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South Carolina Priority Investment Act

Implementation Guide for Local Governments

American Planning Association
South Carolina Chapter

Making Great Communities Happen

First Edition

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acknowledgements

Development and production of the Priority Investment Act (PIA) and this Implementation Guide was the result of a collaborative effort on the part of a number of South Carolina nonprofit public interest organizations and members of the South Carolina Chapter of the American Planning Association (SCAPA). The South Carolina Coastal Conservation League (SCCCL), the South Carolina Association of Counties (SCAC), and the Municipal Association of South Carolina (MASC) were involved in drafting early versions of the Priority Investment Act and each also conducted ongoing analysis and evaluation of the various provisions of the proposed law during the General Assembly's consideration.

Upon adoption of the PIA, SCAPA initiated the development and production of the Implementation Guide to the South Carolina Priority Investment Act in cooperation with these three organizations, as well as the Low Country Housing Trust (LCHT) and several private practitioners experienced with these tools in South Carolina and other states. SCAPA extends its gratitude and appreciation to the following individuals for their assistance:

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SCAPA also would like to extend its sincere appreciation to Representative Ben A. Hagood, Jr., the prime sponsor of the Priority Investment Act.

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introduction

The *South Carolina Priority Investment Act Implementation Guide for Local Governments* empowers cities and counties with information for implementing the Priority Investment Act (also referred to as the "PIA" or "the Act" and included in Appendix A of this document) during the initial years. In addition, the authors of this Guide identify a number of other innovative planning and zoning tools that local governments may consider while implementing the Priority Investment Act; although they are not expressly addressed by the PIA. Several of these tools derive from South Carolina law passed prior to the Act, while others have not been used widely in the state. All tools highlighted in the Guide advance the PIA's central themes of enhanced government efficiency, improved quality of life, sustainable development intensities and land use patterns, and a focus on affordable housing.

The first edition of the Guide is preliminary in nature since there are a limited number of South Carolina communities that have implemented the PIA. Future editions will incorporate the experiences of other communities implementing the Act, as well as subsequent statutory or judicial directives. Cities and counties are encouraged to visit the SCAPA website (www.scapa.org) for additional information between publications of this Guide.

Sample ordinances included in the Guide provide local governments with an example for how other communities implement the tools described herein. Please note that some of the sample ordinances are in draft format, and have not been adopted at the time of this writing. Planning staff should also visit the Environmental Section of the South Carolina Department of Health and Environmental Control (DHEC) for additional information and sample ordinances (www.scdhec.net/environment/baq/ModelOrd.aspx). Information provided in the appendices should not be used in other jurisdictions without careful scrutiny and revision.

The Guide and all appendices are intended for reference only and solely for the purpose of providing examples of planning implementation practices undertaken in communities that have addressed the general topics discussed for the Priority Investment Act. The Guide should be used as a research tool for local government planners exploring effective means of implementing the PIA, or that wish to explore other innovative planning tools not expressly addressed by the Act. None of the tools discussed herein should be implemented without a thorough review to determine applicability in the context of the community, or to ensure compliance with applicable laws and requirements.

The contents of the *South Carolina Priority Investment Act Implementation Guide for Local Governments* do not constitute legal advice and all federal, state, and local laws should be evaluated by legal counsel prior to implementing any tool addressed.

overview of the act

***by* Ben A. Hagood, Jr., Esq.**

Ben A. Hagood, Jr., the principal author of the Priority Investment Act, was a Republican member of the South Carolina House of Representatives, representing Charleston County, at the time the Priority Investment Act was passed. Mr. Hagood practices environmental law with the firm of Hagood & Kerr, PA. in Mount Pleasant.

On May 23, 2007, Governor Sanford signed into law, S266, the South Carolina Priority Investment Act. The Act amends the Local Government Comprehensive Planning Enabling Act of 1994 to improve the local government comprehensive planning process and to provide local governments new zoning tools.

The intent of the Act is to preserve and enhance quality of life throughout South Carolina by better planning and coordination of public infrastructure decisions and by encouraging the development of affordable housing and traditional neighborhood design. Too often one community's plans for roads, water, sewer, and schools are not coordinated with neighboring communities resulting in expensive and poorly planned public structures. In many areas of the state, local development ordinances and zoning codes have proved unnecessary obstacles to affordable housing and traditional neighborhood design. By requiring better local government planning as well as encouraging the use of market-based incentives and the elimination of nonessential regulations, the Priority Investment Act will save taxpayer dollars on needed governmental infrastructure and enhance the vitality of our local communities.

The Priority Investment Act adds two new elements to the comprehensive planning process, a process that must be followed by all county and municipal governments who develop zoning ordinances. The Act provides for a specific transportation element requiring local governments to consider all transportation facilities (including roads, transit projects, pedestrian and bicycle projects) as part of a comprehensive transportation network. The Act also adds a new priority investment element, which requires local governments to analyze available public funding for public infrastructure and facilities over the next ten years and to recommend projects for expenditures of those funds for needed public infrastructure. This element will require more prioritized planning for public infrastructure and facilities such as water, sewer, roads, and schools. Additionally, the priority investment element requires a basic level of coordination between local governments. The Act requires that the priority investment element be developed through coordination with "adjacent and relevant jurisdictions and agencies." All governmental entities and utilities - counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies and other public entities - that are affected by or have any planning authority over the public project identified in the priority investment element must be consulted in the coordination process. The Act provides for a basic level of coordination requiring written notification to the other agencies and an opportunity for comment on the proposed projects.

overview of the act

The Priority Investment Act also provides for two new zoning tools to promote affordable housing and traditional neighborhood design. The Act requires that local governments carefully analyze regulatory requirements affecting the affordability of housing and to identify those housing regulatory requirements that are not necessary to protect the public health, safety or welfare. Local governments must also analyze market-based incentives that may be made available to encourage the development of affordable housing. The Act allows local governments to identify Priority Investment Zones in which local governments may adopt market-based incentives, relax or eliminate nonessential housing regulatory requirements in order to encourage affordable housing, or encourage traditional neighborhood design. The Act defines market-based incentives to include density bonuses, relaxed zoning regulations such as lot area requirements or setbacks, reduced or waived fees, fast track permitting and design flexibility. Nonessential housing regulatory requirements may include requirements like minimum lot size, setbacks, open space requirements, landscaping, impervious surfaces and parking requirements.

Local governments must incorporate the new provisions of the Act into their existing comprehensive plans during their next five year review or update. As the new requirements of the Act are implemented throughout the state, haphazard development and sprawl should be reduced. By prioritizing and coordinating with their neighbors, local governments should spend their precious infrastructure dollars more wisely, thus providing greater accountability to their taxpayers. Bottom up local and regional planning should reduce, and in many cases even eliminate, the land use skirmishes that have inevitably resulted between local governments.

The Priority Investment Act is the result of much hard work by many individuals and interested groups, including the SC Coastal Conservation League, the SC Realtors Association, the Municipal Association of SC, the SC Association of Counties, the SC Homebuilders Association, and the Governors Quality of Life Task Force.

requirements of the act

Act No. 31 of 2007 is the South Carolina Priority Investment Act. The General Assembly amended Title 6, Chapter 29 of the South Carolina Code to explicitly address housing, transportation, capital improvement planning, intergovernmental coordination, and to encourage traditional neighborhood design and the production of affordable housing. There are several new requirements for local governments with comprehensive plans. Beyond these requirements, however, the Act is intended to encourage good planning practices and should therefore be viewed as the "foundation" for planning jurisdictions, not the sum of what can be or should be done, though these zoning tools, for the most part, remain in the discretion of each local government.

Required Comprehensive Plan Elements

The Act amends S.C. Code sec. 6-29-510(D) to add two new required elements and to expand a third element of local comprehensive plans. Implementation of these requirements is addressed on pages 7 - 23 of this Guide.

Housing Element

The "housing element" described in S.C. Code sec. 6-29-510(D)(6) has been expanded to require local governments to analyze "unnecessary nonessential regulatory requirements." These are defined in S.C. Code sec. 6-29-1110(6) as development standards and procedures that are determined by the local body as not essential to protect the public health, safety, or welfare, and would otherwise make a proposed housing development economically infeasible. This section also requires the local government to analyze the use of market-based incentives that may be offered to encourage development of affordable housing. Such incentives may include density bonuses, design flexibility, and streamlined permitting processes.

Transportation Element

A new "transportation element" described in S.C. Code sec. 6-29-510(D)(8) examines aspects of local transportation issues and likely funding. This element requires a more comprehensive examination of the local government's transportation facilities, including major road improvements, new road construction, transit projects, and pedestrian and bicycle projects. The transportation element must be developed in coordination with the current land use element described in S.C. Code sec. 6-29-510(D)(7). Prior to the 2007 amendments, local governments were required to consider their transportation networks as part of the broad "community facilities element", described in S.C. Code sec. 6-29-510(D)(6), and no specific elements of the transportation network had to be examined.

Priority Investment Element

A new "priority investment element" was added in S.C. Code sec. 6-29-510(D)(9). The

priority investment element requires the analysis of likely sources of federal and state funding for public infrastructure that may be available, and a recommendation of projects for expenditure of those funds over the next ten years. This element requires that the prioritization of projects must be done through coordination with adjacent and relevant jurisdictions and agencies. This section defines these groups as counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. Coordination requires the written notification by the local planning commission or its staff to the relevant and adjacent jurisdictions or agencies providing them the opportunity to submit comments to the planning commission or its staff concerning the project. Failure to identify or notify an adjacent relevant jurisdiction or agency does not invalidate the plan or give rise to a civil cause of action.

Zoning and Land Development Regulations

The Act also amends the South Carolina Code of Laws to encourage two zoning concepts through a designated "priority investment zone." Implementation of these techniques is discussed on pages 24 - 30 of this Guide.

Zoning Districts

Act No. 31, amends S.C. Code sec. 6-29-720(C)(7) by creating new "priority investment zones." The new "zone" encourages local governments to adopt market-based incentives or relax or eliminate unnecessary nonessential housing regulatory requirements to encourage private development in the priority investment zone. This section further encourages the local government to provide that "traditional neighborhood design" and "affordable housing" must be permitted within priority investment zones. The use of the priority investment zone in an ordinance is optional under the Act.

Land Development Regulations Prerequisites

Section 5 of the Act amends S.C. Code sec. 6-29-1130(A), the land development regulation provision, to require the adoption of the community facilities, housing, and priority investment elements before the local government may prepare and recommend for adoption regulations governing the development of land within the jurisdiction. Prior to the PIA, only the adoption of the community facilities element was a required prerequisite.

New and Expanded Definitions

Act No. 31 also applied definitions in S.C. Code sec. 6-29-1110 to all of Chapter 29. It is advised that staff check the local government ordinances for any impact from this change.

Affordable Housing

"Affordable housing" is defined in S.C. Code sec. 6-29-1110(1) using the total cost for a dwelling unit for sale, including mortgage, amortization, taxes, insurance, and condominium and association fees. By state law, qualified affordable housing constitutes no more than 28% of the annual household income for a household earning no more than 80% of the area's median income, by household size, as reported by US Housing and Urban Development (HUD). In the case of a rental unit, the total cost for rent and utilities can constitute no more than 30% of the annual household income for a household earning no more than 80% of the area median income, by household size, as reported by HUD.

Traditional Neighborhood Design

"Traditional neighborhood design," commonly referenced as TND, is defined in S.C. Code sec. 6-29-1110(5) as a development pattern intended to enhance the appearance and functionality of new development so that it functions like a traditional neighborhood or town. TND makes possible higher residential densities, a mixture of residential and commercial land uses, single and multi-family housing types, and pedestrian- and bicycle-friendly roadways. Overall, the aim of this portion of the Act is to encourage local governments to reevaluate their comprehensive plans in such a way as to slow the growth of sprawl, prioritize projects and funding, and create new opportunities for affordable housing throughout the state.

Effective Date

The PIA took effect on May 23, 2007. Section 6 of the Act provided that local governments that had recently adopted comprehensive plans would not have to consider the new elements until the next review of the plan, pursuant to the five year provision in S.C. Code sec. 6-29-510(E). It appears, however, that a local government currently reviewing its comprehensive plan must include the provisions of the PIA if final action on the plan had not been taken prior to May 23, 2007. It is recommended that local governments in this situation, as well as those amending their plans prior to the five-year review period, address each of the required elements of the Act. Addressing the Act, may necessitate that some local governments reevaluate project priorities pursuant to S.C. Code sec. 6-29-510(D)(9), and may require the local government to reopen their plan for public comments from adjacent jurisdictions and to give additional written notifications.

focus on implementation

This chapter highlights minimum requirements and available resources for implementation of the Priority Investment Act. Specifically, it addresses new or updated housing, transportation, and priority investment plan elements required in the local comprehensive plan, and the two principle regulatory tools addressed in the PIA — affordable housing and traditional neighborhood design. Planning and finance tools not addressed specifically in the PIA are also included at the end of this chapter for consideration by cities and counties interested in implementing more advanced regulatory tools for managing growth. Local governments are encouraged to research all tools mentioned in the Guide in more detail to ensure local applicability and legality before adoption.

To date, very few communities in the state have completed amendments to their comprehensive plan, or amended local regulatory tools, to comply with the rules and requirements set forth in the PIA. Communities that have completed the required amendments at the time of this printing include: Beaufort County, Charleston County, Dorchester County, and Richland County. Contact information for these communities is available through the South Carolina Chapter of the American Planning Association (SCAPA) or local government websites. We encourage you to contact these communities for more information.

The Comprehensive Plan

The comprehensive plan provides an early opportunity for cities and counties to meet provisions set forth in the PIA. The broad perspective and inclusive planning process critical to developing a successful plan is also an opportunity to review and assess the communities' values relative to town-building and provides for meaningful intergovernmental coordination. New and amended plan elements required in the PIA reinforce the comprehensive, cooperative approach to long-term planning for sustainable development in South Carolina. Such an approach helps to curb unmanaged growth and its unintended consequences of overextended community infrastructure and lack of housing choice and availability.

This section on comprehensive plan amendments provides guidance to local governments as they develop or update their plans to meet local needs, improve fiscal responsibility and efficiency, help position themselves to compete for scarce funds for project implementation, and comply with the provisions of the PIA.

Local planning departments across the state have varying resources and staff available for updating the comprehensive plan to conform with PIA requirements. Therefore, organization of this section highlights "core requirements" and "enhanced components" separately for updating or preparing new housing, transportation, and priority investment elements of the comprehensive plan. All communities should expect to complete core requirements to comply with the Act.

However, communities with available resources or unique circumstances should consider completing one, or all, of the enhanced components as well.

Available data and potential partnering agencies for preparing the housing, transportation, and priority investment elements of the comprehensive plan are identified separately for core requirements and enhanced components.

Housing Element

Over the last several years, housing prices have increased dramatically across South Carolina, leading to less affordable housing for a growing number of low- and moderate-income households. The Priority Investment Act highlights the need for affordable housing as a key component in a community's strategy for developing a strong economy, healthy environment, and sustainable transportation system. Amended language for Section 6-29-510(D)(6) of the Code of Laws of South Carolina specifically requires that local governments update the housing element to *"ascertain unnecessary housing regulatory requirements that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare"* and to include *"an analysis of market-based incentives that may be made available to encourage development of affordable housing"*.

The definition of affordable housing, and priorities for promoting affordable housing in the community, are discussed in further detail on pages 27 - 30 in this Guide.

Core Requirements

Core requirements for the housing element are intended to meet the *minimum* rules and requirements set forth in the PIA. Factors such as community size, complexity of housing issues, and availability of data help determine the effort that will be required for preparing the document. Communities amending their comprehensive plan under the PIA should present information related to the core requirements in text and tabular formats.

Analysis of Unnecessary Housing Regulations

Local governments are required to inventory and evaluate housing regulations that add unnecessary costs to the development of affordable housing, but which are not essential to protect public health, safety, or welfare. The type and magnitude of non-essential housing regulations will vary from community-to-community based on locally-adopted ordinances, codes, and administrative procedures.

The PIA does not define "non-essential housing regulatory requirements" specifically related to the housing element. However, S.C. Code sec. 6-29-1110 defines it as development standards and procedures determined by the local governing body to be non-essential "within a specific priority investment zone" to protect public health, safety,

or welfare and that may otherwise make a proposed housing development economically infeasible. Non-essential housing regulations may include, but are not limited to:

- standards or requirements for minimum lot size, building size, building setbacks, spacing between buildings, impervious surfaces, open space, landscaping, buffering, reforestation, road width, pavements, parking, sidewalks, paved paths, culverts and storm water drainage, and sizing of water and sewer lines that are excessive; or
- application and review procedures that require or result in extensive submittals and lengthy review periods.

Although this definition's reference to housing regulations "within a specific priority investment zone" seems narrow for purposes of the comprehensive plan element, it provides good guidance for addressing the requirements of the housing element.

In simple terms, the PIA requires local governments to identify rules and requirements that bar or deter construction of affordable housing without justification directly tied to public health, safety, or welfare. Further, it looks to limit rules and requirements that disproportionately increase the cost of newly constructed or restored housing by imposing unnecessary limits on the housing location, or development in general, without providing proper compensation in return.

Local housing regulations that could qualify as non-essential based on local conditions and government application may include:

- complicated administrative and permitting procedures;
- unreasonable and expensive building code requirements for rehabilitation projects;
- large lot single-family zoning;
- prohibitions on accessory apartments;
- excessive development and impact fees;
- excessive or discriminatory public review requirements;
- shortage of mixed use zoning districts and land zoned for multifamily housing;
- excessive spacing requirements for group homes;
- excessive requirements for group homes; and
- discriminatory treatment of manufactured housing.

The PIA does not set forth minimum rules or criteria for identifying non-essential housing regulations. Local governments, therefore, may consider creating a task force to study in parallel issues related to affordable housing in their community, solicit input from developers and non-profit agencies, or conduct a staff review of administrative processes, land development regulations, and building and housing codes. Local governments should document their process for identifying and evaluating qualified non-essential housing regulations within the comprehensive plan. An evaluation matrix or brief narrative may be appropriate for summarizing the analysis of unnecessary housing regulations based on local context and complexity of the issues revealed.

Analysis of Market-Based Incentives

Local governments are required to analyze market-based incentives that may be available for the development of affordable housing. The type and magnitude of appropriate market-based incentives will vary from community to community based on geographic size and complexity of housing issues.

The PIA defines market-based incentives as those which encourage private developers to meet the local governing authority's goals developed in Title 6, Section 29 of the Code of Laws of South Carolina. Market-based incentives may include, but are not limited to, the following:

- density bonuses, allowing developers to build at densities higher than residential zones typically permit, allowing developers to build qualified affordable housing at densities higher than typically permitted, or allowing developers to purchase density by paying into a local housing trust fund;
- relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;
- reduced or waived fees including those fees levied on new development;
- projects where affordable housing is addressed, reimburse permit fees upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap-in fees for affordable housing units;
- fast-track permitting including, but not limited to, streamlining and expediting the permitting process for affordable housing developments to help reduce private-sector costs and delays; and
- allowing for greater design flexibility, including preapproved design standards for expedited approval and promoting infill development, mixed use and accessory dwellings.

Since the PIA defers to local governments to develop their own analyses, cities and counties should collaborate with other jurisdictions for success stories related to implementing market-based incentives that increase affordable housing. Authors of the housing element should also research or make contact with federal, state, local, or non-profit organizations that promote innovative approaches to affordable housing. Several optional affordable housing tools are described on pages 27 - 30 of this Guide.

Available Data

Relevant and appropriate data for satisfying the core requirements of the housing element should be collected from professionally accepted existing sources. Primary sources for housing-related data may include:

- Affordable Housing Development Handbook published by the Low Country HousingTrust *(http://www.lowcountryhousingtrust.org/pdfs/lht%20affordable%20housing%20development%20handbook_color.pdf)*;
- SC State Housing Finance and Development Authority (*www.schousing.com*);
- Columbia HUD Office (*www.hud.gov/local/sc/working/columbiaoffice.cfm*);
- Affordable Communities Initiative and Barriers to Rehabilitation of Affordable Housing published by the US Department of Housing and Urban Development (*http://www.hud.gov/initiatives/affordablecom.cfm and http://www.huduser.org/publications/destech/brah.html*);
- The Campaign for Affordable Housing (*http://www.tcah.org/*); and
- Affordable Housing Task Force Update, 2007 Report (*http://www.huduser.org/rbc/docs/ColumbiaSC.pdf*).

Partnering Agencies

Several housing agencies should be considered partners for developing housing element, including:

- Affordable Housing Coalition of South Carolina; and
- Local housing agencies, organizations, and advocacy groups.

Transportation Element

Transportation is one of the most important services provided by government. It connects citizens with their jobs, schools, and other community activities and is critical to the economic vitality of a community. Unfortunately, this most important of services is not always integrated into the community fabric, and too often it is left out of the "transportation and land use" equation during the planning process.

The PIA, however, recognizes transportation as a major component of the physical environment that defines and influences the community. The emphasis on transportation

in the PIA, and requirements for a comprehensive inventory and assessment of the local transportation system, support the need for a stand-alone plan element within the local comprehensive plan. Amended language for S.C. Code sec. 6-29-510(D)(8) specifically requires local governments to prepare a "*transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network.*" It continues by requiring that the element be developed "*in coordination with the land use element to ensure transportation efficiency for existing and planned development.*"

Planning Horizons

Data should be collected and analyzed for existing conditions (usually the previous full year in which data is available) and the long-term planning horizon selected for the comprehensive plan. Many communities choose their long-term planning horizon to coincide with other regional transportation planning initiatives in the area — such as a long range transportation plan or comprehensive transportation plan — to share available data and resources. For South Carolina communities implementing the PIA, a minimum ten-year horizon is recommended to coincide with the timeframe required for identifying needed public facilities and infrastructure in the priority investment element, which is discussed on pages 20 - 23 of this Guide.

Core Requirements

Core requirements for the transportation element are intended to meet the *minimum* rules and requirements set forth in the Priority Investment Act. Factors such as community size, complexity of transportation issues, available data, and age of any transportation plans or studies completed for the community help determine the extent of effort that will be required for preparing the document. Communities implementing the PIA should present information for the core requirements in text, tabular, and graphic formats.

Existing Conditions Analysis

Analysis of existing conditions on the transportation system should address systems-level planning issues, which focus on community-wide travel demand, community-wide land use patterns, major activity centers, and the ability of transportation infrastructure to meet forecasted demand. This top-down planning process allows for the categorization of transportation facilities, and a systematic identification of needed improvements based on a set of established performance goals. "Measures of effectiveness" often are used by local governments to evaluate transportation system performance and prioritize projects. Local governments must consider vehicular, transit, bicycle, and pedestrian modes of travel in their inventory and assessment of the local transportation system. Other modes of travel should be included on a case-by-case basis given local circumstances (e.g., water taxi service, passenger rail, airline, etc.).

Items on the following page should be addressed when completing the existing conditions analysis portion of the transportation element:

1. Roads and Highways
    - Average daily traffic volumes
    - Number of crashes by type (property, injury, fatality)
    - Level of service
    - System needs based on existing deficiencies

2. Transit System
    - Summary of facilities and routes
    - Service hours and headways
    - Integration with bicycle and pedestrian networks

3. Bicycle System
    - System completeness
    - Location of key bicycle rider generators

4. Pedestrian System
    - System completeness
    - Location of key pedestrian generators

Existing Transportation Map Series

The following series of maps may be used to represent existing conditions for the transportation system identified within the local planning jurisdiction. This includes the roadway system, public transit facilities, and bicycle and pedestrian facilities. Some communities may choose to combine information highlighted below to limit the number of pages in the document.

- Map 1: Major Roads by Functional Classification identifies limited access, arterial, and collector streets within the planning jurisdiction and the functional classification for each facility. The functional classification system indicates the role of each street for local and regional mobility, assists in establishing a relationship to nearby development, and reveals jurisdictional responsibility for maintenance. (Note: Functional classifications for major roadways are defined in *A Policy on Geometric Design of Highways and Streets* published by the American Association of State Highway and Transportation Officials.)

- Map 2: Major Roads by Number of Lanes identifies limited access, arterial, and collector streets in the planning jurisdiction by the number of through lanes for each facility.
- Map 3: Major Trip Generators and Attractors identifies the location of major trip generators and attractors in the planning jurisdiction, including event centers, schools, and concentrations of intense retail, office, or residential development.
- Map 4: Existing Transit Facilities illustrates public transit service in the planning jurisdiction, including routes, stops, large parking areas, or transfer points between regional and local service.
- Map 5: Existing Bicycle Facilities identifies existing on-street and off-street bicycle facilities within the planning jurisdiction.
- Map 6: Existing Pedestrian Facilities identifies existing pedestrian facilities within the planning jurisdiction.
- Map 7: Existing Level of Service (LOS) illustrates the current level of service for major roadways identified in the planning jurisdiction. (Note: See the *Traffic Engineering Handbook* published by the Institute of Transportation Engineers for help with LOS definitions and calculations.)
- Map 8: Railroad, Airport, or Seaport Facilities identifies the location of these facilities or corridors within the planning jurisdiction.
- Map 9: Hurricane Evacuation Routes (if applicable) delineates designated local and regional transportation facilities critical to the evacuation of coastal populations prior to an impending disaster.

Analysis of Future Transportation System

Analysis of future conditions on the transportation system should focus on the impacts of growth and development for all modes of travel included in the existing conditions analysis. Deficiencies in the transportation system should be identified, and recommendations should be provided in the transportation element to address these concerns. Potential headings in the section of the transportation element related to the analysis of future year conditions may include:

- Transportation system levels of service and growth trends;
- Projected intermodal deficiencies and needs;
- Impact of Future Land Use Map on transportation system levels of service;
- Projected traffic conditions; and
- Vision for an integrated transportation system.

Future Transportation Map Series

A series of maps similar to Maps 1-7 created for existing conditions should also be created to represent future year conditions on the transportation system. Maps 8 and 9 are generally omitted for future conditions unless major changes are anticipated. Some communities may choose to combine information to limit the number of pages in the document.

Transportation Projects Planned by Other Jurisdictions

Responsibility for maintaining and/or enhancing the transportation system varies between local, county, regional, and state entities depending on the type of improvement and its stage in the implementation process. Communities should include an inventory of project initiatives underway by other jurisdictions in the local planning area in their transportation element. Note that the PIA requires coordination with these jurisdictions during the development of the priority investment element of the comprehensive plan.

Transportation project initiatives by other jurisdictions in the local planning area are traditionally summarized in the following documents: MPO Long Range Transportation Plan, SCDOT Transportation Improvement Program, MPO Transportation Improvement Program, local bicycle or pedestrian facilities plans, and public transit strategic plans.

Land Use Considerations

Consistent with the principles of the PIA, the transportation element should focus on the inherent relationship between land use (demand), urban form (design), and transportation (supply) for improving the efficiency of the transportation system while promoting livable local communities.

Evaluating the relationship between land use, urban form, and regional travel behavior produces several benefits. When considered together, decisions and investments in these three areas have a significant bearing on the local government:

- the impacts to sensitive land uses can be minimized when facilities identified for transportation investments are located *after* considering appropriate land use patterns and development intensities for the area;
- prime locations for development can be stimulated if transportation investments consider available capacity or appropriate mobility options;
- complementary activities can be placed next to existing or planned transportation infrastructure, making the most of land use opportunities and dedicated transportation investments;

- the quantity and location of travel demand can be influenced by land use decisions, making the possibility of real choices for various modes of travel both accessible and attractive; and
- combining specific streetscape design elements can transform transportation corridors from vehicle-dominated thoroughfares into community-oriented streets that safely and conveniently accommodate all modes of travel.

Elements of transportation — including roads and pedestrian, bicycle, and transit facilities — often impact how land is developed in terms of density and use. Further, where land uses are established and how they are distributed inevitably impacts decisions regarding where people travel and how transportation facilities are prioritized. If low-density development is the norm, the residents of such areas must rely almost entirely on automobiles to get from one location or land use to another. On the other hand, denser urban centers that combine complementary land uses enable greater choice in transportation.

Although the PIA does not provide specific criteria for determining compliance with the requirement to coordinate the transportation and land use elements of the comprehensive plan, this Guide recommends that the local community focus on the impact of regional land use patterns and large activity centers (designated on the Future Land Use Map of the comprehensive plan), based on the ability of the regional transportation system to meet future demands. Overtaxing of the regional transportation system can be solved in two ways: (1) capacity improvements that address anticipated deficiencies (supply-side solutions), or (2) redistribution of development intensities or patterns depicted on the Future Land Use Map to shorten trip length and promote alternative travel modes (demand-side solutions). Local governments in urban areas should coordinate with the local metropolitan planning organization to run land use scenarios in the regional travel demand model to measure the impacts of land use patterns on the transportation system.

Many of the enhanced components referenced in this section for the transportation element reinforce integration of land use and transportation decision-making for more sustainable future.

Available Data

Relevant and appropriate data for satisfying the core requirements of the transportation element should be collected from professionally accepted existing sources. Primary sources for transportation-related data may include: the US Census Bureau, South Carolina Department of Transportation, regional transit providers, councils of government, metropolitan planning agencies, airport authorities, railroad companies, local government's engineering or public works department, and local bicycle and pedestrian advocates.

Partnering Agencies

Several transportation agencies are appropriate partners in developing the transportation element, including:

- South Carolina Department of Transportation;
- regional transit providers;
- councils of government;
- metropolitan planning organizations;
- airport authorities;
- seaport authorities;
- railroad companies; and
- local bicycle and pedestrian advocacy groups.

Enhanced Components

Enhanced components for the transportation element are intended to meet the unique circumstances of communities, particularly those seeking to study in greater detail issues facing the transportation system that result in specific recommendations. When reviewing the sections below, it is important to be mindful that the level of effort necessary for preparing enhanced components of the transportation element may vary from community-to-community. Factors such as geographic size, complexity of transportation issues, and available data help determine the effort required to prepare the document.

Community Strategic Corridors

Community strategic corridors are intended to represent critical areas of concern and/or locations where changes in land use intensity or traffic appear eminent. Given the length of many congested roadways, local governments may decide to divide strategic corridors into one or more segments (typically less than one mile) for detailed study. Selected corridors for the comprehensive plan should represent a variety of cross-sections, land use contexts, and should be geographically distributed throughout the community. Once the set of community strategic corridors is established, two exhibits should be developed. The first exhibit should focus on existing conditions and the second should focus on future vision, goals, and recommendations. Analysis of strategic corridors allows more detailed examination, and resulting recommendations for matters such as safety, access management, land use, urban design, and alternate travel modes.

In addition, the community strategic corridors often include projected traffic volumes and recommended cross-sections that have been specifically tailored to address the needs of each corridor. Ultimately, these representative corridors provide a foundation for how best to balance the competing interests between travel demand and land use.

Regional Scenario Planning

Regional scenario planning represents the next generation of analytical processes created to evaluate regionally the influence of development intensities and land use patterns on the efficiency of a proposed transportation system. Most important for the current discussion, is that the regional perspective is emphasized in the PIA, particularly with respect to identifying projected infrastructure needs, including those related to transportation, in the development of the priority investment element.

Visualizing the interaction between land use and transportation decisions, as well as causational factors that explain the push-pull relationship between them, provide community leaders with the information they need to evaluate the consequences of potential actions or policy alternatives. Building on this momentum, the Federal Highway Administration, Environmental Protection Agency, and other federal agencies are actively promoting the use of scenario planning models by state agencies, metropolitan planning organizations, and local governments to better integrate transportation and land use decisions.

Local governments have access to both numerical and spatial data models that provide real-time representation of land use alternatives simultaneously under study. This allows communities to experiment with different land use patterns, densities, and intensities, and to evaluate them side-by-side for impacts to the surrounding regional transportation system. More advanced scenario planning models also allow communities the ability to create photo-realistic, three-dimensional models for land use alternatives that help build consensus among stakeholders in the planning process. Common software available to local governments for scenario planning includes: CommunityViz™, Smart Growth Index™, What If? ™, and ESRI Model Builder™.

Focus Area Studies

Focus area studies provide an opportunity to study in detail opportunities that better integrate land use, urban form, and transportation decision-making processes. They typically represent a much smaller study area than a regional scenario planning analysis, perhaps a parcel or several parcels in close proximity. Recommendations from focus area studies can be applied to other areas of the city or county that share similar vision, development patterns, and supporting infrastructure. Focus area studies typically follow a four-step planning process:

1. Inventory Existing Conditions

   An inventory of existing conditions should be completed for the focus areas using geographic information system (GIS) data, aerial photography, field photos, and windshield surveys. This information should be used to characterize the study area based on existing land use patterns and development conditions. Particular attention should be paid to physical features in the focus area in the context of the surrounding environment. For example, the following conditions may be noted: distribution of open space, size and character of buildings, land use mix, size and character of streets, available travel modes, internal and external connections, location of parking, and interface of properties vs. the public street.

2. Evaluate Existing Development Controls

   A review should be conducted of locally adopted plans, programs, and policies administered by the city or county in which the focus area is located. This information should be used to inventory existing development controls for preparing a "business-as-usual" development scenario, as well as potential barriers for implementing alternative development scenarios. The review should consider the following documents: comprehensive plan, zoning ordinance, subdivision ordinance, small area plans (if applicable), and architectural design standards (if applicable).

3. Development Scenarios

   One or more development scenarios should be prepared for each focus area. The first development scenario should represent continuation of existing plans, programs, and policies administered by the local government under the current zoning designation (i.e., business-as-usual). Subsequent development scenarios should represent a paradigm shift in planning philosophy toward one or more identified planning initiatives gaining popularity in the community for better linking land use, urban form, and transportation planning (e.g., reinvestment in downtown, transit-oriented development, traditional neighborhood development, or rural preservation). All development scenarios for each focus area should include a preferred development pattern, significant transportation infrastructure needs, and recommended circulation strategies as well as best development practices for parking, building placement and arrangement, site access, circulation, and connectivity based on the desired urban form category and prescribed regulatory framework.

4. Development Scenario Trade-offs

   Trade-offs between the development scenarios prepared for each of the focus areas should be identified using a set of elasticity factors developed for the U.S. Environmental Protection Agency. These factors relate physical features of the built environment — density, diversity, and design — to the percentage change in vehicle trips and vehicle miles traveled resulting from the various development scenarios.

