

St. Mary's County  
Department of Land Use & Growth Management  
P.O. Box 653  
23150 Leonard Hall Drive  
Leonardtown, MD 20650

## St. Mary's County

### Transferable Development Rights (TDRs) Frequently Asked Questions

This is a publication of the  
St. Mary's County  
Department of Land Use & Growth Management  
Phone: 301-475-4200, Ext. 1500  
Maryland Relay Service TTY: 711 or 1-800-735-2258

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# A Guide to Transferable Development Rights (TDR)

Area Overlays in accordance with the underlying zone. However, RCA density may not be increased with the use of TDRs.

Dear St. Mary's County Citizens:

The Transferable Development Rights (TDR) program is voluntary for County property owners and is provided to further the objectives of the Comprehensive Plan. The program provides flexibility to encourage the protection of farmland and resource protection areas by allowing the transfer of development potential from a site that has resources deserving protection to a site in a designated receiving zone.

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**41. Do I have to use TDRs to build a tenant house or on-site worker's housing on my farm?**

No. A tenant house, accessory to a farm, does not require a TDR prior to construction. However, if the tenant house is anticipated to be subdivided onto a separate lot in the future, a TDR in compliance with the density of development is required prior to approval of the anticipated lot. Section 50.4 Use #114.

**42. Are there grandfathered provisions for existing projects that are in the development process?**

Yes, all completed applications for subdivision and site plans received prior to July 24, 2007 are grandfathered. Section 26.13

**43. Can I purchase additional land to meet the acreage criteria for the exemptions?**

No. You must own the land prior to May 13, 2002.

**44. If I had a name added to my deed after 2003, can the added person create lots for their children?**

The name of the person must have been on the deed as of May 13, 2002.

**45. If I own two parcels of land, can I combine them to meet the acreage for the purpose of calculating the number of TDRs?**

Yes, but only if they are contiguous or adjoining. Non- adjoining parcels can not be combined.

**46. Does an accessory apartment/dwelling unit require a TDR?**

No. Section 50.4 use #105

**47. If I am in the Rural Legacy Area can I use TDRs to increase density?**

No. Section 26.2.2.b.

**48. How can I use TDRs in the Critical Area?**

TDRs may be lifted at a density of 1:5 in the RCA. TDRs may be used in the Limited Development Area and Intensely Developed

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**1. What is a TDR?**

A TDR (Transferable Development Right) is a development credit recognized nationally as a planning tool. In St. Mary's County it is used to protect agricultural, historic, environmental resources and rural open space, while accommodating the needs of development.

**2. What is a TDR program?**

A TDR program is a transfer mechanism permitting owners of preservation area (sending area) land to separate the development rights from the property itself and sell them for use elsewhere (to a receiving zone).

**3. Where are the regulations that govern the TDR program?**

The St. Mary's County Comprehensive Zoning Ordinance Chapter 26 adopted by the Board of County Commissioners outlines and addresses the TDR program. The Ordinance is located in the Library, on the web ([www.co.saint-marys.md.us](http://www.co.saint-marys.md.us)) or for purchase at the Department of Land Use and Growth Management.

**4. Where can TDRs come from?**

TDRs can be created in the Rural Preservation District (RPD) as the sending area. Section 26.3

**5. What is a sending area?**

A sending area is eligible land in the Rural Preservation District (RPD). Section 26.3

**6. What is a receiving area?**

A receiving area is land eligible to receive TDRs to increase residential density or increase commercial or industrial development. Section 26.4

**7. How do I know if the land is in the RPD?**

density increases, the number of TDRs will also increase. Section 26.4.2

**34. What is the maximum density allowed in the RPD?**

The maximum density in the RPD zone is 1 dwelling unit per 3 acres of land. Section 32.1

**35. Can I sell my land without TDRs?**

Yes. Section 26.2.1

**36. Can I sell TDRs without the land?**

Yes. Section 26.1.2

**37. What alternative preservation programs are available to preserve land?**

Land owners can participate in alternative preservation programs which include: the Maryland Agricultural Land Preservation Foundation (MALPF); the Maryland Environmental Trust Program (MET); the Rural Legacy Program. Contact the Department of Economic Development (DECD) at 301-475-4200, Ext. 1402.

**38. Can I benefit from another preservation program and the TDR program?**

Generally the provisions of each program may restrict the participation in a second program contact DECD for more information.

**39. Is the right to farm legislation affected by the TDR program?**

No. The right to farm legislation runs with the land and is not affected by the TDR program.

**40. How is tenant housing on a farm affected by the TDR program?**

Tenant housing for farming purposes is allowed as an accessory use to the farm. The future creation of a residential lot for the tenant house will require compliance with the TDR provisions. See question #41.

In lieu of purchasing TDRs from a sending parcel for use in development of a receiving parcel, you may pay a fee to the County. The fee will be placed in an account for future land preservation efforts See question #30. Section 26.10

**29. How is the fee in lieu determined?**

The fee in lieu for each TDR is one hundred twenty percent (120%) of the average fair market value paid for TDRs in “arms-length” intermediate transactions in the previous fiscal year, as calculated by the Economic Development Director. The County will make public the fee in lieu calculations no later than thirty (30) days following the end of the fiscal year. The Board of County Commissioners would reserve the right to increase or decrease the fee in lieu within the thirty (30) day period following the annual determination, after which such determination would remain in effect until the following fiscal year. Section 26.10.1

**30. Do I pay a transfer tax on the sale of my TDRs?**

No.

