generally in place
- Limited undeveloped land
- Requires most coordination
 - CPAMs and ZOAMs required for County and any participating Town



Program Options: Residential to Non-residential

- TDR programs may allow for the conversion of residential DRs to non-residential floor area
- The locality identifies a non-residential or mixed use receiving area
- The locality designates the conversion value of each residential DR
 - Example: 1 residential DR = 3,000 SF of non-residential floor area
- Non-residential receiving areas have a maximum by-right floor area ratio (FAR) with an option to achieve an additional amount of FAR through TDRs

Proffer Considerations

- TDR is intended to be an administrative process and cannot be subject to discretionary approval
- The County would not collect proffers to offset the capital impacts of TDR development
- Specific capital impacts depend on program design
 - TDRs shift capital impacts from sending areas to receiving areas
 - Capital impacts would depend on development costs or facility standards of sending areas vs. receiving areas

Competing Policy Goals: Affordable Housing

- Density bonuses are powerful incentives to help achieve planning policy goals
- Currently Loudoun County uses bonus density as part of its Affordable Dwelling Unit (ADU) program (Zoning Ordinance Article VII)
- Multiple mechanisms to achieve bonus density may create competing policies
 - Use of TDR could reduce participation in ADU programs and vice-versa

Competing Policy Goals: Affordable Housing

- The creation of receiving areas should consider these interdependencies
 - Amendments to Article VII of the Zoning Ordinance likely needed
- Less relevant in residential-to-non-residential conversions
 - Loss of residential units via conversion would reduce overall housing supply

Program Options: TDR Banks

- Governmental body establishes a mechanism for the locality's involvement in buying and selling DRs
- Can facilitate the TDR market and helps ensure that DRs are available for purchase
- Significantly greater upfront costs than programs that do not use TDR banks
 - Seed money for establishment and initial DR purchases
 - Significant ongoing administrative costs
 - May be recouped in a very active TDR market through revolving funds but creates an element of financial risk

Program Options: TDR Banks

- Not specifically authorized by state statute but authority may be inferred
- No localities in Virginia currently operate TDR banks
- State code requirements create additional administrative hurdles
 - DRs are interests in real property and a public hearing would be required prior to sale

Potential Paths Forward

1. Send TDR back to the full Board with a recommendation to direct staff to prepare a program scope for Board consideration
2. Direct staff to prepare a scope for Committee consideration for recommendation to the Board
3. Table the TDR Program Discussion for future Committee consideration
4. Take no further action on the TDR Program Discussion at this time
5. Direct staff to prepare a discussion of other land conservation tools and programs for a future Committee meeting

Decision Points for TDR Program Development

1. Whether to move ahead with developing a TDR program.

- Developing a TDR program would require the following:
 - Identification of funding for required modeling/analyses
 - Program development and modeling/analyses
 - Comprehensive Plan Amendment (CPAM)
 - Zoning Ordinance Amendment (ZOAM)

Decision Points for TDR Program Development

2. Preferred sending areas and related policy priorities (i.e., bonus transfer ratios)
3. Preferred receiving areas
4. Conversion options (i.e., residential-to-residential and/or residential-to-non-residential)
5. Resolution of policy conflicts with housing affordability programs
6. Whether to further explore the use of a TDR Bank