A technical memorandum describing in detail the methodology for estimating travel demand impacts from land use and urban design changes is included in the *Smart Growth Index Indicator Dictionary, Appendix A* prepared for the U.S. Environmental Protection Agency by Criterion, Inc. in October 2002.

Priority Investment Element

The PIA requires the preparation of a "priority investment element," which should evaluate the need for public infrastructure, estimate the cost of improvements for which the local government has fiscal responsibility, analyze the fiscal capability of the local government to finance these improvements, adopt policies to guide the funding of improvements, and schedule the funding and construction of improvements when required based on available funding and needs identified in the other comprehensive plan elements.

Specifically, S.C. Code sec. 6-29-510(D)(9) requires local governments to prepare a "*priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools.*" It continues by requiring that recommended projects in the element be developed "*through coordination with adjacent and relevant jurisdictions and agencies.*" For the purposes of the priority investment element, adjacent and relevant jurisdictions and agencies are defined as those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project.

Core Requirements

Core requirements for the priority investment element are intended to meet the *minimum* rules and requirements set forth in the Priority Investment Act. Factors such as community size, available data, fiscal policies, and responsibilities within local government help determine the extent of effort that will be required for preparing the document. Communities preparing a priority investment element should present its information for the core requirements in text and tabular formats.

Analyze Projected Federal, State, and Local Funds

Local governments are required to forecast federal, state, and local funds available for public infrastructure and facilities into the ten-year planning horizon. To meet this requirement, authors of the priority investment element should work directly with city or county staff responsible for the jurisdiction's finances (e.g., finance director, county administrator, etc.). Information should be solicited through department interviews and any available financial documents, including a capital improvements plan or annual budget.

The inventory of available funds should list resources in use today, or available in the future, to fund public infrastructure and facilities in the city or county. These monies may be in existence at the time of project implementation or sought through appropriate processes regulated by South Carolina law, as applicable.

It is recognized that significant challenges exist for local governments trying to forecast available revenues through the ten-year planning horizon. Methods for forecasting available revenues vary greatly based on the specific funding source, and local governments are advised to be conservative in their estimates because this forecast is only the initial step toward programming public infrastructure and facilities in an annual capital budget. Some guidance for local governments to consider when forecasting future year revenues follows:

- average funds available for a revenue source over the past five years, and identify the average funding level as the amount of revenue available each year for the next ten years;
- determine how the funds associated with a revenue source have grown over time and continue to grow the funds by the same percentage over the next ten years;
- establish a policy to dedicate a certain percentage of the general fund revenues public infrastructure and facility projects and use that percentage to project future year funding;
- include only those revenue sources that have a high degree of funding certainty;
- obtain information from available studies and reports that estimate expected revenue generations for a funding source;
- identify any planned funding sources not currently being collected (e.g., approved bond issue); and
- use conservative estimates for funding sources that are highly variable from year-to-year (e.g. 50% of what was available the previous year for all remaining years)

Recommend Needed Public Infrastructure and Facilities

Local governments are required to prepare a list of public infrastructure and facilities needed over the ten-year planning horizon to ensure adequate capacity is reserved to serve the magnitude and timing of anticipated development in the Future Land Use Map of the comprehensive plan. However, the PIA does not set minimum criteria for the useful life or implementation cost of public infrastructure or facilities included in the recommended schedule of improvements. Therefore, the local government should identify their useful life and implementation cost criteria for inclusion in the comprehensive plan based on local financial conditions.

Several methods are available to local governments for compiling the list of required public infrastructure and facilities to support recommendations in the comprehensive plan, including:

- City or county staff could refer to projects identified in the locally adopted capital improvement plan (CIP), if applicable. Note that the typical planning horizon for a local CIP is five years and the Act requires a ten-year planning horizon. Therefore, this method alone would not meet the requirements of the PIA.
- City or county staff could create the list of needed public infrastructure and facilities identified throughout the comprehensive planning process. Staff could review the goals, objectives, and policies written for each plan element and include all capital projects identified in the recommended project list.
- City or county staff could seek input from the Planning Commission or Governing Body on recommended projects. The Planning Commission reviews planning-related documents as well as planning activities in the jurisdiction and evaluates development trends. The Governing Body is also exposed to planning documents and activities and has direct involvement with the budget process.
- City or county staff could contact department heads and all relevant agencies and jurisdictions to determine project needs. Staff could look to department heads as well as all relevant agencies and jurisdictions identified by the jurisdiction to inventory needed public infrastructure and facilities.
- City or county staff could ask the public to recommend projects to be funded using surveys or holding of public meetings and/or charrettes, etc.
- City or county staff could develop the initial list of needed public infrastructure and facilities, and revise the list based on feedback received through the coordination process.

Identifying projects that should be included in the priority investment element can be challenging. Many local governments have obstacles for coordination between city or county departments, as well as other agencies and jurisdictions operating within the community.

Further, the Planning Commission, as the body responsible for preparing the comprehensive plan, is involved in most planning-related decisions but has relatively little input in budget- and finance-related decisions. Some local governments will need to increase information sharing and involvement of all parties in preparing the list of recommended public infrastructure and facility improvements.

Another challenge for cities and counties will be to determine the number of projects that should be included in the priority investment element. Specifically, authors of the priority investment element will need to decide whether to limit recommended projects to those that can be funded over the ten-year planning horizon, or include all candidate projects with a goal and/or set of implementation strategies in the plan element that directs a specific city or county department to prioritize recommended projects in a subsequent planning process (e.g., development of a local capital improvements plan).

Intergovernmental Coordination

Local governments are required to identify adjacent and relevant jurisdictions and agencies important to the planning process for developing the comprehensive plan. Many of these agencies are listed in the "partnering agencies" section of page 24 of this Guide. The local government is responsible for identifying the list of adjacent and relevant jurisdiction and agencies for the community. Written notification of recommended public infrastructure and facility candidate projects to all adjacent and relevant jurisdictions and agencies is required in the PIA, as well as the opportunity for these jurisdictions and agencies to provide comment to the local government concerning recommended projects. However, the Act does not require specific action by the local government with respect to the comments provided by other jurisdictions and agencies.

The PIA does not specify the point in the process at which formal intergovernmental coordination must occur. It is recommended, however, that affected adjacent and relevant jurisdictions and agencies be contacted at the beginning of the planning process to develop the comprehensive plan or plan elements. This approach maximizes data sharing and inclusion of outside agencies throughout the planning process. Alternatively, local governments may elect to engage affected adjacent and relevant jurisdiction and agencies after compilation of the initial list of recommended public infrastructure and facility candidate projects. The decision for what point in the process to start intergovernmental coordination efforts should be determined by the local government based on the complexity of intergovernmental relationships and any agreements, as well as past performance of collaboration in the community.

Available data

Relevant and appropriate data for satisfying the core requirements of the priority investment element should be collected from professionally accepted existing sources. Primary sources for appropriate data may include:

- recommended projects from other elements of the comprehensive plan;
- city or County Capital Improvement Program (CIP);
- annual Budget Report;

- SCDOT Transportation Improvement Program; and
- long-range, strategic plans developed by agencies, jurisdictions, and departments (i.e. school district strategic plans, water and/or sewer master plans, parks and recreation master plans, capital needs plans, police or fire strategic plans).

Partnering Agencies

Several public service providers and financial agencies should be considered partners for developing the priority investment element, including:

- Finance Director;
- adjacent cities and counties;
- public service districts;
- school districts;
- public and private utilities;
- regional transportation agencies; and
- other public agencies entities affected by or that have planning authority over the public projects in the jurisdiction.

Linkage to a Capital Improvements Plan

Not all cities and counties in South Carolina maintain a locally-adopted capital improvements plan (CIP). For those local governments without a CIP, the priority investment element serves as the initial step toward developing a plan to finance public infrastructure and facilities identified to manage growth and development in the community.

For those local governments with a CIP, the priority investment element serves as the precursor to and should be consistent with the more detailed capital improvements plan. The PIE provides the "wish list" of candidate projects identified by city or county departments to improve or maintain current service delivery standards

Preparation of the CIP is an opportunity to refine the candidate project list, and conduct a detailed review of available revenue and funding sources. The planning horizon for the CIP is generally five years, which allows for more reliable revenue forecasts and project costs to be included in the analysis. The first year of the CIP often becomes the annual capital budget for implementing public infrastructure and facilities that originated in the priority investment element of the comprehensive plan.

Zoning and Land Development Regulations

Although the Priority Investment Act imposes planning requirements, regulatory implementation principally is optional. The Act does, however, expressly encourage traditional neighborhood design and affordable housing through the establishment of priority investment zones. It is clear from the face of the Act that these are the two areas the South Carolina Legislature wanted to advance when it adopted the PIA. Beyond these optional incentives, the PIA does not grant additional local government authority. However, from the planner's perspective, the Act does lay the groundwork to implement innovative planning tools within the context of the new planning elements and an adopted priority investment zone. This section discusses the two central regulatory options of traditional neighborhood design and affordable housing, while pages 32 – 44 of this Guide discuss other planning tools not addressed directly by the PIA.

Current planning and legal literature provides thorough and readily-available material on many of these tools. In fact, the South Carolina Department of Health and Environmental Control (DHEC) has included a discussion of a number of them on its website (www.scdhec.net/environment/baq/ModelOrd.aspx). What we have attempted here, however, is to place these planning tools in the context of the PIA and to identify how the PIA framework may supplement their use in South Carolina.

It is important to note that many of these tools have not been used widely, if at all, in South Carolina. This has two implications for local government. First, if used, the tools should be tailored to the unique needs and circumstances of the implementing local government and the requirements of the PIA, if applicable. Second, legal counsel should be consulted prior to implementation. Since the PIA was so recently adopted and since many of these tools are new to South Carolina, the courts have yet to weigh in on the authority of local governments to use them or the manner in which they may be used.

Traditional Neighborhood Design

Traditional neighborhood design, also known as traditional neighborhood development, is characterized by:

- reasonably high densities;
- mixture of residential and commercial uses;
- range of single- and multi-family housing types; and
- street connectivity within development and surroundings

Traditional neighborhood design, or "TND," concepts are intended to create neighborhoods that contain a wide variety of housing options, a hierarchy of streets that serves the needs of both motorists and pedestrians, and an interwoven population of

homes, shops, and workplaces. An emphasis is placed on designing neighborhoods that ensure the community's most important features are a reasonable walk from most areas. The housing options are often reasonably dense, and ease of travel for pedestrians and cyclists is placed at a high importance.

The PIA encourages the use of TND techniques by relaxing or eliminating barriers to affordable housing and allowing the use of market-based incentives. The Act does not encourage or authorize local bodies to ignore or relax all zoning requirements, only those that the local government determines are not essential to protect public safety. By encouraging local bodies to promote the use of TND, the Act aims to slow sprawl and create new areas of affordable housing.

Relaxing zoning requirements and development controls, such as lot area requirements or setbacks, allows planners and developers to design housing at a higher density than would otherwise be feasible. Reducing open space and excessive parking requirements also encourages the use of TND. These requirements, for example, have been cited in the past as obstacles to developers wishing to build affordable housing or to incorporate TND into their projects.

Local governments also are encouraged to provide market-based incentives to promote TND and the inclusion of affordable housing in new development. These incentives include, but are not limited to, density bonuses, reduced or waived fees, fast-track permitting, and an increase in design flexibility.

TND has become increasingly popular in South Carolina. In addition to the sample ordinances provided in Appendix B, local governments may access extensive coverage of TND and TND-related topics at the DHEC website (www.scdhec.net/environment/baq/ModelOrd.aspx), including matters related to sustainable growth, connectivity, landscaping and tree preservation, parking regulations, pedestrian flow and community amenities, pedestrian-oriented design, shared parking, urban growth boundaries, and conservation open space subdivisions. A number of the ancillary techniques described on pages 32 – 44 of this Guide also may be regarded as market-based incentives and potential means of reducing nonessential regulatory barriers to TND.

South Carolina developers, home buyers, municipal officials, and civic groups are becoming increasingly interested in the TND approach. The reasons are varied. Many home buyers feel that TNDs serve their needs and desires better than other development types. Some segments of the development community, quite naturally, would like to satisfy this consumer interest. Property values in many TND projects are strong and the cost of providing public services can be relatively modest, creating a fiscal equation that is attractive to local officials. TNDs are well-suited for "in-fill" properties, supporting and enhancing the vitality of already developed areas, but they also work well in developing areas contiguous to an established urban fabric.

Consequently, conservation groups often support TNDs because the efficient use of in fill land relieves pressure to develop rural properties further away from developed centers.

Several model TND ordinances are provided as Appendix B to provide a starting point for communities interested in this technique. However, municipalities and counties vary greatly, so any TND ordinance adopted pursuant to the PIA should be tailored to the specific needs or the community and the requirements of the PIA. The ordinances provided in Appendix B were either drafted prior to the PIA or by communities outside of South Carolina entirely. It should also be noted that the by-right use of TND ordinances could reduce, but should not eliminate, the review and approval of final standards by the Planning Commission and Council, despite giving the developer more flexibility.

Affordable Housing

In addition to the new planning requirements related to the affordable housing element of the comprehensive plan, the PIA also encourages local governments to establish priority investment zones, in which market-based incentives are imposed or nonessential housing regulatory requirements are relaxed or eliminated.

Although the PIA does not *require* local governments to do so, most are unlikely to see improvements without adopting regulatory tools to implement the planning. Some measures that cities and counties may want to consider for encouraging affordable housing might include:

- inclusionary housing provision in the local zoning ordinance;
- development fees and/or impact fees waivers (where applicable) for projects that include affordable housing;
- public education programs that dispel myths associated with affordable housing;
- local rental assistance programs;
- a community-wide affordable housing plan;
- upgrading deteriorating or substandard housing;
- code and ordinance amendments that encourage affordable housing; and
- funding to construct affordable housing as well as to make information on funding opportunities available to local developers and non-profit agencies.

A few of these techniques are discussed here, after a brief overview of the concept of affordable housing and how it impacts the social and economic fabric of the community.

What is Affordable Housing?

The term "affordable housing" is relative in that it has less to do with the price of a particular home in a given neighborhood and more to do with a household's financial ability to qualify for, purchase, and maintain a home close to where they work, where their children go to school, where they worship, or simply where they would choose to live.

Affordable housing is more formally defined as a dwelling where the total housing costs are affordable to those living in that housing unit. The PIA specifically defines affordable housing ownership as that for which housing costs do not exceed 28% of annual gross income for a household earning no more than 80% of the Area Median Income (AMI). Housing costs considered in this Guide and the PIA include mortgage, taxes and insurance, amortization, and any association or regime fees. In terms of rental housing, the Act defines affordability as housing in which combined rent and utilities do not exceed 30% of the annual household income for a household earning no more than 80% of the AMI.

Household income is a primary factory in housing affordability. In the U.S., households are commonly defined in terms of the amount of income they earn relative to 100% of the AMI. AMI figures are calculated annually based on a survey of comparably-sized households within geographic ranges, defined by the US Office of Management and Budget.

The U.S. Department of Housing and Urban Development (HUD) uses the area median income to calculate household eligibility for a variety of housing programs. HUD estimates the median family income for metropolitan and non-metropolitan areas and adjusts that amount for different family sizes so that family incomes may be expressed as a percentage of the area median income.

Why is Affordable Housing a Priority?

"Safe, decent and affordable housing is pivotal in our society — beyond providing basic shelter, it positively impacts the economy and improves the quality of our environment. This critical objective can only be met through an unwavering commitment and an ongoing ability on the part of state and local government to fill in the gaps created by the limits of federal assistance; a dedicated, mission-driven not-for-profit community, and a forward-thinking private sector." (*Housing America Toolkit, 2008)*

A lack of Affordable Housing may result in:

- families who overspend on housing having less money for food, clothing, transportation, and medical care;

- difficulties for employers in hiring and retaining employees;
- children living in unsanitary conditions and unsafe neighborhoods;
- increases in substandard housing;
- regional sprawl as people are forced to move further from economic and employment centers in order to find housing that they can afford; and
- Intensified need for more infrastructure such as roads and sewer lines.

Benefits of adequate and available affordable housing include:

- supports a higher quality of life for everyone in the community;
- sustains the development of an economically vital community; and
- stable housing boosts the educational performance of children, induces higher participation in civic and volunteer activity, improves health care outcomes, and lowers crime rates and lessens welfare dependency.

Who is involved in the production of Affordable Housing?

1. For-Profit and Nonprofit Developers

- "As the value of residential real estate in the United States has boomed during the past decade, the affordability of housing has decreased for many households. At the same time, the federal government has steadily reduced housing subsidies. The result is that the private sector, with help from local governments, is increasingly meeting the growing need for more affordable housing. Whether for-profit or nonprofit, affordable housing developers must manage their market carefully. In addition to serving the buyers and renters of the homes they produce, they must navigate among local politics, planning departments, and the interests of surrounding neighborhoods and other community stakeholders. Nonprofit and for-profit developers alike have produced thousands of below-market-rate housing units by acquiring viable land, assembling complex layers of financing, and negotiating with communities." (Urban Land Institute, Best Practices in Affordable Housing, 2005)
- "Opportunity awareness differs between nonprofit and for-profit affordable housing developers. For nonprofits, a deal is driven by the availability of resources. For-profit companies presume that the resources are available and make a decision to go ahead with a project based on their ability to succeed." (Helen Dunlap, President, Shorebank Advisors)

2. Local Governments

"Local government plays an influential role in successful affordable housing projects. Local governments can 'set the table' with assistance for land acquisition or tax deals, or with other supportive measures that help underwrite the development. However, local governments can be a hindrance later in the process with time-consuming, inconsistent, duplicative, or unwarranted review, developers say. Streamlined local government review is crucial, both nonprofit and for-profit developers say." (Urban Land Institute, Best Practices in Affordable Housing, 2005)

Under the PIA and the development of the housing element of the comprehensive plan, local governments are required to analyze their review processes and ascertain those unnecessary requirements that serve as barriers to the development of affordable housing. The Act also requires local governments to fully analyze market-based incentives that may promote the development of affordable housing. The PIA, specifically through the use of priority investment zones, encourages implementation by adopting market-based incentive programs, and relaxing or eliminating nonessential housing requirements. The following list includes more detailed information about the market-based incentives and nonessential requirements covered under the Act.

Market-Based Incentives for Developers

Local governments, which usually have jurisdiction over zoning and land use regulations, can use that jurisdiction to create developer incentives, such as a "density bonus" or "fee reduction" for inclusion of affordable units in a development. Some areas make programs like this mandatory (e.g. inclusionary zoning), with incentives as compensation. Others make voluntary programs, with the incentive actually serving as encouragement.

Density Bonuses

Developers who commit to allotting a certain percentage of units at below market rates may be allowed to reduce lot sizes or increase the number of houses on a lot, thereby reducing land cost per unit. This can include bonuses for the rehabilitation of existing substandard housing, provided the bonus units are available as affordable housing. A sample density bonus ordinance is included in Appendix C of this document.

Relaxed Zoning Regulations

Modification to regulations such as: minimum lot area requirements, limitations on multi-family dwellings, minimum setbacks, variances, reduced parking requirements, and modified street standards are essential to the streamlined development of affordable housing.

Reduced or Waived Fees

This includes fees levied on new development projects that incorporate affordable housing. This may include reimbursements of permit fees to developers whose developments are certified as affordable and also waiving up to 100% of water or sewer tap fees for affordable housing units.

Fast-Track Permitting

The fast track permit process is designed to help facilitate projects that include a large number of units at affordable prices or rents or for persons with disabilities through a streamlined permit review and approval process. Priority is given to fast track projects and the development review process is made faster through a more comprehensive pre-application review. This reduces costs and time delays associated with traditional review processes.

Design Flexibility

Loosening design flexibility involves creating pre-approved design standards to allow for quick and easy approval. Infill development, mixed use projects, and accessory dwellings are promoted and favored.

Non-Essential Housing Regulatory Requirements

Housing regulatory requirements are implemented to guarantee the public health, safety, and welfare in the community. These provisions are often time-consuming and costly and contribute to the infeasibility of producing affordable housing. Those elements that are deemed not essential to maintaining the health, safety, and welfare by the local governing body can be removed or lessened for the development of affordable housing within specified redevelopment districts or new developments. Reductions in the restrictiveness of some of the following, may increase the feasibility of private sector production of affordable housing: minimum lot size, building size, building setbacks, distance between buildings, impervious surfaces, open spaces, landscaping, buffering, reforestation, road width, pavements, parking, sidewalks, paved paths, culverts, and storm water drainage, and sizing of water and sewer lines that are excessive.

The PIA was intended to encourage governmental efficiency and compact land use patterns through traditional neighborhood design and affordable housing incentives. However, other regulatory tools may fit well into the framework of the Act as well. It appears that the PIA's regulatory options represent the minimum local governments should strive to achieve, although other tools and incentives also may be explored to encourage efficient land use patterns and housing opportunities. Certainly, a number of market-based techniques have been used in South Carolina and around the country, which may also be consistent with pre-existing planning authorities and advance the intent of the PIA. Several of these are discussed in this chapter. A final word of caution, however: a number of these tools are new to the state and land use legal counsel should be sought when determining the appropriateness of implementing the tools discussed here.

Transferable Development Rights

Though perhaps not expressly contemplated in the PIA, many communities around the country allow "transferable development rights," or TDRs, as a market-based incentive to encourage development in areas prioritized for growth. South Carolina communities similarly may find TDRs an effective tool — within the framework of the PIA or otherwise — by aligning such programs with designated priority investment zones.

TDR programs operate through the transfer of development rights, or units, of density from one geographic area to another within the region. Traditionally, development rights, or "densities," are assigned by the local governing body through legislative action. For example, a local government may adopt a zoning ordinance that assigns one dwelling unit per twenty acres of density (1:20 zoning) to a rural areas and one dwelling unit per acre of density (1:1 zoning) to urban areas. If the local government wished to shift future growth from the rural areas to the urban areas, traditionally it would "downzone," or decrease the density in, the rural areas — for example, from 1:20 zoning to 1:50 zoning (1 unit/50 acres), and "upzone," or increase the density in, the urban areas — for example, from 1:1 zoning to 2:1 zoning.

Under a TDR framework, the private market drives this shift in density, once the local government adopts an ordinance allowing urban developers to "purchase" development rights from rural landowners. Technically, the urban developer is paying the rural landowner to place a permanent conservation easement on his or her property, in exchange for the ability to develop at higher densities in the urban area. The amount paid is governed by the free market, but generally should reflect the difference between the value of the rural property with development rights and without. In this way, the urban developer can secure greater densities in urban markets and the rural landowner can continue to use his or her property for traditional rural uses and receive payment for development rights without actually developing the property.

In the zoning framework, the rural areas from which development rights may be transferred are called "sending areas," and the urban areas to which the rights would be transferred, "receiving areas." Unlike legislative up-zoning, TDR transfers preserve outlying lands without increasing the build-out potential of the community at large. Limited uses typically are allowed on rural sending area properties, including, for example agricultural cultivation, produce stands, wineries, and other uses consistent with local comprehensive planning policies.

Unlike other "government-driven" preservation programs, TDR programs are driven by private participation, which is consistent with the authority within a priority investment zone to adopt "market-based incentives," including "density bonuses, allowing developers to build at a density higher than residential zones typically permit...." (see S.C. Code sec. 6-29-1110(3)). In most cases, the local government does not participate or "extinguish" development rights. Rather, the private sector is left to operate, based on the market's demand for higher intensity development within areas of the community prioritized for development — in this case, perhaps, a designated priority investment zone.

With the use of a TDR program, the objectives of the Priority Investment Act would be furthered by directing density to areas where public facility capacity either already exists or can be most efficiently provided. Presumably, the TDR receiving area would align itself with the priority investment zone expressly authorized by S.C. Code sec. 6-29-720(C)(7). This would concentrate the demand for public facilities and reduce the demand for sprawling public facility expansions.

However, it should be noted that mere adoption of a TDR provision does not guarantee activity in the program or, therefore, its effectiveness. Many of the nation's TDR programs go unused because the demand for higher densities either does not exist within designated receiving areas or it can be achieved through means other than TDRs, usually by legislative "upzonings" as mentioned earlier. Nonetheless, there are examples of successful programs. For example, the TDR program in Montgomery County, Maryland; now viewed as one of the country's most successful, initially was not very active. Although the ability to transfer TDRs existed, TDRs were not being transferred during the program's early stages. Eventually, the market demand for greater densities increased in designated receiving areas. As a result, Montgomery County's program has preserved nearly 50,000 acres of land through a market-based TDR program.

In order for TDR programs to function, the market demand for densities within the priority investment zone must exceed the base densities allowed by the zoning ordinance. Additionally, there must be an incentive for those outside the priority investment zone to transfer their development rights instead of developing housing units onsite. This dynamic may be achieved through density adjustments at the time the TDR program is developed.

Sample TDR provisions are included in Appendix D of this document.

Impact Fee Exemptions

The PIA authorizes priority investment zones in which the local government "relaxes or eliminates nonessential housing regulatory requirements" (see S.C. Code sec. 6-29-720(C)(7)). In addition, S.C. Code sec. 6-1-970 of the South Carolina Development Impact Fee Act authorizes impact fee exemptions if a "project is determined to create affordable housing" and the exemption is "funded through a revenue source other than development impact fees".[1] Whether impact fees would be considered a "nonessential housing regulatory requirement," is unclear, but this affordable housing exemption may remove a potential barrier to the development of affordable housing and would be appropriate for consideration in a designated priority investment zone.

Whether local governments are authorized to exempt land uses other than "affordable housing" is also not clear from the language of the Act. However, impact fees typically are viewed as regulatory in nature and under the Act are "a condition of development approval." [Note: see S.C. Code sec. 6-1-920(8), *but see* Riverwoods, LLC v. County of Charleston, 563 S.E. 2d 651, 349 S.C. 378 (SC 2002) (finding tax exemption unauthorized). Also, S.C. Code sec. 6-29-720(C)(7) authorizes the adoption of "market-based incentives" within a priority investment zone, which include "reduced or waived fees..." (see S.C. Code sec. 6-29-1110(3)(c))]. Certainly impact fee exemptions for land uses in addition to affordable housing within a priority investment zone may encourage development in the area.

For example, impact fee exemptions for identified commercial or residential development within a priority investment zone may be a sufficient incentive to spur development in the priority investment zone that may not have occurred otherwise. However, as with the affordable housing exemption, any impact fees that are exempt within the priority investment zone should be reimbursed by the local government out of non-impact fee funding sources, unless it can be shown that the particular land use does not create a measurable impact on the public facility for which the impact fees are collected.[2] Additionally, the rationale for exempting a particular use — for example, a traditional neighborhood development — should be documented in both the comprehensive plan and the impact fee ordinance itself.

Growth-Related Public Facilities Standards

The PIA authorizes the adoption of "market-based incentives" within a designated Priority Investment Zone (see S.C. Code sec. 6-29-720(C)(7)). According to S.C. Code sec. 6-29-1110(3), "market-based incentives" include, among other things, the relaxation of "zoning regulations."

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1 - Note that the definition of "affordable housing" under the S.C. Development Impact Fee Act differs from the definition adopted in the PIA and codified at S.C. Code sec. 6-29-1110.

2 - Note that the refund requirement that applies to the affordable housing exemption does not apply to the other uses that are exempt from the payment of impact fees under S.C. Code sec. 6-1-970 of the Act. These construction activities – for example, remodeling and replacement of units – do not typically increase the demand for services.

Increasingly, local governments are becoming aware of the impacts new development has on public infrastructure, including roads, schools, parks, and public safety facilities. Demand factors and level of service (LOS) standards for public infrastructure have been established both in practice and in the literature.[3] For example, a local government may find that each new single-family home adds 10 new average daily trips to the road system, thereby decreasing the LOS delivered by the existing road. The same local government may adopt a LOS standard of "C" for the road system impacted by that single-family home. The introduction of new homes without an expansion of the road system may lead to a diminution in the adopted LOS.

In some cases, however, concerns about facility capacity can have the unintended consequence of directing development to rural or underdeveloped areas where public facility capacity is not constrained. Since these areas often are designated for preservation or rural development patterns, the challenge is to direct development to areas where infrastructure already exists (or may be constrained) or where infrastructure expansions are planned. This objective clearly appears consistent with the intent of the priority investment element of the comprehensive plan and the priority investment zone technique.

Some jurisdictions have addressed this problem by relaxing LOS standards or creating limited exemptions from public facility capacity requirements within urban and infill areas of the community. This is a common practice in Florida, for example. These exemptions may reduce the incentive to develop outside of areas designated for urban development or redevelopment. For example, most communities accept (or, at least, expect) greater congestion in urban areas; so, a transportation LOS of "D" may be acceptable in a downtown area versus a rural area that would be expected to operate at higher levels of service, for example, LOS "B."

Therefore, if a priority investment zone were established in an urbanized or "urbanizing" area of the community, the jurisdiction's LOS requirements might be relaxed or waived so that development would not be discouraged from locating within the area for fear of triggering a LOS failure and facing permit denial. Relaxed or waived LOS standards should be consistent with and supported by the relevant elements of the local comprehensive plan, including the priority investment element.

Urban Growth Boundaries

Urban Growth Boundaries, also referred to as Urban Services Boundaries, indicate the planning vision for different geographic areas of a jurisdiction or region. This planning vision typically reflects the level of growth anticipated and the public facilities available for each demarcated area.

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3 - *See e.g.,* Municipal Benchmarking: Assessing Local Performance and Establishing Community Standards, 2nd Edition, David N. Ammons, 2001 (Sage Publications, Inc.).

For example, fully developed or urbanized areas would be indicated as such and capital facility planning in this "developed area" generally would be limited to replacement and maintenance projects. Infill and higher density development would be encouraged or required and level of service (LOS) standards would reflect the developed/urban character of the area. For example, higher levels of road congestion may be an acceptable alternative to roadway expansions in order to maintain needed economic and social vitality. Residential and nonresidential design features would include sidewalks, bike paths, and other transportation mechanisms to encourage connectivity and alternatives to automobile travel.

On the other hand, the urban growth boundary would be drawn between the developed, or developing, areas of the region and the slow growth or rural areas. For example, a "developing area" may include lands just outside the "developed area," discussed above, which will absorb five to fifteen years of future residential and non-residential development. Applicable capital improvement plans should include timely, yet financially-feasible, extension of facilities into the developing area. Rezonings to higher densities should not be allowed until the facilities are provided consistent with the CIP timeframes.[4] With this policy in place and enforced over time, leapfrog development can be avoided.

Finally, a "rural area" would be designated beyond the developed and/or developing areas. The rural area would include lands still in agricultural production or other low-intensity land uses, which demand few public services or infrastructure. No significant extensions of public facilities should be planned in this area for the planning horizon. These "limitations" have two important effects. First, they will maintain an area within which farming, agribusiness, and other open space-oriented land uses can continue without creating conflicts with urban or suburban uses. Second, by having a long-term policy and plan for the area, land owners and potential purchasers within the rural area have notice of the uses allowed there and can plan accordingly. This has an important effect on the reasonable expectations for these lands over the long term.

The number of areas, or "tiers," designated under this type of framework will vary from community to community. Some may have just two, others may have more. Notably, while simple in concept, public acceptance can be hard to achieve and the concept, once accepted, complex in its implementation. It is best to introduce the idea during the comprehensive planning process and to ensure that all comprehensive planning areas and eventual growth areas/boundaries are consistent with all nine of the required comprehensive plan elements. Not only is that consistency an important tenant of planning theory, but it also emphasizes the logic of this framework to lay persons and citizens.

4 - Increases in density within a Developing Area could be restricted to TDR transfers in order to reduce density in the rural areas.

Designating the rural area for very little growth makes more sense, for example, if the same area has identified cultural and natural resources and an economic development policy that hinges on open space preservation and the protection or rural land uses that may be considered a nuisance to urban or suburban citizens.

The overarching goal, of course, is to prevent low-density, leap-frog or sprawl development patterns that require the premature and inefficient extension of public facilities and services. To ensure the efficient extension of facilities — particularly of "growth-inducing" facilities like water, sewer, schools, and roads — the planning jurisdiction must coordinate with the providers of each facility so their capital planning efforts are consistent with the urban growth boundary concepts. This coordination should, at a minimum, take place during the development of the priority investment element of the comprehensive plan, but for long-term success, must be part of the ongoing efforts of the planning jurisdictions.

The PIA provides for the establishment of a priority investment zone, within which traditional neighborhood design and affordable housing must be permitted. The urban growth boundary concept, while not authorized by the PIA expressly, is consistent with the priority investment zone concept. For example, the priority investment zone and a "developing area" may be one in the same. It may be in this area where TND development patterns, connected to established neighborhoods and commercial areas, and affordable housing are encouraged. The "prioritization" of needed facilities within the priority investment zone/developing area will encourage private investment that may take the form of TND and affordable housing development, with proper incentives and/or requirements.

Development Agreements

The development agreement is a local government planning and implementation tool that may be used to meet the intent of the Priority Investment Act. The South Carolina Local Government Development Agreement Act, S.C. sec. 631-10 *et seq*., authorizes local governments to enter into formal agreements with developers for the completion of relatively large scale or multiphase development projects. Purposes specified by the South Carolina Legislature for authorizing development agreements include:

- strengthen the public planning process;
- encourage sound capital improvement planning and financing;
- assist in assuring there are adequate capital facilities for the development;
- reduce the economic cost of development;
- allow for the orderly planning of public facilities and services;

- develop affordable housing;
- establish design standards;
- facilitate the cooperation and coordination of the requirements and needs of the various governmental agencies having jurisdiction over land development; and
- ensure the provision of adequate public facilities for development.

A development agreement provides the developer with vested development rights for a period in excess of the current statutorily specified two years. The period of vesting is a function of the size of the property covered and, with some limitations, the needs of the local government and the developer. The minimum area of land that may be developed pursuant to a development agreement is twenty-five acres of highland. A development agreement covering land up to 250 acres in size may be fully vested for a period of five years. Areas of land between 250 and 1,000 acres may be vested for up to ten years. Agreements covering between 1,000 and 2,000 acres may be vested for a term of not more than twenty years. For projects in excess of 2,000 acres, the term can be determined by the local government and the developer.