**31. What can I do with the land that has been severed of all TDRs?**

Any agricultural use classification to include: processing and storage of crop and animal products, Aquaculture, Horticultural, Farmer’s Market, Auction house for locally produced agricultural products, livestock and handcrafted goods, Silviculture, timber harvesting and others. Please see Schedule 50.4 and Section 26.12 for all allowable uses.

**32. What density requires more than 1 TDR per dwelling?**

A density more than 1 dwelling unit per 5 acres (1:5) requires 2 TDRs per dwelling unit, and a density of more than 1 dwelling unit per 4 acres (1:4) requires 3 TDRs per dwelling unit up to a maximum density of 1:3 allowed in the RPD Zone. Section 26.4.2

**33. Do I need a TDR for every house on my property in the RPD?**

The first dwelling unit on a parcel in the RPD is permitted without a TDR. Request to build a second or more dwelling(s) after July 23, 2007 may require a TDR as part of the development process. As the

The St. Mary’s County Zoning maps depict the zoning for each parcel of land. These maps are available on-line or at the Department of Land Use and Growth Management.

**8. What can be done with TDRs**

TDRs may be used for residential, commercial and industrial development.

There are some exceptions and limitations, please refer to the Comprehensive Zoning Ordinance for details. Sections 32.1 and 32.2

**9. How do I calculate the number of TDRs on a piece of land?**

The number of TDRs on a piece of land is determined by the gross acreage of the parcel divided by 5 and then subtracting the number of dwelling units. The remainder is the number of TDRs. Fractional TDRs are not allowed. For example:

Size of parcel/lot of record based on deed/tax records	98 acres
Divided by 5	19.6
Number of current Dwelling Units (homes) prior to July 24, 2007	2
Number of TDRs available	17

**10. Who certifies the number of TDRs on my property?**

The Director of Land Use and Growth Management and the County Attorney certify the number of TDRs on a parcel of land. Section 26.7

**11. Can I build a residence on my property without a TDR?**

The first dwelling unit on a parcel in the RPD can be built without a TDR; thereafter TDRs may be required. Each property is unique and a determination of your situation will need to be analyzed by the Department of Land Use and Growth Management. Section 26.4

**12. Is the TDR program voluntary?**

Yes, severing or lifting of the TDRs from your property is voluntary as is developing land to its maximum potential with the use of TDRs Section 26.1

**13. Why would someone want to purchase TDRs?**

Someone would want to purchase TDRs to increase the density of residential dwelling units on a site or to increase the intensity of development in a commercial or industrial zone. Section 26.2

**14. How can a person use TDRs?**

A person can use TDRs to increase the density of residential dwelling units on a site or to increase the Floor Area Ratio of a commercial building. Section 32.1

**15. If I have land in the RPD zone, do I need to purchase TDRs ?**

Depending upon the amount of land on a site and the number of dwelling units desired, a person may or may not be required to use their own density or purchase additional TDRs. Section 26.3

**16. Can I sever and sell my TDRs?**

Yes, you can sever a portion or all of your TDRs. Section 26.2.1

**17. How do I sever TDRs from my land?**

To sever TDRs from land, an application must be submitted to the Department of Land Use and Growth Management, along with all pertinent information. The staff will help you with the process and has additional information needed to complete the transaction. Section 26.8

**18. What are the legal instruments (forms) used for the transfer of TDRs?**

The forms used for the transfer of TDRs include: The Original Instrument of Transfer; The Intermediate Instrument of Transfer; a Final Instrument of Transfer; a certificate of title from a lawyer; and a certification of the number of TDRs on a property. Section 26.8 and 26.9

**19. What is the role of the Office of Land Records?**

The Office of Land Records records the legal instruments or documents. Section 26.8 and 26.9

**20. Where do I find TDR forms?**

These forms are located on-line at <http://www.co.saint-marys.md.us/lugm/lugmtemplate.asp?content=applicationformscontent.as> or at the Department of Land Use and Growth Management.

**21. Where can I research to determine if the TDRs on my property have been severed?**

Review your deed, have a title search conducted, and check with the Department of Land Use and Growth Management.

**22. May I sever them before I have a contract to sell them?**

Yes.

**23. Once the TDRs have been severed and sold can I reattach them to the sending property?**

No. Section 26.5

**24. When the TDRs have been transferred to a receiving area can they be transferred again?**

No. Section 26.5

**25. Where can I find TDRs for sale?**

Real Estate Agents, property owners in the RPD or by looking in the classified section of the local newspaper.

**26. Who determines the price of TDRs?**

The price of TDRs is set by the private market, supply and demand.

**27. What is the alternative to purchasing a TDR?**

A fee in lieu can be paid.

**28. What is a fee in lieu?**