One effect of a development agreement is to freeze certain of the development regulations that apply to the development for the period of the agreement. Except under certain conditions, the local government may not enact and apply new regulations to the project without the developer's consent. Consistency in regulations provides the developer with the assurance that new regulatory requirements will not result in unanticipated costs. A development agreement may include regulations specifically drafted for and applicable to the development, which, in a manner, is similar to the approach taken for planned unit developments. Changes in any applicable federal or state law subsequent to the execution of the development agreement will apply to the development. Additionally, the development agreement may not "contravene or supersede" any building, housing, electrical, plumbing or gas code adopted after the effective date of the agreement.

The statute requires that the local government must first adopt an ordinance authorizing development agreements and establishing procedures and requirements for an agreement. Additionally, each individual development agreement must be approved by ordinance. Two public hearings are required before the ordinance may be adopted. The statute provides that, at the option of the local governing body, the public hearing may be held by the local planning commission.

In S.C. Code sec. 6-31-60, the Act lists what a development agreement must include. In addition to the legal description of the property and duration of the agreement, it must include the uses permitted, densities, building intensities and height. Additionally, it must include "a description of public facilities that will service the development, including who

provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development." Other requirements include descriptions of any public land dedications, protection of environmentally sensitive areas, a list and description of all local government development permits necessary, and provisions for the preservation and restoration of historic structures. The agreement must also include a finding that the development permitted or proposed under the agreement is consistent with the local government's comprehensive plan and land development regulations. The agreement must include "any conditions, terms, restrictions, or other requirements determined to be necessary by the local government for the public health, safety, or welfare of its citizens."

A development schedule is also a specific requirement of the agreement which must provide "commencement dates and interim completion dates at no greater than five year intervals." However, failure to maintain the schedule is not a breach of the development agreement. Market conditions and other unforeseen circumstances may affect the schedule and the agreement may be specifically modified to address those changes. A major modification of the agreement requires public notice, public hearing by the local government and an amending ordinance. More than one local government may be a party to the agreement; however, one of the local government parties must be designated as responsible for the administration of the agreement.

An important provision in the statute is that "the development agreement also may cover any other matter not inconsistent with this chapter (31 of the SC Code) and not prohibited by law." This provision, in conjunction with the "conditions, terms, restrictions, or other requirements determined to be necessary by the local government," provides a considerable amount of flexibility to the public and private parties to a development agreement. The development agreement may address infrastructure and affordable housing goals and projects specified in the comprehensive plan as required by the Priority Investment Act. The land area covered by the development agreement could be treated in a manner similar to a priority investment zone. Provisions of an agreement could address Priority Investment Act objectives and might include requirements for a percentage of affordable housing units, reduced development requirements for affordable housing, speedier reviews of development applications, and possibly shared financing of infrastructure.

Again, it should be noted that, as with the PIA, there is no significant case law interpreting the S.C. Local Government Development Agreement Act and legal counsel should be consulted when acting pursuant to the authority it confers.

Tax Increment Financing

SC Code sec. 31-6-10 et seq. of the South Carolina Code provides for tax increment financing for redevelopment projects. When an area of a city or county is designated

as blighted pursuant to the S.C. Code sec. 31-6-30(1), the Council may prepare and adopt a redevelopment plan and designate the blighted area as a redevelopment district. Property tax revenues generated from the incremental increase in assessed value resulting from reinvestment and redevelopment within the district may be allocated to a special tax allocation fund for the purpose of financing public improvements or affordable housing or both within the district. Tax increment revenues accrued from the district may be used to retire debt issued for the purpose of implementing redevelopment projects identified in the plan. If the boundaries of a tax increment district and Priority Investment Zone are coterminous or overlap, redevelopment projects funded with tax increment financing may be used to benefit and encourage private development and affordable housing in the Priority Investment Zone.

The provisions of the South Carolina tax increment financing statute are complex and the discussion contained in this Guide is not intended to provide a detailed analysis or explanation of tax increment financing. Any jurisdiction contemplating the use of tax increment financing for any purpose should consult with the city or county attorney for the specific procedures necessary to create a tax increment district and utilize tax increment financing, including these use of these techniques in conjunction with a priority investment zone.

Overlay Zoning Districts

Overlay zones are authorized as a planning and land development regulation tool pursuant to S. C. Code sec. 6-29-720(C)(5). An overlay zone is a set of secondary regulations that apply on top of the base or underlying zoning district and the standards of both apply to developments proposed in the two zones, unless base district regulations are preempted by the overlay regulations. Overlay zones address special situations and conditions that require the additional regulations to protect or maintain areas that are unique or special. Overlay zones are frequently used to protect historical structures or neighborhoods, provide for special landscaping or pedestrian amenities in highway corridors and protect unique environmental conditions. Overlay zone regulations can also limit or expand permitted uses in the base district and can provide reduced development standards to encourage reinvestment in an area. Under the South Carolina law an overlay zone may "impose or relax a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries" (see S.C. Code sec. 6-29-720).

Under the PIA, a local government may utilize a priority investment zone within which "market-based incentives" are made available or "nonessential housing regulatory requirements" are eliminated to encourage private development. Additionally, the priority investment zone may specifically permit traditional neighborhood design and affordable housing.

A priority investment zone could be established as a separate base zoning district with its own permitted uses and bulk standards. As a separate base district, the Priority Investment Zone permitted uses and standards could be specifically designed to achieve the goals of the PIA. Alternatively, a priority investment zone could be created as an overlay zone. The special public interest would be the implementation of the PIA. Zoning and development standards pursuant to the overlay that could be relaxed may include setbacks, density, permitting procedures, utility tap fees, impact fees, adequate public facilities requirements, etc.

A priority investment zone might also encompass an area where capital improvement projects for water, sewer, storm drainage, sidewalks, and transportation improvements could be targeted in a capital improvement program consistent with the priority investment element of the comprehensive plan. Additionally, a priority investment zone could be an area where other tools could be applied. Those tools might include local government improvement districts, tax increment financing districts, or property tax abatements for affordable housing, pursuant to S.C. Code secs. 4-9-195 *et seq.* and 5-21-140. Each of these is discussed separately in the Guide.

Local Government Improvement Districts

The South Carolina Legislature created a number of financing tools for local governments to construct public improvements. The Municipal Improvements Act of 1999 (SC Code Sec. 5-37-10 *et seq.*), provides municipalities with the ability to create a Municipal Improvement District (MID). The County Public Works Improvement Act (SC Code Sec. 4-35-10 *et seq.*) allows counties to create an improvement district (CPWID). The 2008 Residential Improvement District Act (SC Code Sec. 6-35-10 *et seq.*) created a new improvement district tool, the residential improvement district (RID) that may be used by both municipalities and counties. The three types of districts are similar. All provide for the local government to plan and implement public infrastructure improvements and to apply assessments on property within the district, with the concurrence of property owners, to pay all or a portion of the cost of the improvements. All three provide that a district can be created with an assessment established with the understanding that the property may subsequently be subdivided and sold with a change in assessment that is transferred with the subdivided parcels. All three require an improvement plan (the RID also requires that a comprehensive plan be adopted), a public hearing and adoption of an ordinance creating the district. The plan would include the capital improvement program for the district and would become part of the priority investment element of the comprehensive plan. All three districts provide local governments with the ability to leverage the assessment revenue through the issuance of debt in the form of improvement district or revenue bonds.

The list of improvements that may be funded by each type of district includes a variety of facilities but are not precisely the same for each district. All three provide that the

extensive list of improvements authorized by the South Carolina Revenue Bond Act for Utilities (S.C. Code sec. 6-21-5 et seq.) may be financed with an improvement district. Examples include parks and playgrounds, recreation facilities, pedestrian facilities, the relocation, construction, widening, paving and demolition of streets, roads, and bridges, storm drainage installations, underground utilities, parking facilities, parking garages, the widening and dredging of channels, canals, and waterways, public buildings and parkways, façade redevelopment, open or covered malls, promotion and marketing, and planning, engineering, administration, and managing the affairs of the district. The MID specifically authorizes activities authorized by the State Housing Law (Chapter 1 of Title 31).

Property owners within a proposed improvement district have specific rights and must generally concur in the creation of the district. A petition with signatures of a percentage of the property owners is required in all three types of districts. In a CPWID the requirement is 66%. In a RID the requirement is 100%. In a MID the requirement is a majority of the property owners. Additionally, in a MID owner occupants of residential property may opt out of the district. Local governments considering the creation of an improvement district to finance all or any portion of public capital improvement projects should consult closely with the local government attorney and qualified bond counsel in the early stages of planning for the use of any one of the tools described here.

It appears that local improvement districts could be utilized in conjunction with a priority investment zone to finance infrastructure costs and reduce the initial cost of development. The improvement district is one way for a municipality to facilitate investment in a priority investment zone and facilitate the development of affordable housing. Improvements within the district would be financed entirely or in part through an assessment on real property. The assessment is a charge to the owner of each parcel based on a formula. The formula would be used to allocate the cost of the improvements to the individual property owners based on the benefit the parcel receives from the improvements to be constructed. Elements of the formula could include assessed value, front footage, parcel area, or a simple per parcel amount. Additionally, if determined appropriate by the local governing body, any portion of the total debt could be financed by the local government with legally available revenues. The result would be a lower cost assessed on each property. As described above, the owners of property within the district and the local governing body must agree to the creation of the district, the infrastructure improvements to be financed, and the assessment formula. An advantage of an improvement district is that debt incurred to construct the improvements can be financed at a tax exempt rate and payments on the debt can be paid off with the assessments collected over a number of years with annual property taxes.

The cost of infrastructure improvements in most new private developments or subdivisions is generally financed at a taxable commercial rate and the cost is passed on to the homebuyer in the price of the lot. If the improvement district is established before the sale of any lots (while the developer still owns all of the lots) the developer would be

the only property owner required to approve the assessment formula and the creation of the district. Accordingly, the developer's upfront cost of development could be reduced and both the cost and the savings could be passed through to the purchaser of each lot. As a result, the sale price of a new housing unit could be reduced. However, the infrastructure cost is still there in the form of public debt service (the assessment) and is a part of the monthly housing cost. The new owner will pay for a share of the infrastructure over time until the tax exempt debt is retired. If the municipality subsidizes the improvement district by paying a portion of the initial cost, the share to the homeowner will be less.

As mentioned above, deferring payment on infrastructure costs with improvement district debt financing can make the initial sale price of a unit affordable and reduce the amount of a mortgage and required down payment. The owner will still be responsible for repaying a proportionate share of the infrastructure cost, most often in conjunction with his monthly mortgage payment. The monthly amount paid into escrow for taxes and insurance will include an amount for the repayment of the infrastructure debt. However, because the infrastructure debt is financed at a tax exempt rate that is lower than the private mortgage rate, the net cost to the homebuyer is less.

In the case of rental housing, a developer-owner participating in or creating a local improvement district may defer the cost of the infrastructure improvements and reduce the amount of private financing required. The cost of the public infrastructure will still be borne by the affordable housing landlord but it can be stretched over a longer period of time and at a lower tax exempt rate. If an improvement district was utilized within a priority investment area for the purpose of affordable housing, a local government could assume a portion of the debt service associated with the affordable housing, thereby substantially reducing the cost of development and rental rates.

In some cases local improvement district financing may be utilized to fund improvements located outside the district but which directly benefit the district. Examples might include a sewer trunk line that connects a treatment facility to a newly served area within a priority investment zone or a road construction project necessary to provide or improve access to a priority investment zone. Additionally, in some cases the improvement district may be comprised of noncontiguous parcels on land.

As stated above, jurisdictions considering the creation of an improvement district to fund public capital improvement projects should consult closely with the local government attorney and qualified bond counsel before utilizing any one of the districts described here.

Special Property Tax Assessments (The Bailey Bill)

S.C. Code sec. 4-9-195, et seq. authorizes counties to temporarily abate property taxes for a period of up to twenty years on all or a portion of the value added to real property

as a result of an approved rehabilitation. S.C. Code sec. 5-21-140 grants the same authority to municipalities.

The special property tax assessment process is a tool that might be applied within the priority investment zone concept as an incentive for the renovation of low and moderate income rental property that would constitute "affordable housing" as it is defined by the PIA. Rental housing is eligible for certification and receipt of the special assessment if it provides accommodations under the Section 8 Rental Assistance Program. Rental housing may also be eligible if the expenditures for rehabilitation exceed the appraised value of the property, the property is located within an area designated by the local government as a low and moderate housing rehabilitation district (which could be the same as a priority investment zone) and the owner does nothing to cause the property to be unsuitable for the designation. Additionally, if the low and moderate income rental property qualifies as an historic property, the rehabilitation work must be approved pursuant to the historic structure rehabilitation criteria established by the local government.

There are a number of conditions which apply to the special assessment (temporary abatement) for both historic and low and moderate income properties. An evaluation of the properties must take place, a certification of the structure by the local government must occur and, in the case of historic properties, the rehabilitation work must be validated to be consistent with the applicable renovation standards, most frequently the Secretary of Interior's Standards for Rehabilitation of Historic Properties. Careful legal research and drafting of an ordinance to implement the special assessment provisions of the State law should be undertaken with the advice and participation of the local government attorney.

Appendix A:

The South Carolina Priority Investment Act

South Carolina General Assembly

117th Session, 2007-2008

A31, R52, S266

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, SO AS TO ENACT THE "SOUTH CAROLINA PRIORITY INVESTMENT ACT" BY AMENDING SECTION 6-29-510, RELATING TO COMPREHENSIVE PLANS OF LOCAL PLANNING COMMISSIONS, SO AS TO AMEND THE HOUSING ELEMENT AND TO PROVIDE FOR TRANSPORTATION AND PRIORITY INVESTMENT ELEMENTS OF COMPREHENSIVE PLANS; TO AMEND SECTION 6-29-720, RELATING TO THE REGULATION OF ZONING DISTRICTS, SO AS TO ALLOW LOCAL GOVERNMENTS TO DEVELOP MARKET-BASED INCENTIVES AND ELIMINATION OF NONESSENTIAL HOUSING REGULATORY REQUIREMENTS TO ENCOURAGE PRIVATE DEVELOPMENT, TRADITIONAL NEIGHBORHOOD DESIGN, AND AFFORDABLE HOUSING IN PRIORITY INVESTMENT AREAS; TO AMEND SECTION 6-29-1110, RELATING TO DEFINITIONS, SO AS TO DEFINE "AFFORDABLE HOUSING", "MARKET-BASED INCENTIVES", "TRADITIONAL NEIGHBORHOOD DESIGN", AND "NONESSENTIAL HOUSING REGULATORY REQUIREMENTS"; TO AMEND SECTION 6-29-1130, RELATING TO REGULATIONS OF A LOCAL GOVERNING BODY GOVERNING THE DEVELOPMENT OF LAND UPON THE RECOMMENDATION OF THE LOCAL PLANNING COMMISSION, SO AS TO FURTHER PROVIDE FOR THE CONTENT OF THESE REGULATIONS RELATING TO LAND DEVELOPMENT, AND TO PROVIDE THAT LOCAL GOVERNMENTS AMEND THEIR COMPREHENSIVE PLANS TO COMPLY WITH THESE PROVISIONS.

Be it enacted by the General Assembly of the State of South Carolina:

South Carolina Priority Investment Act

SECTION 1. This act may be cited as the "South Carolina Priority Investment Act".

Local planning commission comprehensive plans

SECTION 2. Section 6-29-510(D) of the 1976 Code is amended to read:

"(D) A local comprehensive plan must include, but not be limited to, the following planning elements:

(1) a population element which considers historic trends and projections, household numbers and sizes, educational levels, and income characteristics;

(2) an economic development element which considers labor force and labor force characteristics, employment by place of work and residence, and analysis of the economic base;

(3) a natural resources element which considers coastal resources, slope characteristics, prime agricultural and forest land, plant and animal habitats, parks and recreation areas, scenic views and sites, wetlands, and soil types. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(4) a cultural resources element which considers historic buildings and structures, commercial districts, residential districts, unique, natural, or scenic resources, archaeological, and other cultural resources. Where a separate board exists pursuant to this chapter, this element is the responsibility of the existing board;

(5) a community facilities element which considers water supply, treatment, and distribution; sewage system and wastewater treatment; solid waste collection and disposal, fire protection, emergency medical services, and general government facilities; education facilities; and libraries and other cultural facilities;

(6) a housing element which considers location, types, age, and condition of housing, owner and renter occupancy, and affordability of housing. This element includes an analysis to ascertain nonessential housing regulatory requirements, as defined in this chapter, that add to the cost of developing affordable housing but are not necessary to protect the public health, safety, or welfare and an analysis of market-based incentives that may be made available to encourage development of affordable housing, which incentives may include density bonuses, design flexibility, and streamlined permitting processes;

(7) a land use element which considers existing and future land use by categories, including residential, commercial, industrial, agricultural, forestry, mining, public and quasi-public, recreation, parks, open space, and vacant or undeveloped;

(8) a transportation element that considers transportation facilities, including major road improvements, new road construction, transit projects, pedestrian and bicycle projects, and other elements of a transportation network. This element must be developed in coordination with the land use element, to ensure transportation efficiency for existing and planned development;

(9) a priority investment element that analyzes the likely federal, state, and local funds available for public infrastructure and facilities during the next ten years, and recommends the projects for expenditure of those funds during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done through coordination with adjacent and relevant jurisdictions and agencies. For the purposes of this item, 'adjacent and relevant jurisdictions and agencies' means those counties, municipalities, public service districts,

school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. For the purposes of this item, 'coordination' means written notification by the local planning commission or its staff to adjacent and relevant jurisdictions and agencies of the proposed projects and the opportunity for adjacent and relevant jurisdictions and agencies to provide comment to the planning commission or its staff concerning the proposed projects. Failure of the planning commission or its staff to identify or notify an adjacent or relevant jurisdiction or agency does not invalidate the local comprehensive plan and does not give rise to a civil cause of action."

Regulation of zoning districts

SECTION 3. Section 6-29-720(C) of the 1976 Code is amended to read:

"(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

(1) 'cluster development' or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;

(2) 'floating zone' or a zone which is described in the text of a zoning ordinance but is unmapped. A property owner may petition for the zone to be applied to a particular parcel meeting the minimum zoning district area requirements of the zoning ordinance through legislative action;

(3) 'performance zoning' or zoning which specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously assuring compatibility with surrounding development and increasing a developer's flexibility;

(4) 'planned development district' or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;

(5) 'overlay zone' or a zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries;

(6) 'conditional uses' or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning district. The conditions, restrictions, or limitations must be set forth in the text of the zoning ordinance; and

(7) 'Priority Investment Zone' in which the governing authority adopts market-based incentives or relaxes or eliminates nonessential housing regulatory requirements, as these terms are defined in this chapter, to encourage private development in the Priority Investment Zone. The governing authority also may provide that traditional neighborhood design and affordable housing, as these terms are defined in this chapter, must be permitted within the Priority Investment Zone."

Definitions

SECTION 4. Section 6-29-1110 of the 1976 Code is amended to read:

"Section 6-29-1110. As used in this chapter:

(1) 'Affordable housing' means in the case of dwelling units for sale, housing in which mortgage, amortization, taxes, insurance, and condominium or association fees, if any, constitute no more than twenty-eight percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size, for the metropolitan statistical area as published from time to time by the U.S. Department of Housing and Community Development (HUD) and, in the case of dwelling units for rent, housing for which the rent and utilities constitute no more than thirty percent of the annual household income for a household earning no more than eighty percent of the area median income, by household size for the metropolitan statistical area as published from time to time by HUD.

(2) 'Land development' means the changing of land characteristics through redevelopment, construction, subdivision into parcels, condominium complexes, apartment complexes, commercial parks, shopping centers, industrial parks, mobile home parks, and similar developments for sale, lease, or any combination of owner and rental characteristics.

(3) 'Market-based incentives' mean incentives that encourage private developers to meet the governing authority's goals as developed in this chapter. Incentives may include, but are not limited to:

(a) density bonuses, allowing developers to build at a density higher than residential zones typically permit, and greater density bonuses, allowing developers to build at a density higher than residential affordable units in development, or allowing developers to purchase density by paying into a local housing trust fund;

(b) relaxed zoning regulations including, but not limited to, minimum lot area requirements, limitations of multifamily dwellings, minimum setbacks, yard requirements, variances, reduced parking requirements, and modified street standards;

(c) reduced or waived fees including those fees levied on new development projects where affordable housing is addressed, reimburse permit fees to builder upon certification that dwelling unit is affordable and waive up to one hundred percent of sewer/water tap-in fees for affordable housing units;

(d) fast-track permitting including, but not limited to, streamlining the permitting process for new development projects and expediting affordable housing developments to help reduce cost and time delays;

(e) design flexibility allowing for greater design flexibility, creating preapproved design standards to allow for quick and easy approval, and promoting infill development, mixed use and accessory dwellings.

(4) 'Subdivision' means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose, whether immediate or future, of sale, lease, or building development, and includes all division of land involving a new street or change in existing streets, and includes re-subdivision which would involve the further division or relocation of lot lines of any lot or lots within a subdivision previously made and approved or recorded according to law; or, the alteration of any streets or the establishment of any new streets within any subdivision previously made and approved or recorded according to law, and includes combinations of lots of record; however, the following exceptions are included within this definition only for the purpose of requiring that the local planning agency be informed and have a record of the subdivisions:

(a) the combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to the standards of the governing authority;

(b) the division of land into parcels of five acres or more where no new street is involved and plats of these exceptions must be received as information by the planning agency which shall indicate that fact on the plats; and

(c) the combination or recombination of entire lots of record where no new street or change in existing streets is involved.

(5) 'Traditional neighborhood design' means development designs intended to enhance the appearance and functionality of the new development so that it functions like a traditional neighborhood or town. These designs make possible reasonably high residential densities, a mixture of residential and commercial land uses, a range of single and multifamily housing

types, and street connectivity both within the new development and to surrounding roadways, pedestrian, and bicycle features.

(6) 'Nonessential housing regulatory requirements' mean those development standards and procedures that are determined by the local governing body to be not essential within a specific Priority Investment Zone to protect the public health, safety, or welfare and that may otherwise make a proposed housing development economically infeasible. Nonessential housing regulatory requirements may include, but are not limited to:

(a) standards or requirements for minimum lot size, building size, building setbacks, spacing between buildings, impervious surfaces, open space, landscaping, buffering, reforestation, road width, pavements, parking, sidewalks, paved paths, culverts and storm water drainage, and sizing of water and sewer lines that are excessive; and

(b) application and review procedures that require or result in extensive submittals and lengthy review periods."

Local government regulation for land development

SECTION 5. Section 6-29-1130(A) of the 1976 Code is amended to read:

"(A) When at least the community facilities element, the housing element, and the priority investment element of the comprehensive plan as authorized by this chapter have been adopted by the local planning commission and the local governing body or bodies, the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the harmonious development of the municipality and the county; for coordination of streets within subdivision and other types of land developments with other existing or planned streets or official map streets; for the size of blocks and lots; for the dedication or reservation of land for streets, school sites, and recreation areas and of easements for utilities and other public services and facilities; and for the distribution of population and traffic which will tend to create conditions favorable to health, safety, convenience, appearance, prosperity, or the general welfare. In particular, the regulations shall prescribe that no land development plan, including subdivision plats, will be approved unless all land intended for use as building sites can be used safely for building purposes, without danger from flood or other inundation or from other menaces to health, safety, or public welfare."

Revision of local plans

SECTION 6. All local governments that have adopted a local comprehensive plan in compliance with the provisions of Article 3, Chapter 29, Title 6 of the 1976 Code shall revise their local comprehensive plans to comply with the provisions of this act at the local

government's next review of its local comprehensive plan as provided in Section 6-29-510(E) following the effective date of this act.

Time effective

SECTION 7. This act takes effect upon approval by the Governor.

Ratified the 17th day of May, 2007.

Approved the 23rd day of May, 2007.

Appendix B:

Traditional Neighborhood Design Ordinances

Resource Documents:

North Augusta (SC) Development Code, Article 2 – Use Standards, Traditional Neighborhood Development

Town of Huntersville (NC) Zoning Ordinance, Article III – Traditional Neighborhood Development Districts

North Augusta Zoning Ordinance

2.5.12 Parking

2.5.12.1 The minimum parking space requirements of Article 12, Parking, do not apply to a Commercial Redevelopment. Additional parking may be placed to the rear of principal buildings provided that the number of spaces for the entire site does not exceed the maximum parking requirements of Article 12.

2.5.12.2 The applicant shall connect parking areas to parking lots on adjoining properties in order to allow customers to drive to other locations without re-entering the major roadway network and adding to traffic volumes. The Director may waive this requirement where he finds that the requirement is not practicable due to unique site topography, natural barriers to vehicular travel or similar obstacles.

2.5.12.3 Service entrances and service yards shall be located only in the rear or side yard. Service yards shall be screened from adjacent residentially zoned or used property by the installation of a buffer as set forth in Article 11, Open Space and Parks. Not more than one (1) parking bay may be placed between any Additional Building constructed or expanded and the street right of way pursuant to this section. Not more than one (1) parking bay may be placed between the existing buildings and any Additional Building constructed pursuant to this section.

2.6 TRADITIONAL NEIGHBORHOOD DEVELOPMENT

2.6.1 Purpose

The Traditional Neighborhood Development (TND) option permits the development of land in a manner consistent with the historic and timelessness of North Augusta's existing neighborhoods. A TND combines a variety of housing types with commercial and civic uses in a compact, walkable neighborhood setting. TNDs feature an interconnected street network and setbacks appropriate to create a public realm built on a human scale. A TND is developed such that the street network recognizes and complements site topography and other natural features.

2.6.2 Applicability

A TND may be approved in any zoning district in which a TND is listed as a permitted use, Table 3-2, Use Matrix.

2.6.3 Processing Procedures

2.6.3.1 There are two (2) procedures for approval of a TND. First, the TND may be approved administratively with a combined subdivision plat and site plan. Second, where the existing zoning classification does not permit a TND, the applicant may request a rezoning to a TND zoning district. In all other respects, the sequence for processing a TND shall be as set forth in Article 5, Approval Procedures.

2.6.3.2 Applications for subdivision approval in any of the districts in which a TND is permitted may file a combined subdivision plat and site plan that complies with the standards of this section and other applicable provisions of this Chapter. Such applications shall be labeled "TND Subdivision" and may be processed and approved in accordance with the site plan procedures and the subdivision plat procedures set forth in Article 5, Approval Procedures.

2.6.4 Size and Location of Site

2.6.4.1 A TND may be located adjacent to, but shall not be bisected by, an arterial street unless the street is designed to conform to the requirements of an avenue or main street as set forth in Article 14, Streets.

2.6.4.2 If the TND is located adjacent to a collector or higher classification street and the street is not designed to conform to the standards of an avenue or main street, the following criteria shall apply:

a. The internal streets providing access to the TND shall be aligned perpendicular to the collector or higher order street; and
b. The buildings or structures that take access from the internal streets shall face the internal streets.

2.6.4.3 The site shall be divided into the following subareas:

a. A "Center" consisting of civic, retail, service and multi-family uses. The size of the Center is based on the size of the entire site, as provided below. The Center shall include a minimum building area of thirty-thousand (30,000) square feet gross floor area. For a TND exceeding two hundred fifty (250) dwelling units, the TND Center shall have a minimum area of one hundred twenty (120) square feet per dwelling unit. A Center shall only be located on a main street as set forth in Article 14, Streets. A continuous system of sidewalks shall connect the Center with streets and lanes which provide access to dwelling units.
b. A neighborhood or series of neighborhoods consisting of multi-family and single-family uses, small-scale retail and service uses and public outdoor gathering places. It is the intent of this Chapter that all areas within a neighborhood are within a five (5) minute walking distance from edge to edge. A neighborhood shall not exceed forty (40) acres in size, not including greenbelts.

2.6.5 Dimensional Standards

2.6.5.1 The requested densities, in terms of number of units per gross residential acre and total number of dwelling units, shall be set forth in the subdivision or site plan application. The subdivision or site plan for a TND shall comply with Table 2-4, TND Land Use Allocations. The applicable land use categories are set forth in Column A. The minimum land area that shall be devoted to the land use is shown in Column B and the maximum land area that shall be devoted to the land use is shown in Column C. Minimum land area is stated as the percentage of gross land area. The density for the particular use shall be at least the amount set forth in Column D for residential uses and shall not exceed the amount shown in Column E. The Floor Area Ratio (FAR) for the particular use shall be at least the amount set forth in Column F and shall not exceed the amount shown in Column G.

TABLE 2-4 TND LAND USE ALLOCATIONS

	A	B	C	D	E	F	G
	Land Use Category	**Minimum Land Allocation**	**Maximum Land Allocation**	**Minimum Density**	**Maximum Density**	**Minimum FAR**	**Maximum FAR**
1.	**Open Space & Parks**	5% or 5 acres, whichever is less	--	--	--	--	--
2.	**Civic Uses**	2%	20%	--	--	2.0	--
3.	**Retail or Service Uses**	5%	20%	--	--	1.5	6.0
4.	**Multi-Family Uses**	10%	40%	5	30	1.5	6.0
5.	**Single-Family Uses**	15%	75%	4	10	--	--

2.6.5.2 The setback for principal buildings shall be as set forth in Table 2-2, Neighborhood Center Dimensional Requirements. Setbacks for accessory structures or accessory dwellings shall comply with Article 3, Zoning Districts. The frontage and setback requirements shall not apply to parks and open space. Examples of lot configurations that meet the criteria below are set forth in Table 2-7, Sample Lot Configurations.

TABLE 2-5 TND DIMENSIONAL STANDARDS

	A	B	C	D	E	F	G	H	I	J	K
	Location	**Minimum Frontage**	**Maximum Average Frontage**	**Minimum Front Setback**	**Maximum Front Setback**	**Minimum Side Setback**	**Maximum Side Setback**	**Minimum Rear Setback**	**Impervious Surface Ratio**	**Minimum Height**	**Maximum Height**
1.	**Arterial**	100’	--	10’	--	0’ or 3’	20’	40’	85%	--	80’
2.	**Collector**	40’	80’	5’	25’	0’ or 3’	20’	0’	85%	--	80’
3.	**Boulevard Street**	10’	40’	0’	12’	0’ or 3’	5’	5’	100%	24’	80’
4.	**Large Street**	20’	40’	5’	25’	0’ or 3’	3’	0’	75%	--	60’
5.	**Local Street**	14’	70’	0’	12’	0’ or 3’	--	0’	75%	--	45’

Notes to Table 2-5:

a. In order to allow for variations for unique uses, such as anchor retail tenants or auditoriums, the maximum frontage requirements in Column C shall be computed as an average.
b. Applies only to single-family detached dwellings, or buildings or structures adjacent to a single-family detached dwelling.
c. There are no height restrictions on civic buildings and portions of structures with footprints less than two hundred twenty-five (225) square feet. See § 2.6.5.3 for standards relating to lots facing a square or a plaza.

2.6.5.3 Lots with frontages or side lot lines adjoining at least one square or plaza, or facing across a street from the square or plaza, as designated in the general development plan, shall conform to the standards below. This section does not apply to a general development plan consisting of less than one hundred (100) acres, unless a square is required by § 2.6.8 because of common ownership.

a. The maximum side setback for at least eighty-five percent (85%) of the frontages shall be three (3) feet. The remaining fifteen percent (15%) shall be devoted exclusively to plazas, entryways, walkways or access drives to parking in the rear or in a structure.
b. All buildings shall have a minimum height of two (2) stories or twenty-four (24) feet, whichever is less.
c. Not less than two-thirds (⅔) of the linear building frontage shall have a minimum height of thirty-two (32) feet or three (3) stories, whichever is less.
d. No building less than thirty-two (32) feet or three (3) stories in height may exceed twenty-five (25) feet in width.

2.6.6 Uses

2.6.6.1 The location of uses shall be governed by street frontage, as shown in Table 2-6, TND Uses by Street Classification. In Table 2-6, "P" means the use is permitted on a lot with primary frontage on the designated street and the structure fronts on the designated street.

TABLE 2-6 TND USES BY STREET CLASSIFICATION

	A	B	C	D	E
	Street	**Civic Uses**	**Retail or Service Uses**	**Multi-Family Uses**	**Single-Family Uses**
1.	**Arterials**	P	--	--	--
2.	**Collectors**	P	P	P	--
3.	**Boulevard**	P	P	P	--
4.	**Large**	P	P	P	--
5.	**Local**	--	--	P	P

2.6.6.2 Multi-family and non-residential buildings may be constructed on any lot type. Such buildings have no setback, build-to line or building coverage limitations. Parking is not allowed forward of any portion of the front plane of the building, except for on-street parking.

2.6.6.3 Accessory buildings and accessory dwellings shall conform to the provisions of Article 4.

2.6.7 Adequate Public Facilities

The city hereby finds that the proximity of jobs and retail uses to housing in a TND can achieve significant trip reductions produced by the internal capture of home-work and home-retail trips. The city further finds and determines that there is a compelling public interest to encourage new development to occur in accordance with the criteria set forth in this section. Accordingly, a TND subdivision plat or site plan is not subject to the full requirements of Article 8, Adequate Public Facilities, which pertain to traffic. The Article 8 requirements may be reduced by fifty percent (50%) through the reduction of the development-related trip generation calculation by fifty percent (50%).

2.6.8 Site Layout

2.6.8.1 All lots shall include frontage abutting a street or a square.

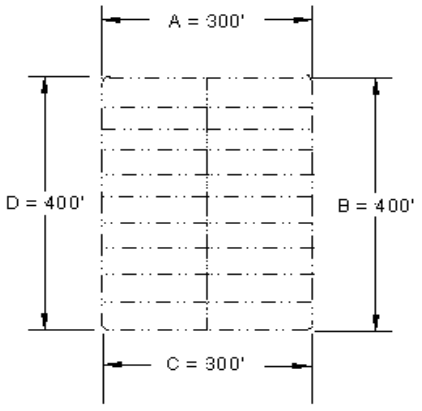
2.6.8.2 For a proposed TND not exceeding eighty (80) acres in size, at least ninety percent (90%) of the dwelling units shall be located within one thousand, three hundred twenty (1,320) feet from the perimeter of a center or a square.

2.6.8.3 For a proposed TND which is at least eighty (80) acres in size, at least fifty percent (50%) of the dwelling units shall be located within one thousand, three hundred twenty (1,320) feet from the perimeter of a center or a square.

2.6.8.4 Blocks shall conform to the maximum block lengths in Table 14-2, Street Design Criteria, and shall not exceed the following dimensions:

a. Blocks shall have an average length not exceeding four hundred (400) feet, with no block exceeding seven hundred (700) feet in length.
b. Blocks shall have an average perimeter not exceeding one thousand, two hundred (1,200) feet, with no block perimeter exceeding one thousand, six hundred (1,600) feet.

FIGURE 2-1 BLOCK LENGTHS AND PERIMETER



A, B, C and D are Block Lengths

A + B + C + D = Block Perimeter

2.6.8.5 Examples of lot configurations that comply with the dimensional standards of this section are set forth in Table 2-7, Sample Lot Configurations. These guidelines indicate the design parameters for lot widths, building placement and the size of the building footprint(s). Site constraints may exist and will impact the placement of a building, accessory structure or landscaping on the building site. Constraints may include, but are not limited to existing and proposed easements, utilities and natural features including trees. Lot types are not restricted to a single type of use and may accommodate various building types. For example, a retail shop front building an office building or a house may be constructed on a rear-yard lot. Waivers to the standards for lot types for individual buildings may be approved in accordance with Article 5, Approval Procedures.

TABLE 2-7 SAMPLE LOT CONFIGURATIONS (All dimensions in feet)

	A	B	C	D	E	F	G	H
	Lot Type and Description	Minimum Frontage	Minimum Front Setback	Maximum Front Setback	Minimum Side Setback	Maximum Side Setback	Minimum Rear Setback	Impervious Surface Ratio
1.	**Rear-Yard Lot** - The principal yard is behind the building. The front yard of the building, if any, is viewed as an extension of the building and is semi-public in nature. Parking is located in the rear-yard.	14	0	12	0 or 3	--	0	75%
2.	**Side-Yard Lot** - The principal yard is located to one side the building. The front yard of the building, if any, is viewed as an extension of the porch or building and is semi-public in nature. Parking may occur in the side yard, but preferably it should be located in the rear yard.	24	0	9	3.75 on one side only	10 on one side only	0	75%
3.	**All-Yard Lot -** The building is entirely surrounded by its yard. Parking may occur in one of the side yards, but preferably it should be in the rear. Driveways and access ways are allowed in the front yard only when a rear lane is not present. No parking shall be permitted in the front yard.	30	5	25	3	--	0	75%
4.	**No-Yard Lot -** The building occupies all or almost all of the lot. Parking can be located either at the rear of the lot, within the building or can be accommodated off-site in a private or public parking lot or garage.	14	0	12	0 or 3	3	0	100%

2.6.8.6 Additional Lot Types – Additional or modified lot types may be approved by the Planning Commission in conjunction with the concept plan for any phase or a preliminary plat.

2.6.8.7 Subdivision of Platted Lots – Unimproved individual single-family lots may be subdivided to create smaller lots provided that each resulting lot meets the dimensional requirements of this Chapter and each lot is occupied by a primary residential structure. Adequate street frontage, access to the lot and parking must be provided. Accessory structures and dwelling units may be developed on the resulting lots subsequent to the primary residential structure. Improved lots may not be subdivided to create smaller lots unless each resulting lot meets the dimensional requirements of § 2.6, each lot is subsequently occupied by a primary residential structure and each primary residential structure meets the setback requirements of this Chapter. Accessory dwelling units may not be subdivided from a single-family lot that also contains a primary residential structure unless both resulting lots and residential structures meet the dimensional requirements of this Chapter.

2.6.8.8 Architectural Elements – Architectural elements including stoops, ramps, stairs, porches, awnings, colonnades, arcades, marquees, balconies and bay windows, projecting forward of the front plane of the building, may encroach upon the build-to zone (front setback) to within six (6) inches of the property line. Stoops, stairs, ramps, canopies and awnings may extend into the public rights of way, and shall extend no further than three (3) feet into the right of way, provided vehicular and pedestrian circulation is not unreasonably restricted and the encroachment is approved in writing by the Director and City Engineer.

2.6.9 Street Design

2.6.9.1 Streets shall comply with the street standards in Article 14, Streets.

2.6.9.2 The Connectivity Ratio shall be not less than one to eight (1:8).

2.6.9.3 Cul-de-sacs, 'T' or hammerhead turnarounds, dead-end and gated street ends are not permitted within the TND unless the Director finds that:

a. The street end does not cause the Connectivity Ratio to decline below one to eight (1:8);
b. The street end does not exceed one hundred (100) feet in length;
c. The street end is needed to avoid extending impervious surfaces into a floodplain, steep slope or woodland, or to mitigate a similar topographical obstruction; and
d. These street ends, where approved, should be designed as a close or loop cul-de-sac.

2.6.9.4 All streets required to include curb and gutter shall have a six (6) inch vertical curb. Curb cuts shall provide handicap access at all intersections and points of pedestrian crossing.

2.6.9.5 All sidewalks shall run parallel with the street and have a width of not less than five (5) feet, as required by the Americans with Disabilities Act.

2.6.10 Open Space and Parks

Open space and parks shall comply with the standards of Table 2-8, TND Open Space Allocation. The amount of land for each open space or park classification set forth in Column A shall not be less than that prescribed in Column B, and not more than that prescribed in Column C. TND open space or parks shall comply with Article 11, Open Space and Parks, standards.

TABLE 2-8 TND OPEN SPACE ALLOCATION

	A	B	C
	TYPE	**Minimum Land Allocation**	**Maximum Land Allocation**
1.	**Parks or Squares**	For tracts of at least 100 acres, the greater of 5% gross land area or 5 acres. There is no minimum requirement for tracts of less than 100 acres and not under common ownership with an adjoining lot or parcel that, together with the subject parcel, would equal 100 acres.	40% of gross land area total. Maximum size per park is 3 acres.
2.	**Greeneways or Greenbelts**	No minimum acreage requirement. Greeneways or greenbelts shall be located within natural areas such as steep slopes, floodplains or significant stands of trees. The area shall be preserved in perpetuity in its natural condition or enhanced by the owner, as determined and permitted by the Planning Commission. The greenbelt area may be used for wetlands, water retention, golf courses or subdivided into house lots no smaller than 5 acres. Roadways may penetrate greenbelts in order to provide access to areas outside the TND.	N/A
3.	**Plazas**	30,000 square feet.	160,000 square feet

2.6.11 Landscaping

Uses within a TND shall be exempt from the standards relating to buffers in Article 10, Landscaping.

2.6.12 Parking

2.6.12.1 Except as otherwise provided by this section, parking requirements for all uses shall be in accordance with Article 12, Parking.

2.6.12.2 The minimum parking space ratio requirements of Article 12, Parking, shall not apply to a TND.

2.6.12.3 Parking lots shall be located at the rear or at the side of buildings.

2.6.12.4 Parking lots and parking garages shall not:

a. Abut street intersections or civic use lots; or

b. Occupy lots which terminate a street vista.

2.6.12.5 Parking lots shall be located in the interior of a block or shall take access from an alley.

2.6.12.6 Loading areas shall adjoin alleys or parking areas to the rear of the principal building.

2.6.12.7 On-street parking and structured parking is encouraged.

2.6.13 Urban Design

2.6.13.1 The principal entrance of all buildings, excluding outbuildings, shall open to a street.

2.6.13.2 Front porches shall be provided on not less than thirty percent (30%) of all dwelling units within the single-family land use allocation. Porches shall be constructed of masonry or wood materials. Architectural metal may be used if it is consistent with the exterior or roofing materials of the primary building. The seating area shall have a minimum width of nine (9) feet and a minimum depth of five (5) feet. A front porch shall have a minimum depth of six (6) feet and a minimum width of twelve (12) feet.

2.6.13.3 Retail and service buildings shall comply with the design standards for “A” streets in the D, Downtown Mixed Use District. Retail and service uses may designate the entire building area above the ground floor or the second floor for residential use.

Huntersville Zoning Ordinance

"Traditional Neighborhood Development"

from **Article III, Zoning Ordinance for**

Huntersville, North Carolina

3.2.11 TRADITIONAL NEIGHBORHOOD DEVELOPMENT DISTRICTS (TND-U AND TND-R)

Intent: The Traditional Neighborhood Development Districts are provided for the development of new neighborhoods and the revitalization or extension of existing neighborhoods, which are structured upon a fine network of interconnecting pedestrian oriented streets and other public spaces. Traditional Neighborhood Developments (TND's) offer a mixture of housing types and prices, prominently sited civic or community building(s), and stores/offices/workplaces to provide a balanced mix of activities. Religious institution and pre-school/elementary school facilities are encouraged. A Traditional Neighborhood Development (TND) has a recognizable center and clearly defined edges; optimum size is a quarter mile from center to edge. A TND-U is urban in form, is an extension of the existing developed area of the town, and complies with density measures of the Neighborhood Residential (NR) District. Minimum size of a TND-U is 40 acres. A TND-R will resemble a rural village, will usually be surrounded by a rural landscape, and must comply with the density limits and bonuses of the Rural and Transitional District. Minimum size of a TND-R is 65 acres.

a) Permitted Uses

Uses permitted by right

- bed and breakfast inns
- boarding or rooming houses for up to six roomers
- civic, fraternal, cultural, community, or club facilities
- commercial uses
- congregate housing
- conference facilities
- government buildings
- hotels
- multi-family homes
- single family homes

Uses permitted with conditions

- cemeteries, (9.7)
- religious institutions, (9.8)
- commercial marinas, (9.43)
- day care centers, (9.4)
- essential services 1 and 2, (9.14)
- neighborhood gasoline stations, excluding major service and repair of motor vehicles (9.22)
- parking lot as principal use (9.28)
- schools, (9.35)
- transit-oriented parking lots as a principal use, (9.49)
- transit shelters, (9.39)
- stalls or merchandise stands for outdoor sale of goods at street front (encroachment onto sidewalk may be permitted by agreement with town); outdoor storage expressly prohibited[11].

[11] items for outdoor sales are returned to building at end of each business day; goods not brought in at close of business day are considered outdoor storage.

b) Permitted Building and Lot Types

- apartment
- attached house
- civic
- detached house
- mixed use[12] up to 6,000 SF of first floor area; up to 65,000 SF of first floor area within 2,000 feet of a freeway interchange or the intersection of two major thoroughfares
- storefront up to 6,000 SF of first floor area; up to 65,000 SF of first floor area within 2,000 feet of a freeway interchange or the intersection of two major thoroughfares
- workplace up to 6,000 SF of first floor area; up to 65,000 SF of first floor area within 2,000 feet of a freeway interchange or the intersection of two major thoroughfares

c) Permitted Accessory Uses

- accessory dwelling, (9.1)
- day care home (small), (9.11)
- drive through windows, excluding those associated with restaurants, (9.12)
- home occupation, (9.19)
- marinas accessory to residential uses, (9.42)
- accessory uses permitted in all Districts (8.11)

[12] The mixed use building duplicates the shopfront building type and has at least two occupiable stories; at least 50% of the habitable area of the building shall be in residential use, the remainder shall be in commercial use. However, when an existing residential building is redeveloped to a mixed-use, at least 40% of the habitable area shall be in residential use.

d) General Requirements

1) Along existing streets, new buildings shall respect the general spacing of structures, building mass and scale, and street frontage relationships of existing buildings.

   - New buildings which adhere to the scale, massing, volume, spacing, and setback of existing buildings along fronting streets exhibit demonstrable compatibility.
   - New buildings which exceed the scale and volume of existing buildings may demonstrate compatibility by varying the massing of buildings to reduce perceived scale and volume. The definition of massing in Article 12 illustrates the application of design techniques to reduce the visual perception of size and integrate larger buildings with pre-existing smaller buildings.

2) On new streets, allowable building and lot types will establish the development pattern.

3) A master plan in compliance with Traditional Neighborhood Development standards shall be provided with the subdivision sketch plan submittal for a general district TND or with the conditional district plan for reclassification to a parallel conditional TND zoning district. The master plan shall include a topographic survey and shall show the location and hierarchy of streets and public open spaces, location of residential, commercial, and civic building lots, street sections and/or plans, a master sign program, an outline of any additional regulatory intentions, phasing, and any other information, including building elevations, which may be required to evaluate the interior pedestrian environment and conditions at project edges.

e) TND Development Provisions

1) Minimum Development Size: generally 40 acres in the TND-U
   generally 65 acres in the TND-R

   To allow for the gradual accretion of a TND, which may include the participation of several property owners over an extended period of time, a partial TND of less than the minimum number of acres may be considered for approval, so long as the project shows an integrated design for at least the minimum size and the potential to become a TND-U of at least 40 acres, or a TND-R of at least 65 acres.

2) Maximum Development Size: 200 acres
   Tracts larger than 200 acres shall be developed as multiple Traditional Neighborhood Developments, each individually subject to all provisions.

3) Maximum Permitted Densities:
   TND-U may be developed to the density permitted in the NR district (see Section 3.2.3)
   TND-R may be developed to the maximum density permitted in the OPS district (see Section 3.2.1)

f) TND Design Provisions

1) Neighborhood Form

   - The illustrations of Traditional Neighborhood Street Typologies in Article 5 show the general arrangement and distribution of elements in a more urban TND (designated TND-U), and in a less urban TND (designated TND-R).
   - The area of the TND shall be divided into blocks, streets, lots, and open space.
   - Similar land uses shall generally enfront across each street. Dissimilar categories shall generally abut at rear lot lines. Corner lots which front on streets of dissimilar use shall generally observe the setback established on each fronting street.

2) Streets

- Public streets shall provide access to all tracts and lots.
- Streets and alleys shall, wherever practicable, terminate at other streets within the neighborhood and connect to existing and projected streets outside the development. Cul-de sacs shall not exceed 250 feet in length, must be accessed from a street providing internal or external connectivity, shall be permanently terminated by a vehicular turnaround, and are permitted where topography makes a street connection impracticable. In most instances, a "close" or "eyebrow" is preferred to a cul-de-sac. Vehicular turnarounds of various configurations are acceptable so long as emergency access is adequately provided.
- The average perimeter of all blocks within the TND should not exceed 1,350 feet. No block face should have a length greater than 500 feet without a dedicated alley or pathway providing through access.
- A continuous network of rear alleys is recommended for all lots in a TND; rear alleys shall provide vehicular access to lots 60 feet or less in width.
- Utilities may run along alleys.
- TND streets shall be organized according to a hierarchy based on function, size, capacity, and design speed; streets and rights-of-way are therefore expected to differ in dimension. The proposed hierarchy of streets shall be indicated on the submitted sketch plan. Each street type in a TND shall be separately detailed. Street types illustrated in Article 5 represent the array of elements that are combined to meet the purposes of TND neighborhood streets: building placement line, optional utility allocation, sidewalk, planting strip, curb and gutter, optional parallel parking, and travel lane(s). Alternative methods of assembling the required street elements will be considered to allow neighborhood street designs that are most appropriate to setting and use.
- To prevent the buildup of vehicular speed, disperse traffic flow, and create a sense of visual enclosure, long uninterrupted segments of straight streets should be avoided. Methods: (1) a street can be interrupted by intersections designed to calm the speed and disperse the flow of traffic (Article 5) and terminate vistas with a significant feature (building, park, natural feature); (2) a street can be terminated with a public monument, specifically designed building facade, or a gateway to the ensuing space; (3) perceived street length can be reduced by a noticeable street curve where the outside edge of the curve is bounded by a building or other vertical elements that hug the curve and deflect the view; (4) other traffic calming configurations are acceptable so long as emergency access is adequately provided.

3) Buildings and Lots

- All lots shall share a frontage line with a street or square; lots fronting a square shall be provided rear alley access.
- Consistent build-to lines shall be established along all streets and public space frontages; build-to lines determine the width and ratio of enclosure for each public street or space. A minimum percentage build-out at the build-to line shall be established on the plan along all streets and public square frontages.
- Building and lot types shall comply with Article 4.
- Large-scale, single use facilities (conference spaces, theaters, athletic facilities, for example) shall generally occur behind or above smaller scale uses of pedestrian orientation. Such facilities may exceed maximum first floor area standards if so sited.

4) Open Space

Open Space is defined as any area which is not divided into private or civic building lots, streets, rights-of-way, parking, or easements for purposes other than open space conservation. Design of urban open space shall comply with Article 7. In the TND-U, the open space requirements of the NR district shall apply. In the TND-R, the open space requirements of the OPS district, including rural open space, shall apply. Rural open space is site specific in its designation. Paragraphs d) 3 & 4 of Section 3.2.1, describe the site analysis required to identify qualifying rural open space.

5) Parking and Landscaping

Parking and landscaping shall comply with Article 6.

Appendix C:

Workforce and Affordable Housing Ordinances

Resource Documents:

American Planning Association, Model Density Bonus Ordinance

Code of Charleston (SC), Chapter 54 – Zoning Ordinance, Mixed Use / Workforce Housing Districts Ordinance

Town of Mount Pleasant (SC), CBS Overlay District Ordinance

Town of Mount Pleasant (SC), Workforce Housing Planned Development District Ordinance, Draft for Town Council, 9/08

Model Affordable Housing Density Bonus Ordinance (APA)

***from*: Section 4.4, Model Affordable Housing Density Bonus Ordinance, *Model Smart Land Development Regulations,* Interim Planning Advisory Service (PAS) Report, © American Planning Association, March 2006**

103. Scope of Application; Density Bonus

[*Alternative 1: Mandatory Affordable Units*]

(1) All of the following developments that result in or contain five or more residential dwelling units shall include sufficient numbers of affordable housing units in order to constitute an Affordable Housing Development as determined by the calculation in paragraph (2) below:

(a) New residential construction, regardless of the type of dwelling unit

(b) New mixed-use development with a residential component

(c) Renovation of a multiple-family residential structure that increases the number of residential units from the number of units in the original structure

(d) Conversion of an existing single-family residential structure to a multiple-family residential structure

(e) Development that will change the use of an existing building from nonresidential to residential

(f) Development that includes the conversion of rental residential property to condominium property

Developments subject to this paragraph include projects undertaken in phases, stages, or otherwise developed in distinct sections.

(2) To calculate the minimum number of affordable housing units required in any development listed in paragraph (1) above, the total number of proposed units shall be multiplied by 20 percent. If the product includes a fraction, a fraction of 0.5 or more shall be rounded up to the next higher whole number, and a fraction of less than 0.5 shall be rounded down to the next lower whole number.

(3) Any development providing affordable housing pursuant to paragraph (1) above shall receive a density bonus of one market-rate unit for each affordable housing unit provided. All market-rate units shall be provided on site, except that, in a development undertaken in phases, stages, or otherwise developed in distinct sections, such units may be located in other phases, stages, or sections, subject to the terms of the Affordable Housing Development Plan.

(4) Any development containing four dwelling units or fewer shall comply with the requirement to include at least 20 percent of all units in a development as affordable housing by:

(a) Including one additional affordable housing dwelling unit in the development, which shall constitute a density bonus;

(b) Providing one affordable housing dwelling unit off site; or

(c) Providing a cash-in-lieu payment to the [*name of local government's*] affordable housing trust fund proportional to the number of market-rate dwelling units proposed.

[*Alternative 2: Incentives for Affordable Units*]

Any Affordable Housing Development or any development that otherwise includes one affordable housing dwelling unit for each four market-rate dwelling units shall receive a density bonus of one market-rate unit for each affordable housing dwelling unit provided on-site.

104. Cash Payment in Lieu of Housing Units

Comment: *This section would be required only under a mandatory affordable housing alternative.*

(1) The applicant may make a cash payment in lieu of constructing some or all of the required housing units only if the development is a single-family detached development that has no more than [10] dwelling units. In the case of an in-lieu payment, the applicant shall not be entitled to a density bonus.

(2) The [legislative body] shall establish the in-lieu per-unit cash payment on written recommendation by the [*planning director or city or county manager*] and adopt it as part of the [local government's] schedule of fees. The per-unit amount shall be based on an estimate of the Actual cost of providing an affordable housing unit using actual construction cost data from current developments within the [local government] and from adjoining jurisdictions. At least once every three years, the [legislative body] shall, with the written recommendation of the [*planning director or city or county manager*], review the per-unit payment and amend the schedule of fees.

(3) All in-lieu cash payments received pursuant to this ordinance shall be deposited directly into the affordable housing trust fund established by Section 109 below.

(4) For the purposes of determining the total in-lieu payment, the per-unit amount established by the [legislative body] pursuant to paragraph (1) above shall be multiplied by 20 percent of the number of units proposed in the development. For the purposes of such calculation, if 20 percent of the number of proposed units results in a fraction, the fraction shall not be rounded up or down. If the cash payment is in lieu of providing one or more of the required units, the calculation shall be prorated as appropriate.

105. Application and Affordable Housing Development Plan

(1) For all developments [in which affordable housing is required to be provided *or* in which the applicant proposes to include affordable housing], the applicant shall complete and file an application on a form required by the [local government] with the [*name of local government department responsible for reviewing applications*]. The application shall require, and the applicant shall provide, among other things, general information on the nature and the scope of the development as the [local government] may determine is necessary to properly evaluate the proposed development.

(2) As part of the application required under paragraph (1) above, the applicant shall provide to the [local government] an Affordable Housing Development Plan. The plan shall be subject to approval by the [local government] and shall be incorporated into the Affordable Housing Development Agreement pursuant to Section 106 below. An Affordable Housing Development Plan is not required for developments in which the affordable housing obligation is satisfied by a cash payment in lieu of construction of affordable housing units. The Affordable Housing Development Plan shall contain, at a minimum, the following information concerning the development:

(a) A general description of the development, including whether the development will contain units for rent or for sale

(b) The total number of market-rate units and affordable housing units

(c) The number of bedrooms in each market-rate unit and each affordable unit

(d) The square footage of each market-rate unit and of each affordable unit measured from the interior walls of the unit and including heated and unheated areas

(e) The location in the development of each market-rate and affordable housing unit

(f) If construction of dwelling units is to be phased, a phasing plan stating the number of market-rate and affordable housing units in each phase

(g) The estimated sale price or monthly rent of each market-rate unit and each affordable housing unit

(h) Documentation and plans regarding the exterior appearances, materials, and finishes of the Affordable Housing Development and each of its individual units

(i) A marketing plan the applicant proposes to implement to promote the sale or rental of the affordable units within the development to eligible households

106. Criteria for Location, Integration, Character of Affordable Housing Units

An Affordable Housing Development shall comply with the following criteria:

(a) Affordable housing units in an Affordable Housing Development shall be mixed with, and not clustered together or segregated in any way from, market-rate units.

(b) If the Affordable Housing Development Plan contains a phasing plan, the phasing plan shall provide for the development of affordable housing units concurrently with the market-rate units. No phasing plan shall provide that the affordable housing units built are the last units in an Affordable Housing Development.

(c) The exterior appearance of affordable housing units in an Affordable Housing Development shall be made similar to market-rate units by the provision of exterior building materials and finishes substantially the same in type and quality.

Comment*: Some of the affordable housing ordinances reviewed by APA contained minimum-square-footage requirements for dwelling units or suggested that there be a mix of units with different numbers of bedrooms, especially to ensure that for-rent projects contain sufficient numbers of bedrooms for larger families.*

While minimum-square-footage requirements, especially for bedroom sizes, are customarily found in housing codes, rather than zoning codes, it is possible to amend this model to include such minimums.

107. Affordable Housing Development Agreement

Comment: *A development agreement between the local government and the developer of the affordable housing project is necessary to reduce to writing the commitments of both parties, thus eliminating ambiguity over what is required regarding maintaining the affordability of the units and establishing and monitoring the eligibility of those who purchase or rent them.*

(1) Prior to the issuance of a building permit for any units in an Affordable Housing Development or any development in which an affordable unit is required, the applicant shall have entered into an Affordable Housing Development Agreement with the [local government]. The development agreement shall set forth the commitments and obligations of the [local government] and the applicant, including, as necessary, cash in-lieu payments, and shall incorporate, among other things, the Affordable Housing Plan.

(2) The applicant shall execute any and all documents deemed necessary by the [local government] in a form to be established by the [law director], including, without limitation, restrictive covenants, deed restrictions, and related instruments (including requirements for income qualification for tenants of for-rent units) to ensure the continued affordability of the affordable housing units in accordance with this ordinance.

(3) Restrictive covenants or deed restrictions required for affordable units shall specify that the title to the subject property shall only be transferred with prior written approval by the [local government].

108. Enforcement of Affordable Housing Development Agreement; Affordability Controls

(1) The director of [*name of responsible local government department*] shall promulgate rules as necessary to implement this ordinance. On an annual basis, the director shall publish or make available copies of the U.S. Department of Housing and Urban Development household income limits and rental limits applicable to affordable units within the local government's jurisdiction, and determine an inflation factor to establish a resale price of an affordable unit.

(2) The resale price of any affordable unit shall not exceed the purchase price paid by the owner of that unit with the following exceptions:

(a) Customary closing costs and costs of sale

(b) Costs of real estate commissions paid by the seller if a licensed real estate salesperson is employed

(c) Consideration of permanent capital improvements installed by the seller

(d) An inflation factor to be applied to the original sale price of a for-sale unit pursuant to rules established pursuant to paragraph (1) above

(3) The applicant or his or her agent shall manage and operate affordable units and shall submit an annual report to the [local government] identifying which units are affordable units in an Affordable Housing Development, the monthly rent for each unit, vacancy information for each year for the prior year, monthly income for tenants of each affordable units, and other information as required by the [local government], while ensuring the privacy of the tenants. The annual report shall contain information sufficient to determine whether tenants of for-rent units qualify as low- or moderate-income households.

(4) For all sales of for-sale affordable housing units, the parties to the transaction shall execute and record such documentation as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing unit shall be sold to and occupied by eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(b) The affordable housing unit shall be conveyed subject to restrictions that shall maintain the affordability of such affordable housing units for eligible households.

(5) In the case of for-rent affordable housing units, the owner of the Affordable Housing Development shall execute and record such document as required by the Affordable Housing Development Agreement. Such documentation shall include the provisions of this ordinance and shall provide, at a minimum, each of the following:

(a) The affordable housing units shall be leased to and occupied by eligible households.

(b) The affordable housing units shall be leased at rent levels affordable to eligible households for a period of 30 years from the date of the initial certificate of occupancy.

(c) Subleasing of affordable housing units shall not be permitted without the express written consent of the director of [*name of responsible local government department*].

109. Affordable Housing Trust Fund

[*This section establishes a housing trust fund into which monies from cash in-lieu payments and other sources of revenues will be deposited. Because of the variation as to how such funds could be established and the differences in state law, no model language is provided.*]

Charleston Mixed Use Workforce Housing District Ordinance

Ratification
Number 2006-463

AN ORDINANCE

TO AMEND CHAPTER 54 OF THE CODE OF THE CITY OF CHARLESTON (ZONING ORDINANCE) TO PROVIDE FOR A MIXED USE 1 – WORKFORCE HOUSING DISTRICT AND A MIXED USE 2 – WORKFORCE HOUSING DISTRICT (as amended).

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is hereby amended by adding to Article II thereof a Part 15, which Part 15 shall read as follows:

Part 15
Mixed Use 1 – Workforce Housing District
Mixed Use 2 – Workforce Housing District

Sec. 54-297. Findings. City Council finds that its urban areas have traditionally included mixed use developments that incorporate housing opportunities for persons of varying means and incomes, along with complementary nonresidential uses. City Council finds that these mixed use developments have contributed significantly to the economic success and unique fabric of its urban environment by enhancing diversity and providing job opportunities, and that it is in the public interest that incentive-driven districts be established to encourage the continued development of mixed use projects.

Sec. 54-298. Purpose. These districts are intended to promote a mixture of housing opportunities within a single development, along with appropriate nonresidential uses, by providing incentives for the creation of such developments in urban areas of the city where on street parking or other public parking is customary and can be reasonably accommodated.

Sec. 54-299. Availability. The MU-1/WH and MU-2/WH districts, being incentive based, are only available to property owners who apply for the district designation.

Sec. 54-299.1. Definitions. For the purpose of this Part, the following terms mean:

a) Owner Occupied Workforce Housing Unit: Residential units made available to households having a Household Income that does not exceed 120% of the area median family income, as defined by the U.S. Department of Housing and Urban Development, or its successor, and adjusted for household size by the City of Charleston Department of Housing and Community Development, or its successor.

b) Rental Workforce Housing Unit: Residential units made available to households having a Household Income of no more than 80% of the area median family income, as defined by the U.S. Department of Housing and Urban Development, or its successor.

c) Qualified Household: Households where Household Income does not exceed, for owner occupancy, 120% or the area median income, as defined annually by the United States Department of Housing and Urban Development, or its successor, and for rental occupancy, 80% of the area median income, as defined annually by the United States Department of Housing and Urban Development, or its successors.

d) Initial Maximum Allowable Sales Price: An amount no greater than three (3) times 120% of the area median income, as adjusted annually by the United States Department of Housing and Urban Development or its successor, plus any subsidy available to the buyer.

e) Fair Market Rent: An amount calculated and published annually by the United States Department of Housing and Urban Development, or its successor, for the Charleston-North Charleston Metropolitan Statistical Area.

f) Household Income: All sources of financial support, both cash and in kind, of adult members of the household, to include wages, salaries, tips, commissions. All forms of self-employment income, interest, dividends, net rental income, income from estates or trusts, Social Security benefits, railroad retirement benefits, Supplemental Security income, Aid to Families with Dependant Children or other public assistance welfare programs, other sources of income regularly received, including Veterans'(VA) payments, unemployment compensation and alimony, awards, prizes, government or institutional or eleemosynary loans, grants or subsidies and contributions made by the members' families for medical, personal or educational needs.

Sec. 54-299.2. Land Uses. The permitted land uses in these districts are those listed under Article 2, Part 3, Table of Permitted Land Uses, in the

column headings having the applicable district designation to wit: MU-1/WH or MU-2/WH, modified as follows:

a) Every development in the MU-1/WH or MU-2/WH zoning district that has five or more residential units must include Owner Occupied Workforce Housing Units and/or Rental Workforce Housing Units. Every development in the MU-1/WH or MU-2/WH zoning district that has less than five units must include at least one (1) Owner Occupied or Rental Workforce Housing Unit or nonresidential use(s) that face the street on the ground level in accordance with the provisions of subsection (b).

b) The number of Owner Occupied Workforce Housing Units and/or Rental Workforce Housing Units per development shall be no less than, in the aggregate, the greater of: (1) one unit; or (2) fifteen (15%) percent of the number of residential units in the development, rounded up to the next whole number. Developments that do not include Owner Occupied and/or Rental Workforce Housing Units must dedicate the greater of: (1) fifty (50%) of the square footage of the ground level or 1,500 square feet for nonresidential uses. Nonresidential uses in the MU-1/WH district are the nonresidential uses allowable in the General Business (GB) district, and nonresidential uses in the MU-2/WH district are the nonresidential uses allowable in the Limited Business (LB) district.

c) Prior to the issuance of a certificate of occupancy for any portion of a development, the owner thereof shall identify, in writing, to the City of Charleston Department of Housing and Community Development, or its successor, the units designated as Owner Occupied Workforce Housing Units and/or Rental Workforce Housing Units.

d) Prior to the issuance of a certificate of occupancy for any portion of a development, the owner shall execute covenants identifying the Owner Occupied Workforce Housing Units and/or Rental Workforce Housing Units and restricting such units to occupancy, and if applicable ownership, by Qualified Households for a period of ten (10) years, and submit a copy of the recorded covenants to the City of Charleston Department of Housing and Community Development, or its successor.

As for the Owner Occupied Workforce Housing Units, the covenants shall identify the Initial Maximum Allowable Sales Price, and provide that the Initial Maximum Allowable Sales Price may be adjusted annually for inflation based on the increase in the area median income or Consumer Price Index, whichever is greater. The covenants shall require notice to the City of Charleston Department of Housing and Community Development, or its successor, of any transfer of the Owner Occupied Workforce Housing Units and verification that the purchaser is a Qualified Household.

As for Rental Workforce Housing Units, the covenants shall require the owner to provide proof to the City of Charleston Department of Housing and Community Development, or its successor,, on an annual basis, that no more than Fair Market Rent is being charged for the unit, and that the unit is occupied by a Qualified Household.

e. The covenants shall accord the City of Charleston, or its assignee, rights to enforcement by any legal and/or equitable means, including the revocation of a certificate of occupancy, and in all events be subject to approval by corporation counsel.

Section 54-299.3. Parking and loading. Parking requirements for an Owner Occupied Workforce Housing Unit or Rental Workforce Housing Unit shall be one (1) space per two units.

Parking requirements for nonresidential uses in developments shall be governed by the parking provisions of Article 3, Part 4, Off-Street Parking Requirements; provided however, there shall be no off-street parking requirements for nonresidential uses in developments for the first 5,000 square feet of area dedicated for nonresidential uses. There are no off-street loading requirements for nonresidential uses.

Section 54-299.4. Height, Area and Setback Regulations. The height, area and setback regulations for the MU-1/WH and MU-2/WH districts are listed under Article 3, Part 1, Table 3.1: Height, Area and Setback Regulations.

Section 2. Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is hereby amended by adding to Sec. 54-201 thereof, the following:

t. Mixed Use 1 – Workforce Housing District. The MU-1/WH district is incentive based and is intended to permit high density residential uses with a mixture of housing opportunities, along with limited neighborhood nonresidential uses and services in urban areas of the city.

v. Mixed Use 2 – Workforce Housing District. The MU-2/WH district is incentive based and is intended to permit high density nonresidential uses with a mixture of housing opportunities, along with a broad range of nonresidential uses in urban areas of the city.

Section 3. Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is hereby amended by adding to Article 2, Part 3, Table of

Permitted Uses, the district designation "MU-1/WH in the column containing the LB and MU-1 district designations, and the district designation "MU-2/WH" to the column containing the GB, UC and MU-2 district designations.

Section 4. Chapter 54 of the Code of the City of Charleston (Zoning Ordinance) is hereby amended by adding to Article 3, Part 1, Table 3.1, Height, Area and Setback Regulations the district designations "MU-1/WH" and "MU-2/WH" to the column containing the MU-1, MU-2 and GP district designations.

Section 5. This Ordinance shall become effective upon ratification.

Ratified in City Council this 17th day of October in the Year of Our Lord, 2006, and in the 231st Year of the Independence of the United States of America

Joseph P. Riley, Jr., Mayor

ATTEST:

Clerk of Council

Mt. Pleasant CBS Overlay District Ordinance

§ 156.329 CBS-OD; COLEMAN BOULEVARD - BEN SAWYER BOULEVARD OVERLAY DISTRICT.

(A) *Boundaries of the district.* The boundaries of the district are generally described as including those properties abutting Coleman Boulevard and Ben Sawyer Boulevard located between the intersections of Magrath Darby Boulevard on the north and Patriot's Point Boulevard on the south and the beginning of the Ben Sawyer Causeway, specifically excluding those properties located within the Shem Creek Waterfront Overlay District and the residential subdivision of Bayview Acres and as more accurately depicted on the official zoning map.

(B) *Purpose and findings.*

(1) *Purpose.* The purpose of the overlay district is to provide a scheme for the redevelopment and adaptive use for the project area as a pedestrian oriented, mixed use, distinctive suburban environment to act as a focal gathering point for the Town of Mount Pleasant. A primary goal is to provide incentives, not necessarily to maximize profit potential for separate individual parcels, but rather to encourage the aggregation of multiple smaller parcels and promote a more effective utilization of larger parcels in creating well designed projects, connected and unified in design and function. A combination of the highest quality standards of site and building design, coupled with a true mixture of uses will provide an environment ensuring a lively, vibrant human experience.

(2) *Findings.* In furtherance of the stated Purpose, Town Council finds and declares the following:

(a) The identified Coleman Boulevard-Ben Sawyer Boulevard District is an area is located in the older and traditional part of town, much of which is under-utilized and suitable for redevelopment.

(b) The traditional part of town identified in the Coleman Boulevard-Ben Sawyer Boulevard District has not kept pace with certain newer areas of town, such as the Johnnie Dodds corridor and town center areas.

(c) Creating an overlay district on portions of Coleman Boulevard and Ben Sawyer Boulevard will encourage appropriate redevelopment to reestablish the vitality and vibrancy of this part of town. Certain incentives in this district will encourage a true mixture of uses and improve the standards of site and building design.

(d) A renewed and vibrant Coleman Boulevard-Ben Sawyer Boulevard District will contribute to the overall economic, aesthetic and general well- being of the town.

(e) Providing for “workforce housing” in the Coleman Boulevard-Ben Sawyer Boulevard District part of town as identified in division (D)(4)(a) of this section is in the best interests of the community of Mount Pleasant.

(f) The redevelopment of the area as contemplated in this overlay district is compatible with the goals and objectives of the Town’s Comprehensive Plan and the Coleman/Ben Sawyer Boulevard Master Plan.

(C) *Definitions.*

ACTIVITY ZONE. The area located between the street right-of-way and the build-to or setback line, which may be utilized for pedestrian-friendly uses such as, but not limited to, street side dining, entertainment or outdoor display of merchandise.

INTERNAL ACCESS ROADS. A vehicular travel way that runs perpendicular to the main boulevard streets, which may or may not connect to another public street that has the appearance and function of, but not necessarily the construction standards of, a dedicated public street.

WORKFORCE HOUSING. . Housing affordable to low and moderate income families (those earning up to 120% of the Charleston-North Charleston Metropolitan Statistical Area (MSA) median family income, as defined in the annual schedule published by the U.S. Department of Housing and Urban Development (HUD)).

(D) *Permitted uses/overlay district.* As an overlay district, permitted uses shall be those of the underlying zoning district classification, as modified herein.

(1) *Mixed use.* A mixture of commercial and residential uses is encouraged overall. This mixed use may include separate commercial use buildings and residential dwellings on the same property, as well as commercial and residential uses in the same building. In order to facilitate the mixture of commercial and residential uses in the same building, residential uses may occur on the street level or any building level containing commercial uses.

(a) Specifically allowed uses are:

1. Residential Town Houses, with no restriction on the number of units within a single building or length of individual rows of townhouse dwelling units;

2. Multifamily Residential development, limited to multi-family, condominium and duplex dwellings;

3. Permitted uses as provided in the OP, NC, and AB districts;

(b) These uses may be allowed without requirement of a minimum lot size, however, the primary goal of aggregating smaller lots and promoting efficient utilization of parcels, as stated in the Purpose section above, shall be maintained.

(c) The development standards shall be as specified within this overlay district, as applicable. Where not so modified, the development standards of the underlying district classification, or as otherwise already provided, shall apply.

(2) Specific mixed use requirements for certain areas.

(a) A minimum of 60% of the first floor level floor area shall be utilized for retail, restaurant or entertainment use in buildings with frontage on Coleman Boulevard within the area located between Live Oak Street and the intersection of Coleman, Ben Sawyer and Chuck Dawley Boulevards.

(b) The remaining 40% of first floor level floor area may be devoted to office or residential use.

(c) This requirement shall only apply to parcels that have greater than 100 feet of frontage on Coleman Boulevard measured property line to property line.

(3) *Density of residential use.*

(a) For the purposes of density calculations, mixed use projects are considered to be projects where at least 15% of the gross floor area (GFA) is devoted to nonresidential uses such as commercial, retail, office, or professional services.

(b) Maximum density of residential uses shall be sixteen (16) units per acre for single use residential development, and twenty (20) units per acre for mixed use development; except for workforce housing as provided below.

(c) Single use residential developments comprising a total area of one-half acre or more in size and providing at least 10% of the total units as workforce housing as defined herein shall be allowed a maximum density of 20 units per acre; while mixed use developments providing at least 10% of the total units as workforce housing shall be allowed 30 units per acre.

(d) Bonus densities of 5 units per acre will be given for projects with no curb cuts on Coleman but instead rely on parallel or perpendicular streets for access.

(4) *Workforce housing*. Developments comprising a total area of one-half acre or more in size and providing at least 10% of the total units as workforce housing as defined herein shall be allowed a maximum density of 20 units per acre, as provided below.

(a) Findings and purpose. Town Council finds and declares the following:

1. The provision of workforce housing is important to economic development in that the availability of affordable housing helps attract and retain essential workers.

2. Mixed-use, mixed-income developments are important to the viability of the community as a whole. Providing a variety of housing types for households with diverse incomes in close proximity to employment opportunities offers a variety of benefits to the community including reduced traffic congestion and creation of a sense of place and pride in the community.

3. The intended goal of this section is to provide home ownership and rental opportunities for low and moderate income families.

4. The incentive in this section is intended to encourage the development of workforce housing and provide a mechanism to reward developers who produce units that meet the standards of this section through bonus density.

(b) Design, location, and size of workforce housing units.

1. Workforce housing units shall be comparable in design to the market-rate units in the development.

2. A mix of efficiency/studio, one-bedroom, and two-bedroom units shall be provided and dispersed throughout the development project.

(c) Owner-occupied workforce housing.

1. Sales procedure for new affordable units. When a new workforce housing unit is fully completed, ready for final inspection, and available for sale, the owner shall send a written "Notice of Intent to Sell" to the town. In response to the notice, the town shall inform the owner of the current maximum allowable sale price.

2. Maximum sale price formula. The maximum sale price for owner-occupied workforce housing units shall be updated yearly, commencing in 2006, as the current U.S. Department of Housing and Urban Development (HUD) income limits become available. The maximum sale price shall be based on the number of bedrooms in the workforce housing unit.

a. To find the appropriate income limits, first determine household size, assuming one person larger than the number of bedrooms in the workforce housing unit (for example, the household size for a two-bedroom unit shall be three persons and for an efficiency/studio, shall be one person). Next, using the annual schedule published by HUD, find the income limit for the appropriate family size for the Charleston – North Charleston Mean Statistical Area (MSA).

b. The monthly mortgage payments of the workforce housing unit shall not exceed 30% of the gross monthly median family income (MFI), adjusted for household size and assuming a specified interest rate. The specified interest rate shall be the 30-year fixed mortgage rate reported by the United States Federal Reserve (www.federalreserve.gov) in the first week of January for any given year and shall remain so for the balance of the year. The monthly mortgage payments shall include principal, interest, property taxes, homeowner insurance, and condominium or homeowners association fees.

c. Example for a family of three (two-bedroom unit) based on 2007 data: $60,900 maximum income (120% of $55,400 MFI, adjusted for family size), 6.18% fixed 30-year mortgage rate = $209,279 maximum workforce housing unit sale price.

4. Eligibility. All workforce housing units shall be sold to households earning no more than 120% of the MFI, as identified by HUD.

5. Eligibility determination process. Prospective buyers of workforce housing units shall be screened and determined eligible by the developer (or his/her designee) prior to occupancy.

6. Term of affordability. Resale of workforce housing units shall be limited by deed restriction to the same maximum sales price as defined above, adjusted for inflation, and to a purchaser eligible as described above for a period of not less than ten years. The increase permitted for inflation is based upon the increase in the Consumer Price Index.

(d) Rental workforce housing units.

1. Rent levels. The maximum rent level for workforce housing units shall be updated yearly, commencing in 2006, as the current U.S. Department of Housing and Urban Development (HUD) Fair Market Rents (FMR) become available.

a. FMR include a utility allowance for electricity, gas, water, and sewer which is based on a schedule published annually by the Charleston County Housing and Redevelopment Authority.

b. The rent levels may be increased no more frequently than annually after unit occupancy.

2. Eligibility. All workforce housing units shall be rented to households earning no more than 80% of the MFI, as identified by HUD.

3. Eligibility determination process. Prospective renters of workforce housing units shall be screened and determined eligible by the owner (or his/her designee) prior to occupancy.

a. The owner shall provide proof to the town on an annual basis that the current tenants meet the necessary qualifications.

b. The owner shall annually provide to the town assurance of compliance with the FMR.

c. Any time a new tenant(s) occupies a workforce housing unit, the owner must provide proof of income to the town.

4. Term of affordability. Workforce housing rental units shall be limited by deed restriction to remain affordable as defined herein for a period of not less than ten years.

(E) *Conditional uses.* Conditional uses will be allowed under the same conditions as the underlying use district with no further approvals.

(F) *Special exception uses.* Special exception uses will be allowed as provided in the underlying use district classification with Board of Zoning Appeals approval; except outdoor dining uses, as provided below.

(G) *Activity zone uses and permits.*

(1) *Allowed uses.* All uses in the activity zone shall be conducted outside of the street right-of-way.

(a) Outdoor dining.

1. Outdoor dining uses, including the sale and consumption of alcoholic beverages, will be a permitted use in all underlying use districts (including the OP district), provided the conditions specified in the underlying use district have been met.

2. The requirement for the 100-foot separation between properties and/or uses shall not apply.

3. Where outdoor dining is provided in the activity zone, no additional parking requirement shall apply.

4. Parking for outdoor dining located outside of the activity zone shall be as provided in § 156.171 for restaurant use and not based upon square footage of outdoor use area.

(b) Outdoor merchandise display.

(c) Performers/entertainment, subject to the provisions of the Town's Noise Ordinance.

(d) Pushcarts.

(e) One A-frame or sandwich board sign per business not exceeding 3 feet by 4 feet in area.

(2) *Permit required.*

(a) A permit shall be required for all allowed activity zone uses, issued upon an application devised by the planning department and subject to a fee determined by Council.

(b) The permit shall specify such uniform terms and conditions for each class of activity as may be decided by Town Council for the conduct of activity zone uses.

(H) *Site development and design elements.*

(1) Maximum height, setbacks and build-to lines, and bufferyard requirements shall be as depicted in the following Development Guidelines Chart and corresponding Development Guidelines Map and as further described herein.

CBS OD - DEVELOPMENT GUIDELINES CHART						
AREA	MAXIMUM BUILDING HEIGHT ALLOWED[1]	FRONT SETBACK OR BUILD-TO ON COLEMAN OR BEN SAWYER[2]	FRONT OR SIDE SETBACK OR BUILD-TO ON OTHER STREETS	REAR BUILDING SETBACK [6]	SIDE BUILDING SETBACK [6]	INTERNAL SIDE AND REAR (NON-STREET) BUFFERS [3]
A1	55	20' SB	20' SB	5	5	5
A2	55	20-30' BT	20 - 30' BT	5	5	5
B1	55	20-30' BT	20' SB	10	10	5
B2	55	20-30' BT	10 - 20' BT	10	10	5
C1	40	20-30' BT	20' SB [5]	5	5	5
C2	55	20-30' BT	20' SB [5]	5	5	5
C3	40	NA	20' SB [5]	5	5	5
D1	75 [3]	20-30' BT	10 - 20' BT	NA	NA	5
D2	55	20-30' BT	10' SB	10	5	5
D3	55	20-30' BT	20' SB	10	5	5
E1	55	NA	20' SB [5]	5	5	5
E2	55	20-30' BT	20' SB	10	10	5
E3	75 [3]	20-30' BT	10 - 20' BT	NA	NA	5
F1	55	20' SB	20' SB	10	15	5
F2	55	NA	20' SB	10	15	5
G1	55	20' SB	20' SB	25	10	5
G2	55	30' SB	NA	25	10	5

[1] IN ALL CASES, THE MAXIMUM HEIGHT FOR BUILDINGS IN THE OVERLAY DISTRICT THAT ARE LOCATED WITHIN 50 FEET OF AN ABUTTING RESIDENTIAL PROPERTY LINE, OR AN ABUTTING STREET RIGHT-OF-WAY ADJOINING RESIDENTIAL PROPERTY OUTSIDE OF THE OVERLAY DISTRICT, SHALL BE 40 FEET, MEASURED FROM GRADE TO ROOF RIDGE, AND FURTHER PROVIDED THAT NO SUCH BUILDING SHALL EXCEED A MAXIMUM OF THREE STORIES.

[2] BUILD-TO LINES ARE MEASURED FROM BACK OF CURB TO FACE OF BUILDING; IF NO CURB PRESENT, MEASURE FROM EDGE OF PAVEMENT. AWNINGS AND CANOPIES ARE NOT INCLUDED. SETBACKS ARE MEASURED FROM THE RIGHT-OF-WAY LINE

[3] COMMON WALL CONSTRUCTION MAY BE UTILIZED IN ACCORDANCE WITH APPLICABLE BUILDING AND FIRE CODE REQUIREMENTS. BUFFERS ARE NOT REQUIRED WHERE INTERCONNECTIVITY BETWEEN PARCELS IS PROVIDED OR SHOWN ON THE PLAN FOR FUTURE CONNECTION, OR WHEN COMMON WALL CONSTRUCTION IS UTILIZED. WHERE INTERCONNECTIVITY OR COMMON WALL CONSTRUCTION IS NOT PROVIDED, A MINIMUM TYPE "A" BUFFERYARD PLANT UNIT MATERIAL IS REQUIRED.

[4] ALL AREAS WHERE 75-FOOT BUILDING HEIGHTS ARE ALLOWED ARE MEASURED 150 FEET FROM REAR AND/OR SIDE PROPERTY LINES AS SHOWN ON THE BUILDING HEIGHT MAP.

[5] SETBACKS MAY BE REDUCED TO NOT LESS THAN FIVE (5) FEET ONLY WHEN:
a) A MINIMUM FIVE (5) FOOT WIDE SIDEWALK IS PROVIDED; AND
b) STREET TREE PLANTINGS ARE IN ACCORDANCE WITH 156.329(H)(4)(a) AND (c) ;AND
c) THE REQUIRED LINE OF SIGHT IS PROVIDED.

[6] WHERE REAR OR SIDE PROPERTY LINES ABUT RESIDENTIAL PROPERTIES LYING OUTSIDE OF THE OVERLAY DISTRICT, A MINIMUM 15 FOOT SETBACK WITH A MINIMUM 10 FOOT TYPE "C" BUFFERYARD WITH AN F3 FENCE IS REQUIRED.

Development Guidelines Map

(2) Building height.

(a) Building heights shall be measured from the top of curb or edge of paving if curb is not present, based on an average measurement taken at all building corners and every twenty five feet along the length of any street or internal access road to either the building eave or ridge of roof, as applicable.

(b) Where indicated on the Development Guidelines Chart and corresponding Map, the maximum height limit shall be 55 feet, measured from the top of curb to the building eave; provided further that all structures shall have a minimum of two floors with a maximum of four floors allowed.

(c) Where indicated on the Development Guidelines Chart and corresponding Map, the maximum building height limit of 40 feet shall be measured to the ridge of the roof, not the eave; provided further that all structures shall have a minimum of two floors with a maximum of three floors allowed.

(d) In all cases, the maximum height for buildings in the overlay district located within 50 feet of an abutting residential property line or abutting street right-of-way adjoining residential property outside of the overlay district shall be 40 feet, measured to the ridge of the roof and provided further that no such building shall exceed a maximum of three stories.

(e) A maximum height of 75 feet, a minimum of two floors and with a maximum of six (6) floors, measured to the eave will be allowed in three specific locations as indicated on the Development Guidelines Chart and Map.

1. The limits of the 75 foot height zone shall be measured 150 feet from any residential properties or street with adjoining residential properties.

2. In the area outside the 150-foot line, the building height shall be 55 feet measured to the eave, except as provided in (d) above.

(f) Additional property may be allowed a maximum height of 75 feet provided these properties are incorporated/aggregated with those in which the 75 foot height limit is allowed in a unified development scheme that meets all of the requirements of the overlay district subject to the requirements of (2)(e) and 1. and 2.

1. Moultrie Plaza area – (D1). Includes additional properties located in D2 and D3 within the area bounded by Coleman Boulevard/Simmons Street/Rue de Muckle/ and Shem and Vincent Drive.

2. Family Dollar site area – (D1). Includes additional properties located in D2 within the area bounded by Coleman Boulevard/Fairmont Avenue/King Street/Pherigo Street.

3. Sea Island shopping center area – (E3). Includes additional properties located in E1 bounded by Ben Sawyer Boulevard/Chuck Dawley Boulevard/Shirmer Street and its extension to Ben Sawyer Boulevard.

(g) Gas stations may be given special consideration when located in areas requiring multiple floors.

(h) False second floors are not allowed for buildings in which multiple stories are required; however, a mezzanine comprising a minimum of one-third of the area of the floor below or an atrium located between the floor and ceiling equivalent to two story spaces may be utilized to fulfill this requirement.

(i) Utilization of area above the maximum height.

1. No area above the maximum height or maximum number of stories may be used to create an extra floor of living area or enclosed commercial space; however, this area may be used for storage and uses such uses as open decks or rooftop restaurants.

2. Multilevel decks above the maximum height are expressly prohibited.

(3) Build-to line/ Setbacks. (Refer to Guidelines Chart.)

(a) The build-to line or setback shall be as indicated on the Development Guidelines Chart, except for civic uses, which shall be determined through the design review approval process.

(4) *Bufferyards* and plantings.

(a) Front yard buffer.

1. For buildings fronting Coleman Boulevard, Ben Sawyer Boulevard, or side streets, no understory or shrub plantings are required, however,

2. Three canopy trees of a minimum four-inch caliper shall be required for each 100 linear feet of road frontage using species such as Southern Red Oak, Live Oak, Willow Oak, Elm varieties and American Beech; such tree types to be consistent with each block and evenly spaced, with exceptions made for curb cuts, utilities, and other obstructions.

3. In order to enhance the pedestrian-oriented theme of development, planters shall be required as a design element to soften the building exterior and enhance the streetscape appearance.

(b) Internal side and rear (non-street frontage) bufferyards shall be provided in accordance with the requirements of the Development Guidelines Chart and Map.

(c) Sabal Palmettos shall be planted in the public right-of-way adjacent to lots on Coleman and Ben Sawyer Boulevards at approximately 24 feet on-center.

1. Additional shrub plantings may be required between the sabal palmettos in the area between the back of curb and the public sidewalk.

(e) Parking lot islands, which must include canopy trees of 4" caliper or larger of a species approved during the design review approval process, must be provided at a minimum of every ten spaces when adjacent to rear or side property lines, and internal parking lot islands shall be provided at a minimum of every twelve spaces.

(5) Building fronts on Coleman and Ben Sawyer Boulevards.

(a) Primary entry must be from Coleman and Ben Sawyer Boulevards.

(b) The rear of buildings shall not be designed to appear as fronts; however, an entry may be provided.

(c) Display windows are required on all street facades for commercial buildings.

(6) Relationship of buildings to the street.

(a) Grade changes. Where grade changes make it a necessity, the finished floor of buildings should step consistent with the existing grades along the street, to maintain a strong relationship between the street and retail or other uses.

1. Along the entire length of Coleman Boulevard and on Ben Sawyer Boulevard to the Center Street intersection where the 20-foot build-to line is used the maximum vertical distance from top of curb to finished floor shall be 1 foot, 8 inches.

2. Where the 30-foot build-to line is used, the maximum vertical distance shall be 1 foot, 10.5 inches, measured from the top of curb to the finished floor of the building.

3. For buildings with build-to lines between 20 feet and 30 feet, the vertical distance from top of curb to finished floor shall be between 1 foot, 8 inches and 1 foot, 10.5 inches.

4. The height of grades shall be measured in a straight line from the center of each door to the curb at a ninety degree angle to the street.

(b) Sidewalk slope and ramps.

1. In no case shall cross slopes of sidewalks or any part of the Activity Zone area be allowed to exceed 2%.

2. Slopes along the path of pedestrian flow should not exceed 5%, as they would be considered a ramp.

3. Ramps are highly discouraged, however, when utilized, slopes should not exceed 4% in order to provide ease in mobility for a broad spectrum of the population.

(7) Lot frontage/pocket parks and other urban open space/plazas. The goal of these requirements is to maintain a cohesive streetscape framed by buildings that address the public realm. The purpose of the Pocket Park or other urban open space/plazas is to provide variety in the public realm and to provide usable outdoor space. This idea is not to be subverted as an excuse for not adequately utilizing the frontage of a site or for the introduction of parking adjacent to the Activity Zone.

(a) On Coleman Boulevard, between the intersection of Lansing Drive and the intersection of Chuck Dawley Boulevard, the minimum building frontage on properties of less than 100 feet shall be the entire width of its frontage, except for adequate allowance for one curb cut.

(b) For properties with more than 100 feet of frontage on the boulevards, a minimum of 70% building frontage shall be required.

(c) Pocket parks, plazas, and other urban open spaces that are integrated into the overall design of a project shall count for a maximum of 20% of the required Building Frontage.

(d) The minimum allowable size of a pocket park or other suitable urban open space shall be 12 feet of frontage and 300 square feet of overall area.

(e) Ideally, these open space areas should be accessible by the public. However, in cases where they are exclusively for the customers of a specific business, they must be visually accessible to people in the public realm. The term ‘visually accessible’ is defined as walls, fences, or other screens which are no more than 50% opaque with a maximum height of five feet which may not encroach on the Activity Zone.

(8) Sidewalks and activity zones

(a) There shall be a public sidewalk either within the right of way or within a pedestrian easement on both sides of all streets within the overlay area that is a minimum five feet wide on side streets and a minimum of eight feet wide on boulevard streets.

(b) On boulevard streets, these walks shall typically be separated from traffic by a grassed verge that shall be a minimum of 3 feet wide, measured from the back of curb and planted with Palmettos at approximately 24 feet on center; provided, however, that where on-street parking is utilized, the Palmettos may be planted in openings of 3' x 3' with 8' wide sidewalks serving the parallel parking areas. See Figures 1 and 2.

Figure 1

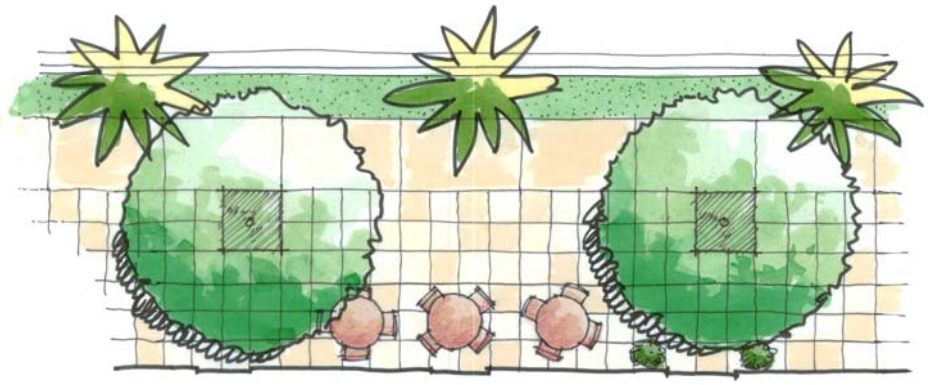
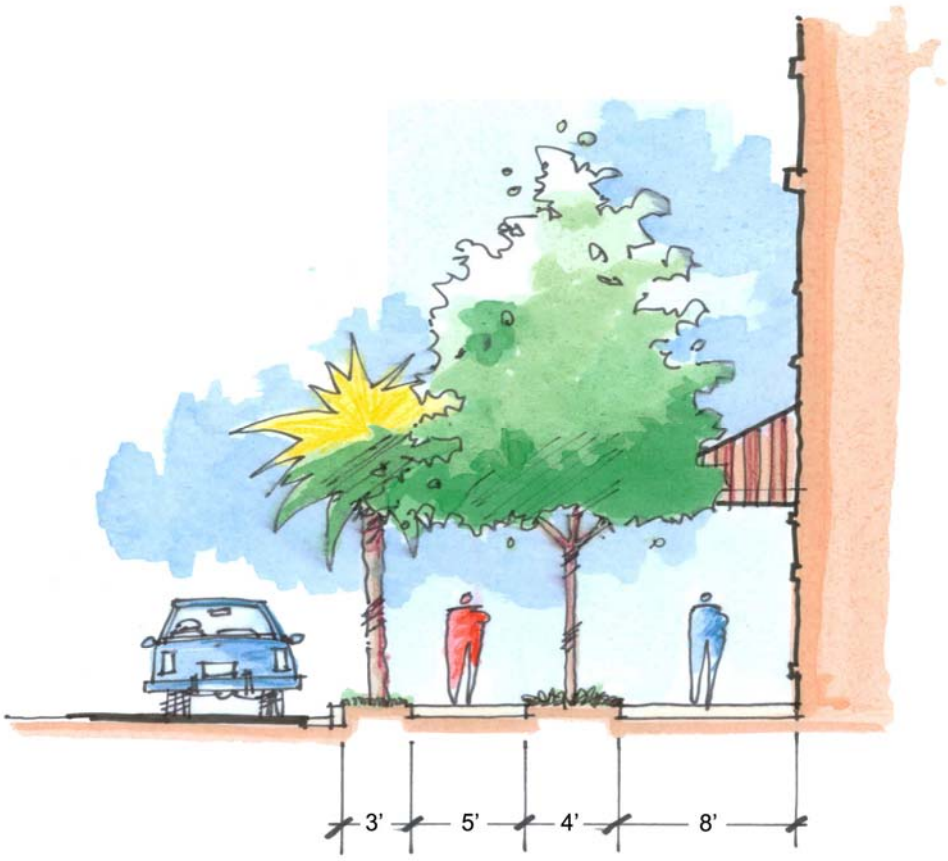


Figure 2



(c) The area between the public sidewalk and the building fronting the boulevards is part of the Activity Zone, which is a quasi-public space and may be used for placement of the required canopy trees, pedestrian circulation, outdoor dining, merchandise display, planters, A-frame signs, benches, trash receptacles, and other street furnishings as provided in the design guidelines for the district.

(9) Curb cuts.

(a) Except as provided herein, existing regulations concerning separation between curb cuts must be met. The location, widths, curb radii, sidewalks, and street trees associated with curb cuts should be carefully evaluated during the design review process with the overall goal to make the streets more walkable and expansive and frequent curb cuts present hazards for pedestrians

(b) One (1) two-way access curb cut (driveway) for parcels with frontage of less than 200'along the boulevards is allowed.

(c) Two (2) two-way access curb cuts (driveways) for parcels with 200 feet or more of frontage along the boulevards are allowed.

(d) No parcel shall be allowed to have more than two curb cuts along the boulevards.

(e) Access points shall look like streets, not like parking lots entrances.

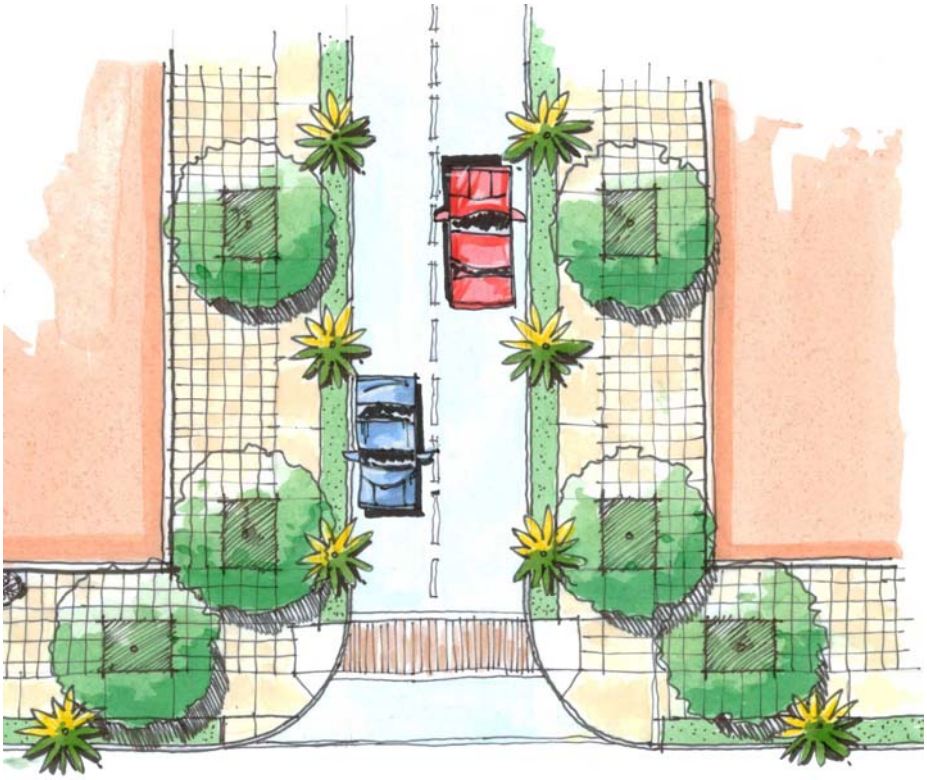


Figure 24. Looks like a street.

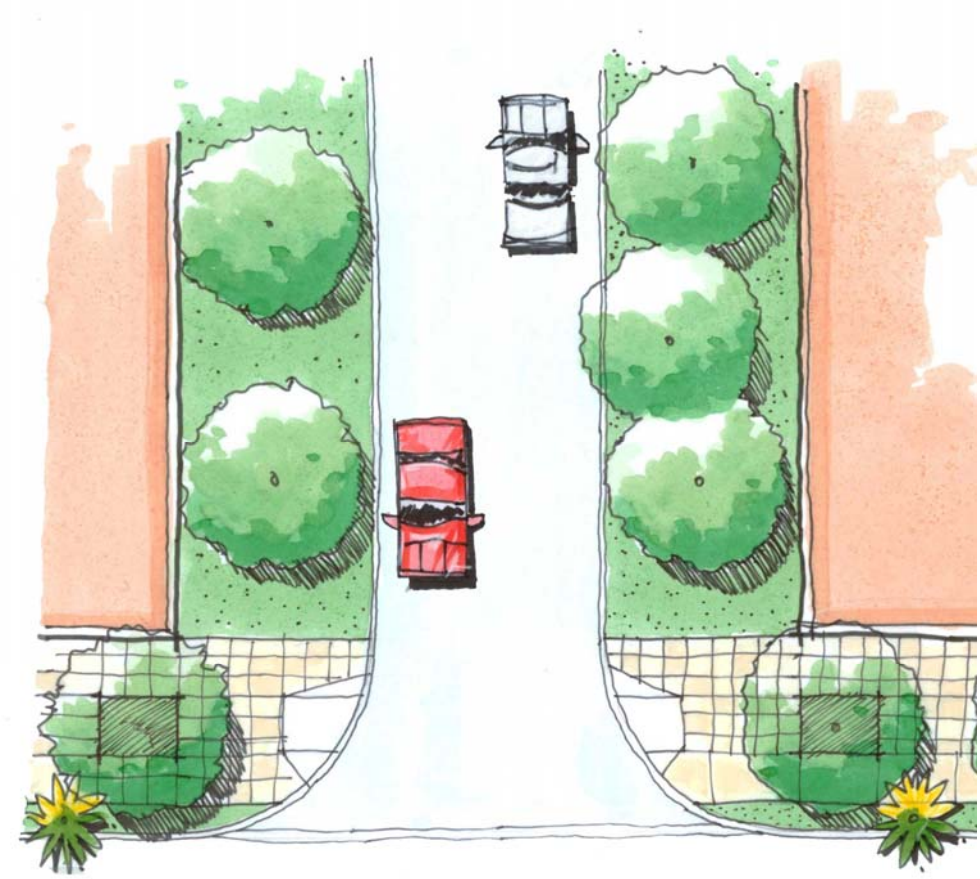


Figure 25. Looks like a parking lot.

(f) Curb cuts shall be allowed along side or parallel streets as long as all other pertinent regulations, such as distance between curb cuts, are met.

(g) Shared access is encouraged; the benefit is more frontage and more developable land on parcels.

(10) Drive-through facilities.

(a) Because "drive-through culture" is not compatible with the overarching goals of the district, drive-through facilities are generally discouraged.

(b) Drive-through lanes are prohibited within the Activity Zone.

(c) Drive-through lanes shall not present impediments to the smooth and orderly flow of vehicular traffic to or within the site.

(11) *Internal access roads.*

(a) In order to facilitate the replication of a grid street pattern and enhance the streetscape appearance, internal access roads shall be required whenever site design characteristics reasonably allow them on all larger parcels and smaller parcels that have been aggregated.

(b) These roads shall be designed to appear and function as a public street. Privately owned access road must be owner-maintained.

(c) On-street parking is encouraged and buildings should address these internal roads in the same manner as a public street with respect to orientation, setbacks and bufferyard requirements.

(12) *Open space.* No open space is required.

(I) *Parking requirements.*

(1) *Shared parking.*

(a) Because one of the primary functions of the overlay district is to provide a pedestrian oriented experience and an overabundance of parking areas would detract from this goal, parking within the overlay district shall be shared for all uses.

(b) Required parking shall be calculated utilizing the shared parking standards established by the Urban Land Institute; provided, however, no additional parking spaces shall be required for uses conducted in the designated activity zone and required parking for commercial uses may be reduced by 20%.

(2) *Residential uses.* Parking spaces for residential uses shall be limited to a maximum of one space per dwelling unit and shall be included in shared parking calculations.

(3) *On-street parking.*

(a) On-street parallel parking shall be implemented on both sides of Coleman Boulevard from Simmons Street to Erkman Drive.

(b) On-street parking in other areas may be either parallel or angled; designed according to accepted standards; and approved by the Town of Mount Pleasant and SCDOT.

(c) On-street parking will be allowed on residential streets adjacent to the overlay district as designated on an on-street parking plan map as approved by the Town of Mount Pleasant and SCDOT.

(d) On-street parking will be allowed on internal access roads.

(e) On-street parking spaces located within 500 feet of any building entrance may count toward the required parking for the use or uses on the lot, utilizing Urban Land Institute (ULI) shared parking standards; provided, however, that care and discretion are exercised in the design review approval process to not "recount" the same parking spaces for multiple uses and ensure that parking demand is realistically assessed and met.

(4) Use of *parking areas.* In all cases, parking areas shall be utilized for parking vehicles and shall not be utilized for storage of such items as merchandise, materials, equipment, boats, trailers or other conveyances.

(5) Pervious materials. Pervious materials may be utilized for required parking spaces subject to design review approval.

(J) *Other considerations.*

(1) *Buildings in flood zones.* In order to project a pedestrian-friendly streetscape, commercial buildings located in "A" flood zones shall be flood proofed rather than elevated. Additionally, residential structures that are not within a flood zone shall not be raised where they front a public street.

(2) *Development.* All development within the overlay area shall be subject to Commercial Design Review Overlay District approval process, however, in order to achieve the goals of the Coleman-Ben Sawyer Boulevard Revitalization Master Plan, site development requirements as set forth in the Coleman-Ben Sawyer Overlay District shall take precedence over those found within the Commercial Design Review Overlay District.

(3) *Building size limitations.* No limitations on square footage of structures will be imposed. However, because "big box" retail development is not consistent with the purpose of the CBS-OD, building footprints (defined as space housing one commercial tenant, not an agglomeration of tenants' spaces) of any individual structure is limited to 40,000 square feet.

(4) Overlay District. Design guidelines for the Overlay District shall be those as promulgated herein and in § 156.055, "Development patterns for commercial villages", and as may be provided in separate design guideline documents or the Coleman Ben Sawyer Boulevard Master Plan.

(5) *Revisions.* Town Council may consider revisions to the Coleman Boulevard - Ben Sawyer Boulevard Overlay District subject to town ordinances and process.

(Ord. 06015, passed 5-15-06; Am. Ord. 07071, passed 11-13-07)

Mt. Pleasant Workforce Housing Planned District Ordinance

§156.007 DEFINITIONS.

MARKET-RATE HOUSING. Housing priced according to prevailing market trends and sold with neither restrictions on the sale price nor on the buyer's income.

PARKING SPACE, TANDEM. The arrangement of not more than two parking spaces in depth, wherein one space is located directly in front of another space, such that it is necessary to pass through one space in order to enter or leave the other space. Each tandem parking space shall be a minimum of nine feet wide and thirty-six feet long, not including passageways, aisles, drives, maneuvering areas, and entryways.

WORKFORCE HOUSING. Housing affordable to low and moderate income families (those earning up to 120% of the Charleston-North Charleston Metropolitan Statistical Area (MSA) median family income, as defined in the schedule published annually by the U.S. Department of Housing and Urban Development).

§156.318 PD; PLANNED DEVELOPMENT DISTRICT.

(C) (6) – The project qualifies as a workforce housing planned development zoning district classification pursuant to the criteria set forth in division (L) of this section.

(L) *Planned Development – Workforce Housing (PD-WFH) standards.*

(1) *Purpose and intent of district.* The purpose of the district is to achieve the goals of the Comprehensive Plan by allowing flexibility in development that will result in the provision of housing affordable to low and moderate income families. To this end, Town Council finds and declares the following:

(a) The provision of workforce housing is important to economic development in that the availability of affordable housing helps attract and retain essential workers.

(b) Mixed-use, mixed-income developments are important to the viability of the community as a whole. Providing a variety of housing types for households with diverse incomes in proximity to employment opportunities offers a variety of benefits to the community including reduced traffic congestion and creation of a sense of place and pride in the community. For this reason, single developments offering workforce housing units as the only product are discouraged.

(c) The incentives in this section are intended to encourage the development of workforce housing and provide mechanisms to reward developers who produce units meeting the standards of this section. However, the Town of Mount Pleasant is under no obligation to approve a PD-WFH zoning request simply because the project meets the requirements of this section. Each development shall be judged on its own merit, and the current inventory of workforce housing as well as the effects of such a development on nearby properties shall also be considered.

(2) *Location.* The location for utilization of this planned development may be implemented throughout the town or in conjunction with an annexation of property into the town.

(3) *Development standards.*

(a) *General standards.*

1. This planned development zoning designation is available for properties of at least two acres in size or greater.

2. The planned development must contain residential uses, of which at least 30% of the total number of dwelling units shall qualify as workforce housing pursuant to this section. A mixture of housing types as well as uses is encouraged, though not required.

3. Workforce housing units must be of the same unit type as the market-rate units in the development. In the case of a development with two or more housing types, the type of workforce housing units must be in the same proportion as the market-rate units.

(b) *Specific standards.*

1. This planned development district may provide for variations from the regulations of the other established zoning districts concerning use, setbacks, lot size, density, bulk, and other requirements in order to accommodate flexibility in the arrangement of uses for the general purpose of promoting and protecting the public health, safety, and general welfare.

2. Variations from requirements of the Land Development Regulations pertaining to such items as right-of-way and road width, intersection radius, and private and unidirectional streets may be allowed; provided that measures such as multiple access points, off-street community parking spaces, twenty-foot wide rear alleys, and fire lane striping and signage are utilized to ensure adequate access for emergency response vehicles.

3. The permitted uses and development standards must be specifically enumerated in the planned development ordinance.

4. Prior to the issuance of building permits for any portion of the development, a workforce housing plan must be submitted to the Town for approval. The plan shall contain, at a minimum, the following information:

a. A general description of the development, including whether the development will contain owner-occupied or rental units, or both.

b. The total number and type of market-rate units and workforce housing units in the development.

c. The number of bedrooms in each market-rate unit and each workforce housing unit.

d. The square footage of each market-rate unit and each workforce housing unit.

e. The location within any multi-family residential structure and any single-family residential development of each workforce housing unit.

5. To the extent not specifically modified by the planned development ordinance, all other provisions of this chapter shall apply to the development and use of the property.

(4) *Sketch plan required.* The planned development ordinance must contain a map containing the required elements of a sketch plan map as specified in the Land Development Regulations.

(5) *Open space required.* A minimum of 5% of total land area must be reserved for open space, pursuant to the requirements of §155.073 (A), (C), and (D).

(6) *Residential density.* Residential uses may exceed the density requirements of §156.104 as follows:

Unit Type	***Units Per Acre***
Single-family detached	8.0
Duplex or townhouse	12.0
Mixture of unit types (may include multi-family units)	16.0

(a) Single developments offering multi-family units as the only product are not permitted in this planned development district. Multi-family units may be allowed only when a mixture of unit types is provided.

(b) Where a mixture of unit types is provided, unit types shall not be segregated from one another; rather, the unit types shall be interspersed throughout the development.

(c) Where a mixture of two unit types is provided, neither unit type shall be less than of 30% of the total provided. Where a mixture of three or more unit types is provided, none may be less than 20% of the total provided.

(7) *Off-street parking required.*

(a) Off-street parking shall be provided pursuant to the requirements of §156.170 through §156.176; however, tandem parking spaces shall be permitted in this planned development district, provided the tandem space serves only a single dwelling unit.

(b) Parking requirements for townhouse units shall be met in the rear yard.

(8) *Design, location, size, and construction of workforce housing units.*

(a) In terms of exterior appearance, workforce housing units shall be indistinguishable from market-rate units. External building materials and finishes for workforce housing units shall be the same in type and quality as the market-rate units.

(b) Interior features of workforce housing units shall be functionally equivalent to the market-rate units, though the finishes and materials need not be identical.

(c) Workforce housing units shall be comparable to the market-rate units in terms of improvements related to energy efficiency, which include, but are not limited to, mechanical equipment and plumbing, insulation, windows, and heating and cooling systems.

(d) In the case of attached dwelling units, a mix of efficiency/studio/loft, one-bedroom, and two-bedroom units shall be provided and integrated throughout the development. In the case of single-family detached dwelling units, a mix of two-bedroom and three-bedroom units shall be provided and integrated throughout the development.

(e) Workforce housing units shall be constructed concurrently with the market-rate units.

(9) *Marketing of workforce housing units.* All workforce housing units shall be marketed to the public in the same manner as the market-rate units.

(10) *Owner-occupied workforce housing.*

(a) *Eligibility.* Sale of owner-occupied workforce housing units is limited to individuals and families earning no more than 120% of the median family income for the Charleston-North Charleston MSA, as published annually by the U.S. Department of Housing and Urban Development and adjusted for household size. The workforce housing unit shall serve as the owner's primary residence for the duration of ownership or until the deed restrictions required by this section have expired.

(b) *Eligibility determination process.* Prospective buyers of new workforce housing units shall be screened and determined eligible by the developer, or his/her designee, prior to occupancy. Prior to closing on a new workforce housing unit, the developer shall submit an affidavit to the Town that sets forth the sale price and verifies the unit will be occupied by persons qualified pursuant to the requirements of this section, in addition to any other information deemed appropriate as this district with workforce housing develops in practice over time.

(c) *Maximum housing cost.* The monthly mortgage payments shall include principal, interest, property taxes, homeowner insurance, private mortgage insurance, maintenance costs, and condominium or homeowners association fees and shall total no more than 35% of the buyer's gross monthly household income.

(d) *Closing costs and related fees.* The buyer of a workforce housing unit shall not pay more in closing costs than is reasonable and customary in the Town of Mount Pleasant. Real estate commissions shall be paid by buyer and seller in accordance with their contractual obligations. In the Town of Mount Pleasant, it is reasonable and customary that the seller pays a commission to his/her real estate broker who often shares the commission with the cooperating real estate broker representing the buyer in accordance with a contractual agreement or the local multiple listing service's agreements.

(e) *Term of affordability.* Resale of workforce housing units shall be limited by deed restriction to the original sales price, adjusted for inflation, and to a purchaser eligible as described above for a period of not less than ten years after issuance of the certificate of occupancy. The increase permitted for inflation shall be based upon the increase in the Consumer Price Index (CPI).

1. A copy of such executed deed restrictions shall be submitted to the Town for approval prior to issuance of a certificate of occupancy for any portion of the development. The deed restrictions shall require notice to the Town of any conveyance of the workforce housing unit and verification that the purchaser is qualified pursuant to the requirements of this section.

(f) *Increase in household income during occupancy.* Should a household's income increase to an amount above 120% of the median family income while occupying a workforce housing unit, the household shall not be required to vacate the unit. Upon vacating the premises naturally, the unit shall be sold to a qualifying household pursuant to the requirements of this section.

(11) *Renter-occupied workforce housing.*

(a) *Eligibility.* Rental of workforce housing units is limited to individuals and families earning no more than 80% of the median family income for the Charleston-North Charleston MSA, as published annually by the U.S. Department of Housing and Urban Development and adjusted for household size. The workforce housing unit shall serve as the renter's primary residence for the duration of the lease.

(b) *Eligibility determination process.* Prospective renters of workforce housing units shall be screened and determined eligible by the developer, or his/her designee, prior to occupancy. All of the following requirements are applicable and subject to final approval by the Town.

1. The owner shall provide proof to the Town upon initial occupancy and anytime the lease is renewed thereafter, that the current tenants meet the necessary qualifications.

2. The owner shall annually provide to the Town assurance of compliance with Fair Market Rents.

3. Any time a new tenant occupies a workforce housing unit, the owner must provide proof of income and compliance with Fair Market Rents to the Town.

(c) *Rent levels.* The maximum rent level for workforce housing units is based on the schedule of Fair Market Rents for the Charleston-North Charleston MSA, as published annually by the U.S. Department of Housing and Urban Development.

1. Fair Market Rents include a utility allowance for electricity, gas, water, and sewer which is based on a schedule published annually by the Charleston County Housing and Redevelopment Authority.

(d) *Lease terms.* A minimum lease term of six months is required for all workforce housing units so as to avoid short-term (i.e., weekly) rentals.

(e) *Term of affordability.* Rental workforce housing units shall be limited by deed restriction to remain affordable as defined herein for a period of not less than ten years after issuance of the certificate of occupancy.

1. A copy of such executed deed restrictions shall be submitted to the Town for approval prior to issuance of a certificate of occupancy for any portion of the development. The deed restrictions shall require notice to the Town of any lease renewal or new rental contract for the workforce housing unit and verification that the tenant is qualified pursuant to the requirements of this section.

(f) *Increase in household income during occupancy.* Should a household's income increase to an amount above 80% of the median family income while occupying a rental workforce housing unit, the household shall not be required to vacate the unit immediately. The tenant may renew the lease for one additional term, not to exceed two years. Upon vacating the premises, the rental unit shall be rented to a qualifying household pursuant to the requirements of this section.

(12) *Deed restrictions required.*

(a) Standard deed restrictions for all workforce housing units produced pursuant to the requirements of this section are required and subject to approval by the Town. Such restrictions shall include, at a minimum, the following elements:

1. Duration.

2. Occupancy requirement and restrictions against leasing/subleasing.

3. Restriction on resale.

4. Requirement to notify the Town in the case of conveyance (for owner-occupied units), lease renewal (for rental units), or establishment of a new rental contract (for rental units).

5. Right of first refusal, if applicable.

6. Distribution of gross sales proceeds, if applicable.

7. Procedure in the case of foreclosure (for owner-occupied units only).

Appendix D:

Transfer of Development Rights Ordinances

Resource Documents:

American Planning Association, Model Transfer Development Rights Ordinance

St. Mary's County (MD) Comprehensive Zoning Ordinance, Article 2 – Administration, Transfer Development Rights

Queen Anne's County (MD) Zoning Ordinance, Article XIX – Noncontiguous Development Ordinance

Queen Anne's County (MD) Zoning Ordinance, Article XX – Transfer Development Rights

Montgomery County (MD) Zoning Ordinance, Chapter 2B – Agriculture Land Preservation, TDR Ordinance Provisions

Model Transferable Development Rights Ordinance (APA)

4.6 MODEL TRANSFER OF DEVELOPMENT RIGHTS (TDR) ORDINANCE

The model ordinance below establishes a general framework for severing development rights involving net density and intensity (through FARs) from a sending parcel and transferring them to a receiving parcel. Section 101 of the ordinance authorizes a transfer of development rights (TDR) for a variety of purposes, including environmental protection, open space preservation, and historic preservation, which are the most typical.

Under Section 104, the local government has two options in setting up the TDR program. The first involves the use of overlay districts, which would zone specific areas as sending and receiving parcels. The second involves identifying which zoning districts would be sending and receiving districts in the text of the ordinance itself, rather than through a separate amendment to the zoning ordinance. In both cases, the designations must be consistent with the comprehensive plan. Section 105 of the ordinance contains a table that shows, by use district, the permitted maximum increases in density and FAR that can be brought about through TDR.

Section 106 outlines a process by which the zoning administrator would determine the specific number of development rights for a sending parcel in terms of dwelling units per net acre or square feet of nonresidential floor area (for commercial and industrial parcels) and issue a certificate to the transferor. Sections 107 and 108 describe the instruments by which the development rights are legally severed from the sending parcel through instruments of transfer and attached to the receiving parcel. Section 107 describes how the applicant for a subdivision or other type of development permit would formally seek the use of development rights in a development project (e.g., a subdivision). Note that the transfer would not apply to rezonings, but only to specific projects where a development permit is going to be issued in order that development may commence.

Commentary to the ordinance describes, in Section 109, a development rights bank, a mechanism by which the local government purchases development rights before they are applied to receiving parcels, retains them permanently in order to prevent development, or sells them as appropriate in order to make a profit or direct development of a certain character to a specific area. Whether this is an appropriate role for local government or should be left to nonprofit organizations (e.g., land trusts) is matter for local discussion and debate. No ordinance language is provided, although the description in the commentary should be sufficient for local government officials to draft language establishing the bank.

Primary Smart Growth Principle Addressed: Preserve open space and farmland
Secondary Smart Growth Principle Addressed: Direct development towards existing communities

101. Purposes

The purposes of this ordinance are to:

(a) preserve open space, scenic views, critical and sensitive areas, and natural hazard areas;

(b) conserve agriculture and forestry uses of land;

(c) protect lands and structures of aesthetic, architectural, and historic significance;

(d) retain open areas in which healthful outdoor recreation can occur;

(e) implement the comprehensive plan;

(f) ensure that the owners of preserved, conserved, or protected land may make reasonable use of their property rights by transferring their right to develop to eligible zones;

(g) provide a mechanism whereby development rights may be reliably transferred; and

(h) ensure that development rights are transferred to properties in areas or districts that have adequate community facilities, including transportation, to accommodate additional development.

Comment: *The local government may tailor this list of purposes to its particular planning goals and objectives or leave it with a wide range of purposes and implement the ordinance to achieve specific goals and objectives.*

102. Authority

This ordinance is enacted pursuant to the authority granted by [*cite to state statute or local government charter or similar law*].

Comment: *It is important to determine whether the local government has legal authority to enact a TDR program because not all local governments in all states have identical powers. In addition, enabling legislation for TDR may require that the transfers be done in a certain manner other than is described in this model.*

103. Definitions

As used in this ordinance, the following words and terms shall have the meanings specified herein:

"**Development Rights**" mean the rights of the owner of a parcel of land, under land development regulations, to configure that parcel and the structures thereon to a particular density for residential uses or floor area ratio for nonresidential uses. Development rights exclude the rights to the area of or height of a sign.

Comment: *Unless sign area and height are excluded from the definition of "development rights," it is possible to transfer them to another parcel, resulting in larger or taller signs. In*

some cases, development rights might extend to impervious surface coverage, and a transfer of such rights would allow more extensive lot coverage.

"Density" or **"Net Density"** means the result of multiplying the net area in acres times 43,560 square feet per acre and then dividing the product by the required minimum number of square feet per dwelling unit required by the zoning ordinance for a specific use district.

"Density" or "Net Density" is expressed as dwelling units per acre or per net acre

"Floor Area" means the gross horizontal area of a floor of a building or structure measured from the exterior walls or from the centerline of party walls. "Floor Area" includes the floor area of accessory buildings and structures.

"Floor Area Ratio" means the maximum amount of floor area on a lot or parcel expressed as a proportion of the net area of the lot or parcel.

"Net Area" means the total area of a site for residential or nonresidential development, excluding street rights-of-way and other publicly dedicated improvements, such as parks, open space, and stormwater detention and retention facilities, and easements, covenants, or deed restrictions, that prohibit the construction of building on any part of the site. "Net area" is expressed in either acres or square feet.

[**"Overlay District"** means a district superimposed over one or more zoning districts or parts of districts that imposes additional requirements to those applicable for the underlying zone.]

Comment: *This definition is only necessary if the TDR designation is accomplished via an overlay district.*

"**Receiving District**" means one or more districts in which the development rights of parcels in the sending district may be used.

"**Receiving Parcel**" means a parcel of land in the receiving district that is the subject of a transfer of development rights, where the owner of the parcel is receiving development rights, directly or by intermediate transfers, from a sending parcel, and on which increased density and/or intensity is allowed by reason of the transfer of development rights;

"**Sending District**" means one or more districts in which the development rights of parcels in the district may be designated for use in one or more receiving districts;

"**Sending Parcel**" means a parcel of land in the sending district that is the subject of a transfer of development rights, where the owner of the parcel is conveying development rights of the parcel, and on which those rights so conveyed are extinguished and may not be used by reason of the transfer of development rights; and

"**Transfer of Development Rights**" means the procedure prescribed by this ordinance whereby the owner of a parcel in the sending district may convey development rights to the

owner of a parcel in the receiving district or other person or entity, whereby the development rights so conveyed are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing regarding that parcel or may be held by the receiving person or entity.

Comment: *This definition recognizes that development rights may be sold to an entity (e.g., the local government or a nonprofit organization) that will hold them indefinitely.*

"Transferee" means the person or legal entity, including a person or legal entity that owns property in a receiving district, who purchases the development rights.

"Transferor" means the landowner of a parcel in a sending district.

104. Establishment of Sending and Receiving Districts.

[*Alternative 1: Amend the zoning map using overlays*]

(1) The [local legislative body] may establish sending and receiving districts as overlays to the zoning district map by ordinance in the manner of zoning district amendments. The [planning director] shall cause the official zoning district map to be amended by overlay districts to the affected properties. The designation "TDR-S" shall be the title of the overlay for a sending district, and the designation "TDR-R" shall be the title of the overlay for a receiving district.

Comment: *When a zoning map is amended, one practice is to list the ordinance number and the enactment date in a box on the map, along with the signatures of the planning director and the clerk of the local legislative body (e.g., the clerk of council). This allows for an easy reference if there should be any later questions about whether the map amendment accurately reflects the legal description in the ordinance.*

(2) Sending and receiving districts established pursuant to Paragraph (1) shall be consistent with the local comprehensive plan.

[*Alternative 2—Specify zoning districts that can serve as sending and receiving districts*]

(1) The following zoning districts shall be sending districts for the purposes of the transfer of development rights program:

[*list names of districts*]

(2) The following zoning districts shall be receiving districts for the purposes of the transfer of development rights program:

[*list names of districts*]

Comment: *Since the sending and receiving districts are being established as part of the ordinance rather than through separate overlays, the local government would need to make a declaration of consistency with the comprehensive plan for such districts as part of the enactment of these two paragraphs.*

105. Right to Transfer Development Rights

(1) Each transferor shall have the right to sever all or a portion of the rights to develop from the parcel in a sending district and to sell, trade, or barter all or a portion of those rights to a transferee consistent with the purposes of Section 101 above .

(2) The transferee may retire the rights, resell them, or apply them to property in a receiving district in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density or intensity indicated in Table 1.

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

Note: District names, densities, and intensities are hypothetical examples only.

Zoning District Title	Maximum Density in Dwelling Units Per Net Acre	Maximum Intensity in Floor Area Ratio	Maximum Density with TDR	Maximum Intensity in Floor Area Ratio with TDR
R-1	4		8	
R-2	8		16	
R-3	16		32	
C-1		0.2		0.4
C-2		1.0		2.0
C-3		2.0		4.0
C-4		4.0		8.0
I-1		0.75		1.5

(3) Any transfer of development rights pursuant to this ordinance authorizes only an increase in maximum density or maximum floor area ratio and shall not alter or waive the development standards of the receiving district, including standards for floodplains, wetlands, and [*other environmentally sensitive areas*]. Nor shall it allow a use otherwise prohibited in a receiving district.

Comment: *In some cases, it may be desirable to allow the transfer of the right to additional impervious surface coverage on a site. For example, if a certain zoning district limits the amount of surface parking by a maximum impervious surface parking ratio and additional parking is needed, Table 1 should be amended to authorize this.*

106. Determination of Development Rights; Issuance of Certificate

(1) The [zoning administrator] shall be responsible for:

(a) determining, upon application by a transferor, the development rights that may be transferred from a property in a sending district to a property in a receiving district and issuing a transfer of development rights certificate upon application by the transferor.

(b) maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and

(c) making available forms on which to apply for a transfer of development rights certificate.

(2) An application for a transfer of development rights certificate shall contain:

(a) a certificate of title for the sending parcel prepared by an attorney licensed to practice law in the state of [*name of state*];

(b) [five] copies of a plat of the proposed sending parcel and a legal description of the sending parcel prepared by [licensed *or* registered] land surveyor;

(c) a statement of the type and number of development rights in terms of density or FAR being transferred from the sending parcel, and calculations showing their determination.

(d) applicable fees; and

(e) such additional information required by the [zoning administrator] as necessary to determine the number of development rights that qualify for transfer

Comment: *A local government should consult with its law director or other legal counsel to determine the requirements for an application for a TDR. Consequently, this paragraph as well as other Sections of the ordinance may need to be revised to reflect state-specific issues concerning real property law and local conditions.*

(3) A transfer of development rights certificate shall identify:

(a) the transferor;

(b) the transferee, if known;

(c) a legal description of the sending parcel on which the calculation of development rights is based;

(d) a statement of the number of development rights in either dwelling units per net acre or square feet of nonresidential floor area eligible for transfer;

(e) if only a portion of the total development rights are being transferred from the sending property, a statement of the number of remaining development rights in either dwelling units per net acre or square feet of nonresidential floor space remaining on the sending property;

(f) the date of issuance;

(g) the signature of the [zoning administrator]; and

(h) a serial number assigned by the [zoning administrator].

(4) No transfer of development rights under this ordinance shall be recognized by the [local government] as valid unless the instrument of original transfer contains the [zoning administrator's] certification.

107. Instruments of Transfer

(1) An instrument of transfer shall conform to the requirements of this Section. An instrument of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the sending parcel.

(2) Any instrument of transfer shall contain:

(a) the names of the transferor and the transferee;

(b) a certificate of title for the rights to be transferred prepared by an attorney licensed to practice law in the state of [name of state];

(c) a covenant the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending parcel to the receiving parcel;

(d) a covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred; and

(e) [*any other relevant information or covenants*].

(3) An instrument of original transfer is required when a development right is initially separated from a sending parcel. It shall contain the information set forth in paragraph (2) above and the following information:

(a) a legal description and plat of the sending parcel prepared by a licensed surveyor named in the instrument;

(b) the transfer of development rights certificate described in Section 106 (4) above.

(c) a covenant indicating the number of development rights remaining on the sending parcel and stating the sending parcel may not be subdivided or developed to a greater density or intensity than permitted by the remaining development rights;

(d) a covenant that all provisions of the instrument of original transfer shall run with and bind the sending parcel and may be enforced by the [*local government*] and [*list other parties, such as nonprofit conservation* organizations]; and

(d) [*indicate topics of other covenants, as appropriate*].

(4) If the instrument is not an instrument of original transfer, it shall include information set forth in paragraph (2) above and the following information :

(a) a statement that the transfer is an intermediate transfer of rights derived from a sending parcel described in an instrument of original transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the [land records of the county].

(b) copies and a listing of all previous intermediate instruments of transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the [land records of the county].

(5) The local government's [law director] shall review and approve as to the form and legal sufficiency of the following instruments in order to affect a transfer of development rights to a receiving parcel:

(a) An instrument of original transfer

(b) An instrument of transfer to the owner of the receiving parcel

(c) Instrument(s) of transfer between any intervening transferees

Upon such approval, the [law director] shall notify the transferor or his or her agent, who shall record the instruments with the [name of county official responsible for deeds and land records] and shall provide a copy to the [*county assessor*]. Such instruments shall be recorded prior to release of development permits, including building permits, for the receiving parcel.

Comment: *The procedures in paragraph (5) may need to be modified based on the structure of local government in a particular state and the responsibilities of governmental officials for land records and assessments. The important point is that the TDRs must be permanently recorded, and the property of the owner of the sending parcel, the value of which is reduced because of the transfer, should be assessed only on the basis of its remaining value.*

108. Application of Development Rights to a Receiving Parcel

(1) A person who wants to use development rights on a property in a receiving district up to the maximums specified in Table 1 in Section 105 above shall submit an application for the use of such rights on a receiving parcel. The application shall be part of an application for a development permit. In addition to any other information required for the development permit, the application shall be accompanied by:

(a) an affidavit of intent to transfer development rights to the property; and

(b) either of the following:

St. Mary County, Maryland TDR Ordinance

CHAPTER 26 TRANSFERABLE DEVELOPMENT RIGHTS (TDRS)

Sections:

26.1. Purpose.

1. The Transferable Development Rights (TDR) program in this chapter is voluntary for property owners and is provided as a means to further the objectives of the Comprehensive Plan. The chapter 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.

2. In order to protect agricultural areas and give the owners of such property an alternative to development, or a means to recover some of the value from an undevelopable residential lot, TDRs are established.

26.2. Right to Transfer Development Rights.

7/24/07 1. ***Removing Development Rights from the Land.*** Each landowner of a parcel in a sending area ("transferor") has the right to remove all or a portion of the right to develop from the parcel (the "sending parcel"), and to hold, sell, trade or barter these rights to another person or legal entity ("transferee").

7/24/07 2. ***Using Development Rights.*** The transferee may retire the development rights, resell them, or apply them to land in a receiving area (the "receiving parcel") in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density or intensity indicated in Schedule 32.1, subject to the following:

a. No development right may be used to increase density within the Critical Area if such right is derived from a portion of a sending parcel that is outside the Critical Area, nor may a development right be transferred from land within an Intensely Developed Area (IDA) or Limited Development Area (LDA) to a Resource Conservation Area (RCA), or
9/26/03 from an IDA to an LDA, nor may any development right be transferred to land in the RCA from any RCA lot of record that is less than 20 acres in size.

7/18/06 b. Land zoned RPD which is designated as a Rural Legacy Area by the Maryland Rural Legacy Board shall not be developed to a density greater than one (1) dwelling unit per five (5) acres of gross area.

c. No use of a development right shall result in a reduction of resource protection land required by this Ordinance on a receiving parcel.

d. No development right may be derived from land in a sending zone that is already expressly prohibited from transferring development rights by virtue of a recorded restrictive covenant or agricultural or environmental easement. Development rights may be derived from property subject to the St. Mary's County Agriculture Land Tax Credit Program between the owner and the Board of County Commissioners.

e. Except for transfer of rights from lots of record that cannot be developed for residential purposes, no development right may be derived from land in a sending area that is part of a subdivision that has no available density remaining in the parent tract. Where density is available, the rights shall be assigned based on the unused density available in the subdivision.

26.3. TDR Sending Zones; Assignment of Transferable Development Rights.

1. ***Designation.*** Rural Preservation Districts ("RPD") shall be TDR sending areas and may be receiving areas subject to Schedule 32.1.

2. ***Determination.*** Each parcel of land in the RPD shall have one (1) transferable development right for each five (5) acres of land based on the gross acreage within the parcel, as determined by the transferor's recorded deed. In the event the gross acreage cannot be ascertained from the recorded deed, the gross acreage of the parcel shall be determined by the most recent records of the Maryland Department of Assessments and Taxation. In any event, at the transferor's option, the gross acreage may be determined by a metes and bounds survey of the parcel prepared, signed and sealed by a duly licensed professional land surveyor or professional property line surveyor, which determination shall take precedence over the gross acreage determined by the recorded deed or the assessment records. One (1) TDR shall be deducted for each existing dwelling and one (1) TDR shall be deducted for each proposed dwelling for which a building permit has been duly issued by the Department of Land Use and Growth Management for the parcel prior to July 24, 2007.

3. ***Fractional Rights***. Fractional parts of a development right shall be disregarded. No transfer shall include other than a whole number of development rights.

4. ***Effect of Prior Transfer.*** Each TDR reserved by an "original instrument of transfer" prior to adoption of this Ordinance and not yet utilized on a receiving parcel shall be equivalent to one (1) TDR under this Ordinance. Provided, however, that TDRs which have been previously removed from a sending parcel and are still held by the original transferor shall, in the discretion of the transferor, be recalculated and re-certified by the Planning Director using the gross acreage formula set forth above in the Section 26.3. Upon such re-certification, a revised original instrument of transfer shall be recorded among the land records, and the initial original instrument of transfer shall be deemed void and of no further effect.

26.4. Maximum Residential or Non-Residential Density/Intensity Allowed in Receiving Zones.

1. Zoning Districts RNC (in growth areas only), RPD, RL, RH, RMX, VMX, TMX, and CMX are receiving zones for TDRs for increased residential density. The RPD, RSC, RCL, RL, RMX, VMX, TMX, DMX, CMX CC, OBP and I are receiving zones for TDRs for increased non-residential intensity of approved uses in the respective zones.

2. Land located in a receiving zone may be developed at additional density or intensity of use through the acquisition of TDRs, up to the maximum density or intensity indicated in Schedule 32.1. With the exception of the RPD, the residential density for land within a receiving zone may be increased at a rate of one (1) additional dwelling unit for each TDR, up to the maximum number permitted in Schedule 32.1. Each parcel of land within the RPD existing as a parcel of record on the date of this Ordinance shall be considered as a single residential lot, with no requirement for the use of TDRs for any existing residential dwellings that exist on the parcel or for which a valid building permit has been issued as of the date of this Ordinance. Such existing dwellings or dwellings for which a valid building permit has been issued may be subdivided from

CHAPTER 26 TRANSFERABLE DEVELOPMENT RIGHTS (TDRS)

Sections:

26.1. Purpose.

1. The Transferable Development Rights (TDR) program in this chapter is voluntary for property owners and is provided as a means to further the objectives of the Comprehensive Plan. The chapter 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.

2. In order to protect agricultural areas and give the owners of such property an alternative to development, or a means to recover some of the value from an undevelopable residential lot, TDRs are established.

26.2. Right to Transfer Development Rights.

7/24/07 1. ***Removing Development Rights from the Land.*** Each landowner of a parcel in a sending area ("transferor") has the right to remove all or a portion of the right to develop from the parcel (the "sending parcel"), and to hold, sell, trade or barter these rights to another person or legal entity ("transferee").

7/24/07 2. ***Using Development Rights.*** The transferee may retire the development rights, resell them, or apply them to land in a receiving area (the "receiving parcel") in order to obtain approval for development at a density or intensity of use greater than would otherwise be allowed on the land, up to the maximum density or intensity indicated in Schedule 32.1, subject to the following:

a. No development right may be used to increase density within the Critical Area if such right is derived from a portion of a sending parcel that is outside the Critical Area, nor may a development right be transferred from land within an Intensely Developed Area (IDA) or Limited Development Area (LDA) to a Resource Conservation Area (RCA), or
9/26/03 from an IDA to an LDA, nor may any development right be transferred to land in the RCA from any RCA lot of record that is less than 20 acres in size.

7/18/06 b. Land zoned RPD which is designated as a Rural Legacy Area by the Maryland Rural Legacy Board shall not be developed to a density greater than one (1) dwelling unit per five (5) acres of gross area.

c. No use of a development right shall result in a reduction of resource protection land required by this Ordinance on a receiving parcel.

d. No development right may be derived from land in a sending zone that is already expressly prohibited from transferring development rights by virtue of a recorded restrictive covenant or agricultural or environmental easement. Development rights may be derived from property subject to the St. Mary's County Agriculture Land Tax Credit Program between the owner and the Board of County Commissioners.

e. Except for transfer of rights from lots of record that cannot be developed for residential purposes, no development right may be derived from land in a sending area that is part of a subdivision that has no available density remaining in the parent tract. Where density is available, the rights shall be assigned based on the unused density available in the subdivision.

26.3. TDR Sending Zones; Assignment of Transferable Development Rights.

1. ***Designation.*** Rural Preservation Districts ("RPD") shall be TDR sending areas and may be receiving areas subject to Schedule 32.1.

2. ***Determination.*** Each parcel of land in the RPD shall have one (1) transferable development right for each five (5) acres of land based on the gross acreage within the parcel, as determined by the transferor's recorded deed. In the event the gross acreage cannot be ascertained from the recorded deed, the gross acreage of the parcel shall be determined by the most recent records of the Maryland Department of Assessments and Taxation. In any event, at the transferor's option, the gross acreage may be determined by a metes and bounds survey of the parcel prepared, signed and sealed by a duly licensed professional land surveyor or professional property line surveyor, which determination shall take precedence over the gross acreage determined by the recorded deed or the assessment records. One (1) TDR shall be deducted for each existing dwelling and one (1) TDR shall be deducted for each proposed dwelling for which a building permit has been duly issued by the Department of Land Use and Growth Management for the parcel prior to July 24, 2007.

3. ***Fractional Rights***. Fractional parts of a development right shall be disregarded. No transfer shall include other than a whole number of development rights.

4. ***Effect of Prior Transfer.*** Each TDR reserved by an "original instrument of transfer" prior to adoption of this Ordinance and not yet utilized on a receiving parcel shall be equivalent to one (1) TDR under this Ordinance. Provided, however, that TDRs which have been previously removed from a sending parcel and are still held by the original transferor shall, in the discretion of the transferor, be recalculated and re-certified by the Planning Director using the gross acreage formula set forth above in the Section 26.3. Upon such re-certification, a revised original instrument of transfer shall be recorded among the land records, and the initial original instrument of transfer shall be deemed void and of no further effect.

26.4. Maximum Residential or Non-Residential Density/Intensity Allowed in Receiving Zones.

1. Zoning Districts RNC (in growth areas only), RPD, RL, RH, RMX, VMX, TMX, and CMX are receiving zones for TDRs for increased residential density. The RPD, RSC, RCL, RL, RMX, VMX, TMX, DMX, CMX CC, OBP and I are receiving zones for TDRs for increased non-residential intensity of approved uses in the respective zones.

2. Land located in a receiving zone may be developed at additional density or intensity of use through the acquisition of TDRs, up to the maximum density or intensity indicated in Schedule 32.1. With the exception of the RPD, the residential density for land within a receiving zone may be increased at a rate of one (1) additional dwelling unit for each TDR, up to the maximum number permitted in Schedule 32.1. Each parcel of land within the RPD existing as a parcel of record on the date of this Ordinance shall be considered as a single residential lot, with no requirement for the use of TDRs for any existing residential dwellings that exist on the parcel or for which a valid building permit has been issued as of the date of this Ordinance. Such existing dwellings or dwellings for which a valid building permit has been issued may be subdivided from

the receiving parcel as separate lots without the use of TDRs. If no residential dwelling exists on the parcel or for which a valid building permit has been issued as of the date of this Ordinance, one (1) single-family residential dwelling may be constructed on the parcel without the use of TDRs.

-For a receiving parcel in the RPD, one (1) TDR shall be required for each additional residential lot or dwelling, provided the parcel density does not exceed one (1) residential lot or dwelling for each five (5) acres of gross area, two (2) TDRs shall be required for each additional residential lot or dwelling in excess of 1 dwelling unit per 5 acre density, provided the parcel density does not exceed one (1) residential lot or dwelling for each four (4) acres of gross area, and three (3) TDRs shall be required for each additional residential lot or dwelling in excess of 1 dwelling unit per 4 acre density, provided the parcel density does not exceed one (1) residential lot or dwelling for each three (3) acres of gross area.

The number of TDRs required per residence is based on the density of the property as developed July 24, 2007 in accordance with the following schedule.

Density (number of units per acre)	Number of TDRs
Less than 1 dwelling unit per 5 acres	1 TDR per lot
1 dwelling unit per 5 acres	1 TDR per lot
More than 1 dwelling unit per 5 acres and less than or equal to 1 dwelling unit per 4 acres	2 TDRs per lot
More than 1 dwelling unit per 4 acres and not to exceed 1 dwelling unit per 3.0 acres	3 TDRs per lot

26.5. Effect of Transfer.

1. After development rights have been transferred by an instrument of original transfer, the sending parcel shall not be further subdivided or developed to a greater density or intensity of use than permitted on the remaining acreage. Once development rights have been transferred from a lot or parcel of record, that lot or parcel of record shall not later become a receiving parcel.

2. The portion of the sending parcel from which development rights have been transferred may be used only for the uses listed in 26.12.

3. All development rights that are the subject of an "instrument of original transfer," described in Section 26.8, shall be deemed removed from the sending parcel when such rights have been severed from the property by recording of the "instrument or original transfer" in form and content approved by the County Attorney.

26.6. Rights of Transferees.

Between the time of the transfer of a development right by an original transferor and the time when its use on a specific receiving parcel is final in accordance with the provisions of this chapter, a transferee has only the right to use the development right to the extent authorized by all applicable provisions of the Ordinance in effect at the time when use of the development right for a specific receiving parcel is finally approved. No transfer shall be construed to limit or affect the power of the County Commissioners to amend, supplement or repeal any or all of the provisions of this chapter or any other section of this Ordinance or to entitle any transferor or transferee to damages or compensation of any kind as the result of any such amendment, supplementation or repeal.

26.7. Certification by Director of Planning and Zoning and County Attorney.

1. ***Requirement.*** The Planning Director shall certify that the development rights proposed for transfer are available for transfer from the sending parcel. No transfer shall be recognized under this chapter unless the instrument of original transfer contains the Planning Director's certification.

2. ***Application for Certificate.*** An application for a certificate shall contain a certificate of title by an attorney duly licensed to practice law in the State of Maryland and a description of the proposed sending parcel from which development rights are being removed. Applicable fees and any additional information the Planning Director deems necessary to determine the number of development rights involved in the proposed transfer shall also be required.

3. ***Responsibility.*** The transferor and the transferee named in an instrument of original transfer shall have sole responsibility for supplying all information required by this chapter, providing a proper instrument of original transfer, and paying, in addition to any other fees required by this chapter, any applicable recording costs.

4. ***Issuance of Certificate.*** On the basis of the information submitted to him or her, the Planning Director shall affix a certificate of his or her findings to the instrument of original transfer and shall assign to each development right a distinct serial number based on a registration system developed and approved by the Planning Director, which number shall be used to track each development right. The certificate shall contain a specific statement of the number, if any, of development rights that are derived from any portions of the sending parcel within the Critical Area. The Planning Director's certification, the title certificate and the instrument of original transfer shall be reviewed and approved by the County Attorney for legal sufficiency.

5. ***Effect of Determination.*** The determination of the Planning Director and the County Attorney shall not be construed to enlarge or otherwise affect in any manner the nature, character, and effect of a transfer as set forth in Section 26.5.

26.8. Instruments of Transfer.

1. An instrument of transfer shall conform to the requirements of this section. There shall be three types of instruments of transfer, all of which shall be on forms approved and developed by the County Attorney; (i) an instrument of original transfer which shall be used to sever the development right from the property and which shall be executed by the owner of the property from which the development right is being severed as both grantor and grantee; (ii) an instrument of intermediate transfer which shall be used to transfer the development right between intermediate owners of the development right; and (iii) the instrument of final transfer which shall be used to convey the development right to the Board of County Commissioners of St. Mary's County by which the development right is extinguished and used for the purposes of development on the receiving parcel.

2. ***Requirements of All Instruments.*** All instruments of transfer shall contain:

   a. The names of the transferor and the transferee;

   b. A certificate of title for the rights to be transferred certified to by an attorney licensed to practice law in Maryland in a form approved by the County Attorney;

   c. A covenant that the transferor grants and assigns to the transferee and the transferee's heirs, personal representatives, successors and assigns a specified number of development rights from the sending parcel;

   d. If any rights involved in the transfer are derived from portions of the sending parcel within the Critical Area, a specific statement of the number of such rights included within the transfer;

   e. A covenant by which the transferor acknowledges that he or she has no further use or right of use with respect to the development rights being transferred;

   f. A statement of the rights of the transferee prior to final approval of the use of those development rights on a specific parcel, as set forth in Section 26.2, except when the development rights are being transferred to the Board of County Commissioners in accordance with this chapter; and

g. A covenant that at the time when any development rights involved in the transfer are finally approved for use on a specific receiving parcel, such rights shall be transferred to the Board of County Commissioners for no consideration.

h. The serial number of each development right being transferred pursuant to the instrument of transfer.

3. ***Requirements of Instruments of Original Transfer.*** An "instrument of original transfer," which is required when a development right is initially removed from the sending parcel, shall also contain:

a. A description of the property from which the development right is being removed, either from the recorded deed or at the tranferor's option, from the boundary survey of the sending parcel, prepared, signed and sealed by a duly licensed surveyor, or professional property line surveyor, provided that if a boundary survey is used the instrument shall also reference the deed recording reference.

b. A covenant that the sending parcel may not be subdivided to a greater extent than permitted by the remaining development rights and that such subdivision shall be in accordance with the zoning and subdivision regulations in place at the time of the request for subdivision.

c. A covenant that the sending parcel is restricted to and may be used only for agricultural uses and those uses allowed in Section 26.12 of this chapter and such residential uses as are permitted by the remaining development rights.

d. A covenant that all provisions of the instrument of transfer shall run with and bind the sending parcel and may be enforced by the County Commissioners, the Planning Director and their respective designees.

e. The certificate of the Planning Director required by Section 26.7.

4. ***Requirements for Instruments of Intermediate Transfer.*** An instrument of intermediate transfer shall include:

a. A statement that the transfer is an intermediate transfer of rights derived from a sending parcel described in an instrument of original transfer (which original instrument shall be identified by its date, the names of the original transferor and transferee and the book and page where it is recorded among the land records of St. Mary's County).

b. A list of all previous "intermediate instruments of transfer" identified by their date, and the book(s) and page(s) where the documents are recorded among the land records of St. Mary's County affecting the development rights being transferred.

c. A statement of the actual consideration paid or to be paid by the transferee for the development rights.

5. ***Requirements for Instruments of Final Transfer.*** An instrument of final transfer shall include:

a. A statement that the transfer is a final transfer of rights derived from a sending parcel described in an instrument of original transfer (which original instrument shall be identified by its date, the names of the original transferor and transferee and the book and page where it is recorded among the land records of St. Mary's County).

b. The instrument of original transfer and all previous intermediate instruments of transfer identified by their date, and the book(s) and page(s) where the documents are recorded among the land records of St. Mary's County affecting the development rights being transferred.

c. A statement of the actual consideration paid or to be paid by the transferee for the development rights.

d. A current certificate of title.

6. ***Recordation of All Instruments of Transfer/Delivery to DECD and Planning Director.*** After it has been properly executed, an original instrument of transfer or intermediate instrument of transfer shall be recorded by the transferor or the transferee among the land record of St. Mary's County, and a copy thereof shall be promptly delivered to the Planning Director and the Department of Economic and Community Development ("DECD"). After it has been reviewed and approved for legal sufficiency by the County Attorney, and executed by the transferor and the Planning Director, on behalf of the County, a final instrument of transfer shall be recorded by the Planning Director in the land records of St. Mary's County, and a copy of the recorded instrument shall be promptly delivered by the Planning Director to the transferor.

26.9. Approval of the Development Using Transferable Development Rights.

1. ***Initial Request for Use of TDR in a Development Project.*** The request to use development rights on a property in the receiving area shall be in the form of a concept or preliminary subdivision plat, a site plan, or other application for development submitted in accordance with the requirements of this Ordinance. In addition to any other information required by this Ordinance, the application shall be accompanied by a statement of intent to transfer development rights to the property and a statement of the number of development rights intended to be transferred.

2. ***Preliminary approvals***. The County may grant preliminary subdivision or concept site plan approval for the proposed development conditioned upon proof of ownership of the necessary TDRs or a contract to purchase said TDRs being presented to the County as a prerequisite to final subdivision or site plan approval.

3. ***Final Subdivision or Site Plan Approval of a Development Using TDRs***.

a. *Proof of ownership of TDR's and proof of deed restriction.* No final plat shall be approved and no zoning permits shall be issued for development involving the use of TDRs until and unless the applicant has demonstrated to the County that:

(1) The applicant is the bona fide owner of all TDRs that will be used or redeemed for the construction of additional dwellings or the creation of additional lots;

(2) An instrument of transfer for the TDRs proposed for the development has been recorded in the chain of title of the parcel of land from which the development rights has been transferred and that such instrument restricts the use of that parcel in accordance with this chapter; and

(3) The TDRs proposed for the development have not been previously used. Proof must be in the form of a current title certificate issued by a licensed attorney.

b. *Required Instruments*. The following instruments, which may be required to effect transfer of development rights to the receiving parcel, shall be approved as to form and legal sufficiency by the County Attorney. Said instruments shall be recorded among the land records of St. Mary's County when the subdivision record plat is recorded or subsequent to final site plan approval but before building permits are released.

(1) An instrument of original transfer.

(2) All intermediate instruments of transfer between any intervening transferees, including the owner of the receiving parcel.

(3) A final instrument of transfer to the Board of County Commissioners.

4. ***When Completed.*** Transfer to a receiving parcel is final when the approved final subdivision plat or approved final site plan for the receiving parcel has been recorded or approved, as applicable, in accordance with this Ordinance and when the development right has been transferred by a final instrument of transfer to the Board of County Commissioners at no cost to the County.

26.10. Fee in Lieu for Open Lands Option.

In lieu of purchasing development rights from a sending parcel for use in development of a receiving parcel, a person may pay a fee to the County, which the County shall hold in a separate Open Lands Trust Fund for use in purchasing development rights from owners of sending parcels and other related purposes as defined in the subsections below.

1. ***Fee Schedule.*** A schedule of the "in lieu of" fees for the Open Lands Trust Fund shall be established annually. The fee in lieu for each TDR shall be 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 DECD Director. The DECD Director shall 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 shall reserve the right to increase or decrease the fee in lieu within the thirty (30) day period following the DECD Director's annual determination, after which such determination shall remain in effect until the following fiscal year.

2. ***Administration of Fee in Lieu Program.*** The DECD Director shall administer the fee in lieu program and coordinate the necessary forms and documentation consistent with the requirements of this chapter. Those applicants who pay the fee in lieu may apply credits received for said payments to develop land in a receiving parcel at an additional density or intensity of use through the same provision as for TDRs contained herein.

3. ***Use of Funds from Payment of Fees in Lieu.*** Payments received by the County as fees in lieu of purchasing development rights from sending zones shall be used by the St. Mary's County Agricultural Preservation Commission to acquire property having a resource deserving of protection or replenish the Critical Farms Programs. Such purchase of development rights may be resold by the County.

26.11. Exempted lots from TDR requirements.

A maximum of 2 lots may be created for conveyance to children (natural or legally adopted) without the use of a TDR subject to the following:

a. The conveying property owner owned the land in the RPD zone as of May 13, 2002;
b. The lots created pursuant to this exemption comply with the 1 to 5 acre base density of the RPD;
c. A maximum of 2 exempt lots for children may be subdivided from the parcel of land;
d. A child shall not receive more than one exempt lot in the RPD zone;
e. The property owner must submit a subdivision plan prior to May 13, 2009 and record the subdivision plat prior to May 13, 2012;
f. The property owner creating the lot must enter into an agreement with the County that:
    1) contains the grantor's obligations under this section;
    2) is recorded in the land records of St. Mary's County;
    3) is noted on the subdivision plat; and
    4) prohibits the grantee from transferring the conveyed lot to a third party for at least seven years from the date of final approval of the family conveyance, except in a case of severe hardship, as determined by the Director of Land Use and Growth Management.
g. Compliance with all remaining applicable regulations of the Zoning Ordinance and Subdivision Ordinance.

26.12. Uses allowed after TDRs have been severed from the sending area.

The following uses may be allowed on land in the RPD zone after TDRs have been severed from the sending area. All uses must comply with other applicable regulations in the Zoning Ordinance.

– Agricultural Industry, minor (on-the-farm processing, e.g. small grain mills, dairy processing)
– Animal Husbandry
– Aquaculture (raising finfish, shellfish, aquatic plants)
– Crop production and horticulture e.g. (typical row & field crops, orchards, nursery)
– Farmers' market (locally produced goods, sales by 2 or more sellers)
– Auction House (wholesaling of locally produced goods)

- Roadside stand
- Silviculture
- Burial grounds (family plots only)
- Day Care, family, home
- Rural medical practice
- Bed and breakfast (in existing dwellings)
- Personal improvement service (accessory to principle residence)
- Extractive industry (mining, gravel pits)
- Production industry, custom (small scale, hand manufactured e.g. blacksmith, welding, carpentry)
- Communication towers, commercial and public
- Regional flood and stormwater management facility
- Utilities, minor
- Various accessory uses
- Various temporary events

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26.13. Grandfathering.

For Major Subdivisions, Minor Subdivisions, Major Site Plans, Minor (Simplified) Site Plans and a request for TDR certification per Chapter 26, for which a complete application has been submitted to the Technical Evaluation Committee ("TEC") prior to July 24, 2007, and Phasing Plans which have been approved prior to July 24, 2007, the Applicant shall have the option to proceeding with development pursuant to the provisions of Chapter 26, Schedule 32.1 and 32.2 of this Ordinance as they existed on the date for which the complete application was submitted to the TEC or the Phasing Plan was approved, or as the same was previously grandfathered by this Ordinance, or pursuant to the provisions of Chapter 26, Schedule 32.1 and Schedule 32.2 as revised on July 24, 2007.

Queen Anne's County Noncontiguous Development Program

ARTICLE XIX Noncontiguous Development

§ 18:1-97. Scope.

A. This article applies only within the AG District, the noncritical area CS District and to *subdivisions* utilizing the noncontiguous *development* technique after the adoption of this Chapter 18.

B. For approved *subdivisions* utilizing noncontiguous *development* prior to July 25, 1999, refer to § 18:1-7H.

§ 18:1-98. Application and standards.

A. *Development plan*. A landowner or group of landowners whose *lots* are in the same zoning district, but are not contiguous, may file a *development plan* under Part 7 of this Chapter 18:1 in the same manner as the owner of a single *lot*. The decision to use the noncontiguous *development* technique must be made at the time of the initial *major subdivision* application. **[Amended 9-7-2004 by Ord. No. 04-28]**

B. *Open space*.

(1) The *open space* ratio of the appropriate district shall apply to all land within the overall *development plan*, rather than separately to the *developed parcel* and *noncontiguous parcel*. **[Amended 9-7-2004 by Ord. No. 04-28]**

(2) The minimum *open space ratio* for the *developed parcel* is .50.

(3) *Net buildable area* and *open space*.

(a) After the date of adoption of this Chapter 18, if a landowner proposes a noncontiguous *development*, pursuant to this article, the *net buildable area* and *open space* on the *developed parcel* may be identified and set aside only in accordance with the following two-step phasing schedule:

	Developed Parcel — Net Buildable Area	***Developed Parcel — Open Space***
Phase 1	Not to exceed 0.30	Minimum of 0.50
Phase 2	Not to exceed 0.50	Minimum of 0.50

(b) The *open space* provided on the *developed parcel* during Phase 1 of the *development* shall be labeled "Noncontiguous Open Space Phase 1" and may be reduced and administratively reconfigured during Phase 2 of the project as necessary.

C. *Base site area*. For the purpose of computing *base site area*, the area of the *noncontiguous parcel* and the *developed parcel* shall be combined.

D. *Density* and *lot line* setbacks.

(1) The *developed parcel* shall use a *density* of no more than 0.9 of a *dwelling unit* per *acre*.

(2) For any *developed parcel* 50 *acres* in area or less, all new *lots* shall be located at least 100 feet from the property lines of the *developed parcel* as they existed prior to submittal of the *development plan*.

(3) For any *developed parcel* greater than 50 *acres* in area, all new *lots* shall be located at least 50 feet from the property line of the *developed parcel* as they existed prior to submittal of the *development plan*. **[Added 8-2-2005 by Ord. No. 05-12** Editor's Note: This ordinance also renumbered former Subsection D(3) as D(4), which follows. **]**

(4) All new *lots* on a *developed parcel* shall be located at least 100 feet from the nearest public *road* that exists prior to submittal of the *development plan*. **[Amended 8-2-2005 by Ord. No. 05-12]**

E. *Developed parcel* screening requirements: **[Added 8-2-2005 by Ord. No. 05-12** Editor's Note: This ordinance also renumbered former Subsections E and F as Subsections F and G, respectively. **]**

(1) A planted tree buffer at least 50 feet in width shall be installed between the developed portion of the parcel and any adjacent farm operation or tillable and pasture land and any public *road*.

(2) A qualified professional or licensed forester shall design the planting scheme for the buffer area in accordance with the following:

(a) For every 100 linear feet of buffer, the *developer* shall plant:

[1] Seven *canopy trees*.

[2] Fifteen *understory trees* or large shrubs; and

[3] Thirty small shrubs

(b) The buffer shall be planted according to sound *nursery* practices with the following specifications:

[1] The minimum required size of *canopy trees* at the time of planting shall be three-quarters-inch to one-inch *caliper* measured four inches above the root ball. *Understory* and evergreen *trees* shall be at least three feet tall at the time of planting.

[2] The *canopy tree* planting shall include at least four different species and trees must be expected to attain a height of at least 50 feet at maturity.

[3] Drought-resistant native trees and plants shall be used whenever feasible.

[4] Plants shall be *nursery* grown in accordance with good horticultural practices and grown under local climatic conditions.

[5] The State of Maryland's Noxious Weed Law must be adhered to during the planting and maintenance of the planted tree buffer.

[6] Plants shall be installed with intact root balls. Properly installed guy wires shall be provided for *canopy* and *understory trees* so that they stand plumb after planting. The trees shall bear the same relation to finished grade as they bore to grade at the *nursery* where grown.

[7] Planting soil (backfill mix) must be five parts topsoil and one part wet loose peat moss. All plants shall be well watered after installation.

[8] The installation shall be supervised by a qualified professional or licensed forester.

(c) A *performance guarantee*, secured by a bond, cash deposit or letter of credit from the developer, shall be provided, ensuring survival of the plantings for two years after installation.

(3) The *screening* provisions of this section may be used to meet the provisions of the Forest Conservation Act and may not be required when there is an existing mature forest located between the proposed *development* and any farm operation, tillable or

pasture land, and any public *road* provided that the mature forest is identified by a forest stand delineation and will be protected by a long-term protective agreement in accordance with the provisions of Chapter 18:2, Forest Conservation.

F. Resource protection land. Natural resources shall be protected at the required percentage on the *developed parcel* and *noncontiguous parcels*. **[Amended 9-7-2004 by Ord. No. 04-28]**

(1) Total resource protection land shall be calculated for the *developed parcel* and *noncontiguous parcel*, as if combined.

(2) Natural resources shall be protected at the required percentage on the *developed parcel* and *noncontiguous parcels*, as if combined.

G. *Noncontiguous parcel*.

(1) May be less than all of a *lot of record*, however, the area of the *noncontiguous parcel* used must be at least 40 *acres* in size or constitute at least 1/2 of the total area of the *lot of record*, whichever is less.

(2) Meets the following soils criteria as per the 1966 Soils Survey of Queen Anne's County: **[Amended 9-7-2004 by Ord. No. 04-29[**

(a) At least 50% of the land shall classify as Class I, II or III soils; or

(b) If the land is wooded, 50% of the land is classified as *woodland* Group 1 or 2; or

(c) If there is an insufficient percentage of Class I, II or III soils alone and there is an insufficient percentage of *woodland* Group 1 or 2 soils alone, the land must have a combination of the classifications that meets or exceeds 60%.

(3) Plats of the *noncontiguous parcel* must provide the location of all existing *buildings*.

(4) Upon approval of a *development plan*, the *noncontiguous parcel*:

(a) May not be subdivided or reconfigured;

(b) Shall be deemed *open space* and shall be limited to only those *uses* allowed pursuant to Column A of the *open space* table in § 18:1-12 of this Chapter 18:1; and

(c) Shall not be used in connection with any determination of *site area* or *density*, except as may be necessary in determining the amount of deed restricted *open space* required by the *development plan*.

§ 18:1-99. Requirements for approval; covenants.

A. Duties of *property owner*. In addition to any other requirements of this Chapter 18, including those relating to required improvements, guarantees and other *covenants*, a *property owner* involved in an application shall, prior to any approval of a *development plan*, provide *covenants* by which land required to remain in *open space* is restricted to the *uses* allowed in § 18:1-12 of this Chapter 18:1.

B. *Covenants*. The *covenants* shall conform to the requirements of Chapter 18:1, Part 7, Article XXVII.

Queen Anne's County, MD Noncontiguous Development Ordinance

Queen Anne's County Noncontiguous Development Program

ARTICLE XIX Noncontiguous Development

§ 18:1-97. Scope.

A. This article applies only within the AG District, the noncritical area CS District and to *subdivisions* utilizing the noncontiguous *development* technique after the adoption of this Chapter 18.

B. For approved *subdivisions* utilizing noncontiguous *development* prior to July 25, 1999, refer to § 18:1-7H.

§ 18:1-98. Application and standards.

A. *Development plan*. A landowner or group of landowners whose *lots* are in the same zoning district, but are not contiguous, may file a *development plan* under Part 7 of this Chapter 18:1 in the same manner as the owner of a single *lot*. The decision to use the noncontiguous *development* technique must be made at the time of the initial *major subdivision* application. **[Amended 9-7-2004 by Ord. No. 04-28]**

B. *Open space*.

(1) The *open space* ratio of the appropriate district shall apply to all land within the overall *development plan*, rather than separately to the *developed parcel* and *noncontiguous parcel*. **[Amended 9-7-2004 by Ord. No. 04-28]**

(2) The minimum *open space ratio* for the *developed parcel* is .50.

(3) *Net buildable area* and *open space*.

(a) After the date of adoption of this Chapter 18, if a landowner proposes a noncontiguous *development*, pursuant to this article, the *net buildable area* and *open space* on the *developed parcel* may be identified and set aside only in accordance with the following two-step phasing schedule:

	Developed Parcel — Net Buildable Area	***Developed Parcel — Open Space***
Phase 1	Not to exceed 0.30	Minimum of 0.50
Phase 2	Not to exceed 0.50	Minimum of 0.50

(b) The *open space* provided on the *developed parcel* during Phase 1 of the *development* shall be labeled "Noncontiguous Open Space Phase 1" and may be reduced and administratively reconfigured during Phase 2 of the project as necessary.

C. *Base site area*. For the purpose of computing *base site area*, the area of the *noncontiguous parcel* and the *developed parcel* shall be combined.

D. *Density* and *lot line* setbacks.

(1) The *developed parcel* shall use a *density* of no more than 0.9 of a *dwelling unit* per *acre*.

(2) For any *developed parcel* 50 *acres* in area or less, all new *lots* shall be located at least 100 feet from the property lines of the *developed parcel* as they existed prior to submittal of the *development plan*.

(3) For any *developed parcel* greater than 50 *acres* in area, all new *lots* shall be located at least 50 feet from the property line of the *developed parcel* as they existed prior to submittal of the *development plan*. **[Added 8-2-2005 by Ord. No. 05-12** Editor's Note: This ordinance also renumbered former Subsection D(3) as D(4), which follows. **]**

(4) All new *lots* on a *developed parcel* shall be located at least 100 feet from the nearest public *road* that exists prior to submittal of the *development plan*. **[Amended 8-2-2005 by Ord. No. 05-12]**

E. *Developed parcel* screening requirements: **[Added 8-2-2005 by Ord. No. 05-12** Editor's Note: This ordinance also renumbered former Subsections E and F as Subsections F and G, respectively. **]**

(1) A planted tree buffer at least 50 feet in width shall be installed between the developed portion of the parcel and any adjacent farm operation or tillable and pasture land and any public *road*.

(2) A qualified professional or licensed forester shall design the planting scheme for the buffer area in accordance with the following:

(a) For every 100 linear feet of buffer, the *developer* shall plant:

[1] Seven *canopy trees*.

[2] Fifteen *understory trees* or large shrubs; and

[3] Thirty small shrubs

(b) The buffer shall be planted according to sound *nursery* practices with the following specifications:

[1] The minimum required size of *canopy trees* at the time of planting shall be three-quarters-inch to one-inch *caliper* measured four inches above the root ball. *Understory* and evergreen *trees* shall be at least three feet tall at the time of planting.

[2] The *canopy tree* planting shall include at least four different species and trees must be expected to attain a height of at least 50 feet at maturity.

[3] Drought-resistant native trees and plants shall be used whenever feasible.

[4] Plants shall be *nursery* grown in accordance with good horticultural practices and grown under local climatic conditions.

[5] The State of Maryland's Noxious Weed Law must be adhered to during the planting and maintenance of the planted tree buffer.

[6] Plants shall be installed with intact root balls. Properly installed guy wires shall be provided for *canopy* and *understory trees* so that they stand plumb after planting. The trees shall bear the same relation to finished grade as they bore to grade at the *nursery* where grown.

[7] Planting soil (backfill mix) must be five parts topsoil and one part wet loose peat moss. All plants shall be well watered after installation.

[8] The installation shall be supervised by a qualified professional or licensed forester.

(c) A *performance guarantee*, secured by a bond, cash deposit or letter of credit from the developer, shall be provided, ensuring survival of the plantings for two years after installation.

(3) The *screening* provisions of this section may be used to meet the provisions of the Forest Conservation Act and may not be required when there is an existing mature forest located between the proposed *development* and any farm operation, tillable or

pasture land, and any public *road* provided that the mature forest is identified by a forest stand delineation and will be protected by a long-term protective agreement in accordance with the provisions of Chapter 18:2, Forest Conservation.

F. Resource protection land. Natural resources shall be protected at the required percentage on the *developed parcel* and *noncontiguous parcels*. **[Amended 9-7-2004 by Ord. No. 04-28]**

(1) Total resource protection land shall be calculated for the *developed parcel* and *noncontiguous parcel*, as if combined.

(2) Natural resources shall be protected at the required percentage on the *developed parcel* and *noncontiguous parcels*, as if combined.

G. *Noncontiguous parcel*.

(1) May be less than all of a *lot of record*, however, the area of the *noncontiguous parcel* used must be at least 40 *acres* in size or constitute at least 1/2 of the total area of the *lot of record*, whichever is less.

(2) Meets the following soils criteria as per the 1966 Soils Survey of Queen Anne's County: **[Amended 9-7-2004 by Ord. No. 04-29[**

(a) At least 50% of the land shall classify as Class I, II or III soils; or

(b) If the land is wooded, 50% of the land is classified as *woodland* Group 1 or 2; or

(c) If there is an insufficient percentage of Class I, II or III soils alone and there is an insufficient percentage of *woodland* Group 1 or 2 soils alone, the land must have a combination of the classifications that meets or exceeds 60%.

(3) Plats of the *noncontiguous parcel* must provide the location of all existing *buildings*.

(4) Upon approval of a *development plan*, the *noncontiguous parcel*:

(a) May not be subdivided or reconfigured;

(b) Shall be deemed *open space* and shall be limited to only those *uses* allowed pursuant to Column A of the *open space* table in § 18:1-12 of this Chapter 18:1; and

(c) Shall not be used in connection with any determination of *site area* or *density*, except as may be necessary in determining the amount of deed restricted *open space* required by the *development plan*.

§ 18:1-99. Requirements for approval; covenants.

A. Duties of *property owner*. In addition to any other requirements of this Chapter 18, including those relating to required improvements, guarantees and other *covenants*, a *property owner* involved in an application shall, prior to any approval of a *development plan*, provide *covenants* by which land required to remain in *open space* is restricted to the *uses* allowed in § 18:1-12 of this Chapter 18:1.

B. *Covenants*. The *covenants* shall conform to the requirements of Chapter 18:1, Part 7, Article XXVII.

Queen Anne's County, MD Zoning Ordinance

Queen Anne's County TDR Program

ARTICLE XX Transferable Development Rights

§ 18:1-100. Right of transfer.

A. In general. A *development* right of a *transferor parcel* may be transferred and used to increase *residential or nonresidential development* on a *receiving parcel* in accordance with the provisions of this article.

B. For approved *transfer* of *development* rights prior to the 1994 Zoning Ordinance Update refer to § 18:1-7G.

C. Limitations.

(1) A *development* right may not be used in any manner inconsistent with the provisions set forth in this subsection.

(2) A *development* right may not be used to increase residential *density* or nonresidential *floor area* or impervious area within the critical area unless the *development* right is derived from a portion of a *transferor parcel* that is located within the Critical Area Resource Conservation Area (RCA).

(3) The use of a *development* right may result in the reduction of natural resource protection land required under this Chapter 18:1 on the *receiving parcel*, provided that natural resources are protected on the combined parcels overall based on the requirements set forth in Chapter 18:1, Part 4, Article XI.

(4) A *development* right may not be used to increase *density* for *receiving parcels* located within the Critical Area Resource Conservation Area beyond the *density* allowed within the parcel's zoning district.

(5) TDRs used on *receiving parcels* within the CMPD and TC Districts must be derived from eligible *transferor parcels* located within the Fourth (Kent Island) Election District.

(6) TDRs used on *receiving parcels* within the Stevensville Growth Area must be derived from eligible *transferor parcels* located within the Fourth Election District of Queen Anne's County.

D. Intermediate *transfer*. Subject to the provisions of this section, a *development* right may be transferred to a *transferee* prior to the time when its *use* for a specific *receiving parcel* has been finally approved in accordance with this article.

§ 18:1-101. Effect of transfer.

A. After *development* rights have been transferred by an *original instrument of transfer*, the *transferor parcel*:

(1) May not be subdivided or reconfigured;

(2) Shall be deemed *open space* and shall be limited to only those *uses* allowed pursuant to Column A of the *open space* table in § 18:1-12 of this Chapter 18:1;

(3) May not be used in connection with any determination of *site area* or *site capacity*, except as may be necessary in determining the number of *development* rights involved in the *transfer*; and

(4) A *transferor parcel* must be at least 24 *acres* or 1/2 of the size of the *lot of record*, whichever is less, and meet the following soils criteria as per the 1966 Soils Survey of Queen Anne's County: **[Amended 9-7-2004 by Ord. No. 04-29]**

(a) At least 50% of the land shall classify as Class I, II or III soils; or

(b) If the land is wooded, 50% of the land is classified as *woodland* Group 1 or 2; or

(c) If there is an insufficient percentage of Class I, II or III soils alone and there is an insufficient percentage of *woodland* Group 1 or 2 soils alone, the land must have a combination of the classifications that meets or exceeds 60%.

(d) Plats of TDR parcels must provide the location of all existing *buildings*.

B. A *transferor parcel* within the *Chesapeake Bay Critical Area* shall be at least 20 *acres* in size; and

C. All *development* rights that are the subject of the *transfer*, and the value of such rights, shall be deemed for all other purposes, including assessment and taxation, to be appurtenant to the *transferor parcel,* until such rights have been finally approved for use on a specific *receiving parcel* and transferred to the *County Commissioners*.

§ 18:1-102. Certificate of Planning Director.

A. General requirement. A *transfer* may not be recognized under this article unless the *original instrument of transfer*:

(1) Contains a certificate of the *Planning Director* that the number of *development* rights that are the subject of the *transfer* represent the number of *development* rights applicable to the *transferor parcel*; and

(2) Is recorded by the *Planning Director* as provided in this article.

B. Responsibility. The *transferor* and the *transferee* named in an *original instrument of transfer* shall have sole responsibility to:

(1) Supply all information required by this section;

(2) Provide a proper *original instrument of transfer*; and

(3) Pay, in addition to any other fees required by this section, all costs of its recordation among the land records of the *County*.

C. Application for certificate. An application for a certificate shall:

(1) Contain information, prescribed by the Planning Director, as may be necessary to determine the number of *development* rights involved in the proposed *transfer*;

(2) Include five copies of a plat of the proposed *transferor parcel*, prepared by a registered land surveyor on the basis of an actual on-*site* survey; and

(3) Be accompanied by such fee as may be prescribed by the *County Commissioners*.

D. Issuance of certificate.

(1) On the basis of the information submitted, the *Planning Director* shall affix a certificate of the *Planning Director's* findings to the *original instrument of transfer*.

(2) The certificate shall contain a specific statement of the number of *development* rights that are derived from the *transfer parcel.*

E. Effect of determination. The determination of the *Planning Director* may not be construed to enlarge or otherwise affect in any manner the nature, character, and effect of a *transfer*, as set forth in § 18:1-100 of this Chapter 18:1.

§ 18:1-103. Instruments of transfer.

A. In general.

(1) An *instrument of transfer* shall conform to the requirements of this Chapter 18:1, Part 7, Article XXVII, relating to *covenants*.

(2) An *instrument of transfer*, other than an *original instrument of transfer*, need not contain a metes and bounds description or plat of the *transferor parcel*.

B. Contents. In addition to the provisions in Chapter 18:1, Part 7, Article XXVII, an *instrument of transfer* shall contain:

(1) The names of the *transferor* and the *transferee*;

(2) A *covenant* that the *transferor* grants and assigns to the *transferee* and the *transferee's* heirs, personal representatives, successors, and assigns a specified number of *development* rights from the *transferor parcel*;

(3) If the instrument is not an *original instrument of transfer*, a statement that the *transfer* is an intermediate *transfer* of rights derived from a *transferor*

parcel described in an *original instrument of transfer* (which original instrument shall be identified by its date, the names of the *original transferor* and *transferee*, and the book and page where it is recorded among the land records of the *County*);

(4) A specific statement of the number of *development* rights included within the *transfer*;

(5) A *covenant* by which the *transferor* acknowledges that the *transferor* has no further use or right of use with respect to the *development* rights being transferred;

(6) Except when *development* rights are being transferred to the County Commissioners in accordance with this article, a statement of the rights of the *transferee* prior to final approval of the use of those *development* rights on a specific *receiving parcel*, as provided in § 18:1-100 of this Chapter 18:1; and

(7) Either:

(a) A *covenant* that at the time when any *development* rights involved in the *transfer* are finally approved for use on a specific *receiving parcel* the rights shall be transferred to the *County Commissioners* for no consideration; or

(b) In cases when *development* rights are being transferred to the *County Commissioners* after approval, a *covenant* that the rights are being transferred to the *County Commissioners* for no consideration.

§ 18:1-104. Original instruments of transfer.

A. Contents of *original instrument of transfer*. In addition to fulfilling the requirements of § 18:1-103 of this Chapter 18:1, an *original instrument of transfer* shall also contain:

(1) A metes and bounds description of the *transferor parcel,* prepared by a licensed surveyor named in the instrument;

(2) A *covenant* that the *development* rights being permanently transferred represent all *development* rights with respect to the *transferor parcel* under the existing or any future zoning or similar ordinance regulating the use of land in the *County*;

(3) A *covenant* that the *transferor parcel* may not be subdivided or reconfigured;

(4) A *covenant* by which use of the *transferor parcel* is restricted to Column A of the *open space* table in § 18:1-12 of this Chapter 18:1;

(5) A *covenant* that all provisions of the *instrument of transfer* shall run with

and bind the *transferor parcel* and may be enforced by the *County Commissioners*; and

(6) The certificate of the *Planning Director* required by this article.

B. Recordation of original *transfer*.

(1) After it is properly executed, an *original instrument of transfer* shall be delivered to the *Planning Director*.

(2) The *Planning Director* shall:

(a) Deliver the *original instrument of transfer* to the *recorder of deeds*, together with the required fees for recording furnished by the *original transferor* and *transferee*; and

(b) Immediately notify the *original transferor* and *transferee* in writing of the recording.

§ 18:1-105. Application for use on receiving parcel.

A. Application. The owner of a proposed *receiving parcel* shall file with the *Planning Director* an application to use transferred *development* rights with respect to the *development* of the proposed *receiving parcel*.

B. Contents. The application shall:

(1) Contain information as may be prescribed by the *Planning Director*;

(2) Include five copies of a plat of the proposed *receiving parcel*, prepared by a registered land surveyor on the basis of an actual on-*site* survey;

(3) Be accompanied by such fee as may be prescribed by the *County Commissioners*; and

(4) Be accompanied by:

(a) Original or certified copies of a recorded *original instrument of transfer* involving the *development* rights proposed to be used and any intervening *instruments of transfer* through which the applicant became a *transferee* of those rights; or

(b) A signed, written agreement between the applicant and a proposed *original transferor* that contains the plat of a proposed *transferor parcel* and other information required by § 18:1-102 of this Chapter 18:1 and in which the proposed *transferor* agrees to execute an *original instrument of transfer* from the proposed *transferor parcel* to the applicant at the time when the *use* of such rights on the proposed *receiving parcel* is finally approved.

§ 18:1-106. Consideration of application for use.

A. Review of application. The *Planning Director* shall review the *instruments of transfer* or agreement submitted with the application and determine their sufficiency to fulfill the requirements of this article.

B. Determination. The *Planning Director* shall:

(1) Determine the number of *development* rights that are available for use under the terms of the instruments submitted with the application;

(2) Determine the number of *development* rights that this Chapter 18:1 allows to be used on the proposed *receiving parcel*; and

(3) Report the preliminary determination of the *Planning Director* in writing to the applicant within 30 days after all information necessary to make the determinations has been received.

C. Residential *density*, *open space*, and *net buildable area*.

(1) The following *density*, *open space*, and *net buildable area* standards shall be used in the application of residential TDRs for residential purposes.

(2) For purposes of cluster and *planned residential development* outside the critical area in the E, SE, SR, UR, VC, GNC, SHVC, GVC, TC, and CS Districts:

(a) The minimum required *open space* for the *receiving parcel* as determined in § 18:1-12 of this Chapter 18:1 may be decreased by a maximum of 25%;

(b) The maximum *density* allowed for the *receiving parcel* as determined in Article V of Part 3 of this Chapter 18:1 may be increased by a maximum of 25%; and

(c) The *net buildable area* for the *receiving parcel* as determined in § 18:1-12 of this Chapter 18:1 may be increased by a maximum of 25%; and;

(d) In the AG District, eight *acres* of land shall be permanently deed restricted as *open space* for each *development* right transferred from a *transferor parcel*; or

(e) In the CS District located outside of the critical area, five *acres* of land shall be permanently deed restricted as *open space* in accordance with § 18:1-12 of this Chapter 18:1 for each *development* right transferred from a *transferor parcel*.

(3) For purposes of cluster and *planned residential development* inside the critical area in the E, SE, SR, UR, VC, GNC, SHVC, GVC, and TC Districts:

(a) The minimum required *open space* for the *receiving parcel* as determined in § 18:1-12 of this Chapter 18:1 may be decreased by a maximum of 25%;

(b) The maximum *density* allowed for the *receiving parcel* as determined in Article V of Part 3 of this Chapter 18:1 may be increased by a maximum of 25%;

(c) The *net buildable area* for the *receiving parcel* as determined in § 18:1-12 of this Chapter 18:1 may be increased by a maximum of 25%; and

(d) In the CS District, 20 *acres* of critical area RCA land shall be permanently deed restricted as *open space* for each *development* right transferred from a *transferor parcel*.

(4) For purposes of cluster and *planned residential development* in the CS District located within the Critical Area Resource Conservation Area:

(a) The maximum *density* permitted for a *receiving parcel* may be increased to one *dwelling unit* per five *acres*;

(b) Twenty *acres* of RCA critical area land shall be permanently deed restricted as *open space* on the *transferor parcel* for each *development* right transferred from a *transferor parcel* in accordance with § 18:1-12 of this Chapter 18:1; and

(c) The *receiving parcel* shall maintain a minimum sixty-percent *open space* ratio, and the overall *open space ratio* for the *receiving parcel* and *transferor parcel* combined may not be less than 85%.

(5) For purposes of single-family large-lot, cluster, and *planned residential development* in the NC District located within the Critical Area Resource Conservation Area:

(a) The maximum *density* allowed for a *receiving parcel* shall be the base *density* as determined by the minimum *lot* size required for the district;

(b) Twenty *acres* of RCA critical area land shall be permanently deed restricted as *open space* on the *transferor parcel* for each *development* right transferred from a *transferor parcel* in accordance with § 18:1-12 of this Chapter 18:1; and

(c) For cluster and *planned residential developments* in the NC-5, NC-2, and NC-1 Districts, a minimum forty-percent *open space ratio* shall be maintained; in the NC-20, NC-15, and NC-8 Districts, a minimum thirty-percent *open space ratio* for the *receiving parcel* shall be maintained; and the overall *open space ratio* for the *receiving parcel* and *transferor parcel* combined may not be less than 85%.

(6) For the purposes of cluster and *planned residential development* in SMPD, CMPD, and GPRN Districts outside of the critical area:

(a) The maximum *density* allowed for the *receiving parcel* as

determined in Article V of Part 3 of this Chapter 18:1 may be increased by a maximum of 25%; and

(b) Eight *acres* of AG land shall be permanently deed restricted as *open space* for each *development* right transferred from a *transferor parcel*; or

(c) In the CS District located outside of the critical area, five *acres* of CS land shall be permanently deed restricted as *open space* in accordance with § 18:1-12 of this Chapter 18:1 for each *development* right transferred from a *transferor parcel*; and

(d) The *receiving parcel* shall maintain a minimum of twenty-five-percent *open space ratio*.

(7) For the purposes of cluster and *planned residential development* in SMPD, CMPD, and GPRN Districts inside the critical area:

(a) The maximum *density* allowed for the *receiving parcel* as determined in Article V of Part 3 of this Chapter 18:1 may be increased by a maximum of 25%;

(b) In the CS District, 20 *acres* of critical area RCA land shall be permanently deed restricted as *open space* for each *development* right transferred from a *transferor parcel*; and

(c) The *receiving parcel* shall maintain a minimum of twenty-five-percent *open space ratio*.

D. Nonresidential intensity and *floor area*.

(1) The following intensity and *floor area* standards shall be used in the *transfer* of *development* rights for nonresidential purposes.

(2) For purposes of *nonresidential development* in the VC, TC, SC, UC, and SI Districts and in the same zoning districts with a critical area (IDA) designation:

(a) The maximum *floor area* allowed for the *receiving parcel* as determined in Article V of Part 3 of this Chapter 18:1 may be increased by a maximum of 25%;

(b) The maximum impervious area allowed for the *receiving parcel* as determined in Article V of Part 3 of this Chapter 18:1 may be increased by a maximum of 25%.

(3) In the AG District, eight *acres* of land shall be permanently deed restricted as *open space* for each 200 square feet of floor area and 500 square feet of impervious area *transfer*red to the *receiving parcel*.

(4) In the CS District located within the Critical Area Resource Conservation Area, 20 *acres* of land shall be permanently deed restricted as *open space*, in accordance with § 18:1-12 of this Chapter 18:1, for each 1,000

square feet of *floor area* and 2,500 square feet of impervious area transferred to the *receiving parcel*.

(5) In the CS District located outside of the critical area, five *acres* of land shall be permanently deed restricted as *open space*, in accordance with § 18:1-12 of this Chapter 18:1, for each 200 square feet of *floor area* and 500 square feet of impervious area transferred to the *receiving parcel*.

E. Effect. Any determination of the Planning Director under this section:

(1) Is not final; and

(2) Shall be subject to *amendment*, modification, or rescission until the time when the *transfer* is final in accordance with § 18:1-107 of this Chapter 18:1.

§ 18:1-107. Final approval of use.

A. When final. *Transfer* from a *transferor parcel* to a *receiving parcel* is final at the time when:

(1) Final *subdivision* approval or final *site plan* approval with respect to the *receiving parcel*, based upon *use* of *development* rights, has been given in accordance with Part 7 of this Chapter 18:1; and

(2) All *development* rights upon which such approval was based have been transferred to the *County Commissioners* as provided in Subsection B of this section.

B. Required instruments. Final approval may not be given to any *site plan* or *subdivision* plan that involves the use of *development* rights transferred under the provisions of this article until satisfactory evidence is presented that such of the following instruments as may be required to effect *transfer* of those rights to the *County Commissioners* have been approved as to form and legal sufficiency by the attorney to the *Planning Commission* and recorded among the land records of the *County*:

(1) An *original instrument of transfer* to a *transferee*, other than the *County Commissioners*;

(2) An *instrument of transfer* to the owner of the *receiving parcel*;

(3) *Instrument(s) of transfer* between any intervening *transferees*; and

(4) An *instrument of transfer* from the owner of the *receiving parcel* to the *County Commissioners*.

Montgomery County, MD Agriculture Land Preservation Zoning Ordinance

Montgomery County TDR Ordinance Provisions

Chapter 2B. Agricultural Land Preservation. [Note]

Article I. General Provisions.

§ 2B-1. Definitions.

§ 2B-2. Agricultural preservation advisory board; establishment; membership; terms of office; duties and responsibilities.

§ 2B-3. State agricultural districts; procedures for establishment.

§ 2B-4. Activities and land uses permitted in state districts.

§ 2B-5. Agricultural easements.

§ 2B-6. Termination of state easements.

Article II. Purchase of Easements by the County.

§ 2B-7. Eligible land.

§ 2B-8. Approval of county agricultural districts.

§ 2B-9. Procedures to establish a county agricultural district.

§ 2B-10. Procedures to terminate a county agricultural district.

§ 2B-11. Use of land in a county agricultural district.

§ 2B-12. Purchase and value of easements.

§ 2B-13. Termination and repurchase of easements.

§ 2B-14. Right to sell.

§ 2B-15. Public access.

§ 2B-16. Easements on county-owned farmland.

§ 2B-17. Recordation.

§ 2B-18. Executive regulations.

§ 2B-19. Administration and conflict.

Article I. General Provisions.

Sec. 2B-1. Definitions.

(a) In this chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

Agricultural board: The agricultural preservation advisory board.

Agriculture: The science or art of cultivating and managing the soil, growing and harvesting crops and other plants, forestry, horticulture, hydroponics, breeding or raising livestock, poultry, fish, game, and furbearing animals, dairying, beekeeping, similar activities, and primary processing on the farm of an agricultural product in the course of preparing it for market. This may or may not cause a change in the natural form or state of the product, but it does not entail operations of a commercial or industrial character that must be regulated so as to preclude adverse external impacts.

County agricultural district: An agricultural district that the council approves.

Easement: A covenant running with the land which limits the use permitted on the property to agricultural and other uses as specified in this chapter.

Foundation: The Maryland Agricultural Preservation Foundation.

Fund: The county agricultural land preservation fund.

Landowner: A person or corporation owning or having an interest in land situated within a state or county agricultural district or proposed to be so situated.

Planning board: The county planning board for Montgomery County.

Productive agricultural land: Land determined to be eligible to be included in a state agricultural district in accordance with regulations promulgated by the foundation.

State agricultural district: An agricultural district established under subtitle 5 of title 2 of the Agricultural Article of the Annotated Code of Maryland.

(b) In this chapter, the following words and phrases have the meanings set forth in subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland:

(1) Allocated purchases;

(2) County;

(3) Eligible county;

(4) General purchases of easements;

(5) Matching purchases of easements; and

(6) Total amount to be allotted. (1980 L.M.C., ch. 57, § 1; 1988 L.M.C., ch. 30, § 1.)

Sec. 2B-2. Agricultural preservation advisory board; establishment; membership; terms of office; duties and responsibilities.

(a) *Generally.* The agricultural preservation advisory board operates under state law to perform the duties and responsibilities set forth below.

(b) *Composition.* The agricultural board consists of five (5) members appointed by the county executive and confirmed by the county council. Three (3) must be owner-operators of commercial farm land earning fifty (50) percent or more of their income from farming. All members of the agricultural board must be residents of Montgomery County.

(c) *Terms of office.* The original members must be appointed as follows: One (1) member must be appointed to a term of three (3) years; two (2) members must be appointed to terms of four (4) years; and two (2) members must be appointed to terms of five (5) years. Thereafter, the terms of office are for five (5) years. A member may not serve more than two (2) successive full terms. Appointment to a vacancy must be for the remainder of the unexpired term. Members must not be compensated for their services, but may be reimbursed for necessary expenses.

(d) *Duties and responsibilities.* The agricultural board is assigned the following duties and responsibilities as provided under subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland:

(1) To advise the county governing body with respect to the establishment of state and county agricultural districts and the approval of purchases of easements by the foundation within the county;

(2) To assist the county governing body in reviewing the status of state and county agricultural districts and land under easement;

(3) To advise the foundation concerning county priorities for agricultural preservation;

(4) To promote preservation of agriculture within the county by offering information and assistance to farmers with respect to establishment of state and county agricultural districts and purchase of easements; and

(5) In addition to those duties prescribed by state law, the board should:

a. Delineate areas of productive agricultural land in the county.

b. Recommend to the county executive procedures for mediation or arbitration of disputes as to values of easements being considered for purchase by the county.

c. Review and make recommendations to the governing body on regulations proposed for state and county agricultural districts, and perform other duties as may be assigned by the county council or county executive.

d. Prepare and/or review recommendations to the governing body with regard to county policies and programs for agricultural preservation.

e. Cooperate with the planning board, the cooperative extension service and the soil conservation district in carrying out its responsibilities. (1980 L.M.C., ch. 57, § 1; 1988 L.M.C., ch. 30, § 1.)

Cross reference-Boards and commissions generally, § 2-141 et seq.

Sec. 2B-3. State agricultural districts; procedures for establishment.

(a) The procedures provided under subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland must be followed with regard to the review of petitions to establish state agricultural districts and the recommendation of the county council to the foundation. The recommendation of the council to the foundation must be by resolution.

(b) Other agricultural land may be added to a state agricultural district provided the owner applies for the land to be included, the state district meets acreage requirements without inclusion of such land, and each parcel is at least five (5) acres.

(c) State districts may be established within the ten-year water and sewerage envelope of Montgomery County only if the land is outstanding in productivity and is of significant size. (1980 L.M.C., ch. 57, § 1; 1988 L.M.C., ch. 30, § 1.)

Sec. 2B-4. Activities and land uses permitted in state districts.

(a) *Permitted uses.* Notwithstanding any other provisions of this Code, the following activities are permitted in districts in conformance with the county policy that agriculture be the preferred land use in districts:

(1) Any agricultural use of land.

(2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products.

(3) All normal agricultural operations performed in accordance with good husbandry practices which do not cause bodily injury or directly endanger human health.

(4) Sale of farm products produced on the farm where such sales are made.

(b) *Land uses not permitted in districts.*

(1) Subdivision or use for residential, commercial or industrial purposes is not permitted within agricultural districts; provided, however, upon written application to the foundation, conveyance of one (1) acre for the landowner and one (1) acre for each child of the person owning the land at the time the land enters into a district shall be permitted for the construction of the principal residence for the grantee or child and does not constitute residential subdivision for commercial purposes. A landowner within a district may also construct housing for tenants fully engaged in operation of the farm; provided that, in no case shall the average density of tenant housing exceed one (1) house for each one hundred (100) acres of land in the farm.

(2) Public access or use is not granted by virtue of purchase of an easement by the foundation or the county unless specifically provided for in the easement contract.

(3) Condemnation of any land within a district for public use shall not occur unless other reasonable alternatives do not exist.

(c) *Enforcement of regulations.*

(1) The Department of Permitting Services enforces this Chapter and any regulations adopted to implement this Chapter.

(2) If, in the enforcement of regulations adopted pursuant to this Chapter, conflict occurs between County laws or regulations concerned with land use, economic activity, noise and environmental controls and regulations adopted pursuant to this Chapter, the agricultural district regulations shall supersede such other conflicting regulations.

(d) *Appeals.* An aggrieved individual may file an appeal to the County Board of Appeals within 30 days after a decision of the Director of Permitting Services made under this Section. (1980 L.M.C., ch. 57, § 1; 1988 L.M.C., ch. 30, § 1; 1993 L.M.C., ch. 20, § 1; 1996 L.M.C., ch. 20, § 1; 1998 L.M.C., ch. 12, § 1; 2001 L.M.C., ch. 14, § 1; 2002 L.M.C., ch. 16, § 2.)

Sec. 2B-5. Agricultural easements.

(a) *Purchase of easements by the foundation.*

(1) The purchase of easements by the state of either general or matching allotted purchases is governed by subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland.

(2) Agricultural easements must be recorded in the land records of the county; provided, that recordation of an agricultural easement is not subject to any local transfer tax.

(b) *Additional county payment.* If the foundation purchases an easement on land in a state agricultural district, the county may make an additional payment to the landowner of up to fifteen (15) percent of the price of the easement. The county executive must annually establish the percentage used to determine the payment. (1980 L.M.C., ch. 57, § 1; 1984 L.M.C., ch. 24, § 5; 1988 L.M.C., ch. 30, § 1.)

Sec. 2B-6. Termination of state easements.

Termination of easements purchased in full or in part with state funds must comply with subtitle 5 of title 2 of the Agriculture Article of the Annotated Code of Maryland. (1980 L.M.C., ch. 57, § 1; 1988 L.M.C., ch. 30, § 1.)

Article II. Purchase of Easements by the County.

Sec. 2B-7. Eligible land.

(a) The county may purchase an easement under this article on land:

(1) Without establishment of a county agricultural district if it is zoned Rural, Rural Density Transfer, or Rural Cluster; or

(2) That is in a county or state agricultural district.

(b) The county may not purchase an easement under this article on land on which further development is already precluded.

(c) An owner of land subject to a county easement under this article that is not located in a county agricultural district has the same rights and is subject to the same restrictions as an owner of land located in a county agricultural district. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-8. Approval of county agricultural districts.

(a) Land in a county district must:

(1) Include at least fifty (50) contiguous acres;

(2) Meet USDA soil classification standards I--III or woodland classifications 1 and 2 on at least fifty (50) percent of the acreage; and

(3) Lie outside water and sewer categories 1, 2, and 3. However, the council may establish a county district that includes other land if the council decides it has significant agricultural value and, after considering the recommendation of the master plan for the area, determines that it is in the public interest to establish the county district.

(b) The council may establish conditions to its approval of a county district that it considers in the public interest. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-9. Procedures to establish a county agricultural district.

(a) The council may establish by resolution one (1) or more county agricultural districts.

(b) At the request of an owner of agricultural land, the agricultural board may recommend that the council establish a county agricultural district or include the owner's land in a county agricultural district.

(c) Upon receipt of a request from an owner to establish a county district, the agricultural board must notify any adjacent property owner of the request and of applicable approval procedures. An adjacent property owner must be notified, in writing, of any public hearing on the request.

(d) Within sixty (60) days after receiving a request, the agricultural board must forward a written recommendation to the council. This recommendation may be to:

(1) Approve;

(2) Deny; or

(3) Recommend modification of the request.

(e) Upon receipt of a request of an owner to establish a county district, the agricultural board immediately must forward a copy of that request to the planning board for review. The planning board must submit written comments to the council within thirty (30) days after receiving the agricultural board's recommendation on the request. The planning board's period for comment may be extended for up to fifteen (15) days.

(f) Within sixty (60) days after receiving comments from the planning board, the council must act on the request.

(g) (1) After receiving the recommendations, the council must hold a public hearing on the request unless it waives this requirement.

(2) The council may extend the period of action by up to one hundred twenty (120) days.

(3) If the council takes no action within the applicable time period, the request is denied.

(h) The council may not include a landowner's property in a county district without the landowner's consent. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-10. Procedures to terminate a county agricultural district.

A landowner may withdraw from a county district by giving notification in writing to the agricultural board and the county council:

(a) No earlier than five (5) years from the date the council includes the owner's land in the district; or

(b) After the county has rejected the purchase of an easement on the landowner's property.

In a county district that contains land from more than one (1) landowner, if a landowner's withdrawal from the district causes the district no longer to meet requirements for a county district, the council may reevaluate the district after receiving the recommendations of the agricultural board and the planning board. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-11. Use of land in a county agricultural district.

(a) Except as prohibited by the zoning ordinance, these activities are permitted in a county district:

(1) Any agricultural use of land;

(2) Operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;

(3) All normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health; and

(4) Operation of a wayside stand for sale of farm products.

(b) Subsection (a) does not alter the special exceptions applicable to the zone in which the county district is located under the zoning ordinance.

(c) A person who owns land that the council has included in a county district must not use or subdivide the land for residential, commercial, or industrial uses. However, a grantor may use no more than:

(1) One (1) acre, or the minimum lot size required by the zoning and health regulations, whichever is greater, to build a house for use by the grantor;

(2) One (1) acre, or the minimum lot size required, whichever is greater, to a maximum density of not more than one (1) house per twenty-five (25) acres for each house built, to be occupied by an adult child of the grantor, to a maximum of ten (10) children; and

(3) The acreage needed to construct housing for tenants fully engaged in the operations of the farm, not to exceed one (1) tenant house per one hundred (100) acres. The owner or the owner's child must not further subdivide the parcel on which the house is built. The land on which a tenant house is constructed must not be subdivided or conveyed to any person. The tenant house must not be conveyed separately from the original parcel. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-12. Purchase and value of easements.

(a) The county agricultural land preservation fund is created as a special, nonlapsing revolving fund for agricultural land preservation purposes. It consists of:

(1) The county's share of the state agricultural transfer tax;

(2) Easement repurchases and reimbursements; and

(3) Any other available monies for the purchase of easements under this article.

(b) Monies from the county's share of the state agricultural transfer tax and any revolving funds must be used for the purposes of this chapter before the expenditure of any other funds.

(c) The county may purchase an easement on real property to preserve agricultural land in the county. To purchase an easement, the county may use:

(1) Negotiations;

(2) Competitive bidding; or

(3) Any other method that is fair and equitable to the owners of agricultural land.

(d) The purchase price may be based on an appraisal or any other evidence of value of the easement that the county is receiving.

(e) Priority for purchasing easements should be based on:

(1) Price;

(2) Whether the land is designated in the master plan as agricultural;

(3) Whether the land borders a municipality or other developing area; and

(4) Other factors the county executive determines are needed to preserve agricultural land.

(f) The county may, in writing, agree to purchase an easement subject to the condition that an owner;

(1) Make a good-faith application to the foundation for the purchase of an easement by the state; and

(2) Accept any foundation offer if its price is equal to or higher than the agreed county price.

If the foundation does not agree to purchase an easement subject to a conditional agreement under this subsection, the county must purchase it at the agreed price and may make an additional payment to an owner whose application has been rejected by the foundation in order to compensate for any delay in the state application process that is beyond the control of the applicant. This additional payment should be determined based on an appropriate inflation index, the rate of return, or other relevant factors.

(g) Consistent with this article, the county may establish appropriate terms and conditions for any agreement to purchase an easement or the easement itself. The county may limit the right of the grantor or any successor in interest to apply for a special exception that is inconsistent with the purpose of this article.

(h) In addition to its authority to purchase easements under this article, the county may accept the donation of an easement or other interest in property for agricultural land preservation purposes. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-13. Termination and repurchase of easements.

(a) (1) Not earlier than twenty-five (25) years after the county has purchased an easement, an owner may, in writing, ask the county to terminate the easement. Termination may be requested earlier only if the district council zones the land subject to easement in a manner that precludes agricultural uses as a matter of right.

(2) The council must hold a public hearing within ninety (90) days after receiving a request to terminate an easement unless it waives that requirement. The

council must request the advice of the agricultural board and the planning board and notify all people who own land adjacent to the land on which the easement is located.

(3) Within one hundred eighty (180) days after receiving a request to terminate an easement, the council must decide whether to terminate the easement. The council may extend the time for this decision by not more than ninety (90) days.

(4) Before granting the request, the council must find that the land is no longer suitable for agriculture and that the public interest would be best served by terminating the easement.

(5) Within one hundred eighty (180) days after the council agrees to terminate the easement, an owner may repurchase the easement by paying to the fund the difference between the fair market value and the agricultural value of the land, as determined by an appraisal.

(b) If land under easement is purchased or condemned by the county for park or other nonagricultural uses, the county must transmit funds equal to the present value of the easement to the fund.

(c) An owner who builds a house under section 2B-11(b) of this article must reimburse the fund the pro rata amount that the county paid for the easement on that land. (1988 L.M.C., ch. 30, § 1.)

Editor's note—See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion dated 10/2/90 explaining that, without a main dwelling or a transferable development right to support it, no farm-tenant house may be constructed.

Sec. 2B-14. Right to sell.

This article does not restrict the right of an owner to sell land located in a county agricultural district or land on which the county holds an easement. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-15. Public access.

Purchase of an easement by the county does not create a right of public access to the land unless the easement contract specifically provides for public access. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-16. Easements on county-owned farmland.

(a) Productive agricultural lands sold by the county must be sold with an easement attached where the easement is consistent with the general plan of Montgomery County as amended by applicable master plan.

(b) Productive agricultural lands purchased by the county in pursuit of farmland preservation goals may be resold only for private agricultural uses and subject to an easement. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-17. Recordation.

The county must record an easement in the land records of the county. The recordation of an easement is not subject to any county transfer or recordation tax. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-18. Executive regulations.

(a) Within four (4) months after this article becomes effective, the county executive must adopt regulations under method (1) to implement this article.

(b) The regulations must include:

(1) Method of easement valuation;

(2) Method of purchasing easements;

(3) Terms of payment for easements; and

(4) Method of ranking offers to sell easements. (1988 L.M.C., ch. 30, § 1.)

Sec. 2B-19. Administration and conflict.

(a) The funds to administer any agricultural land preservation program may be paid from the fund and any other monies the Council appropriates.

(b) The Department of Economic Development must administer this Article and the regulations under it.

(c) The Department of Economic Development must issue a public annual report on this program.

(d) (1) If a conflict occurs between the provisions of this Article and County laws on economic activity, noise, or environmental controls, this Article supersedes the conflicting laws.

(2) If a conflict occurs between the enforcement of regulations adopted under this Article and County regulations on economic activity, noise, or environmental

controls, the regulations adopted under this Article supersede the conflicting regulations. (1988 L.M.C., ch. 30, § 1; 1996 L.M.C., ch. 14, § 1.)

Endnotes

[Note] *Cross reference-Transfer of development rights for agricultural preservation, § 59-A-6.1.

59-C-1.33. Transferable development rights zones.

(a) **Location.** No land shall be classified in any of the transferable development rights zones unless recommended on an approved and adopted master plan or sector plan.

59-C-1.331. Methods of Development. The following 2 methods of development are possible in each of the TDR zones:

(a) **Standard method of development.** Development under the standard method for TDR zones must comply with the requirements for development and density limitations contained in the corresponding zones as identified in section 59-C-1.332. In addition, standard method development may be approved under either the cluster development procedures of section 59-C-1.5 or the procedures for development including moderately priced dwelling units, as contained in section 59-C-1.6, if the property satisfies the minimum requirements for these development options.

(b) **Optional method of development.** Under the optional method of development for the TDR zones, greater densities may be permitted up to the maximum density established in the development standards of section 59-C-1.332 of the zone, but development must also conform to the special regulations for optional method developments using transferable development rights as contained in section 59-C-1.39.

The special regulations require compliance with the density, numerical limitations, and other guidelines contained in the applicable master plan approved by the district council.

	RE-2/TDR	RE-2C/ TDR	RE-1/TDR	R-200/ TDR	R-150/ TDR	R-90/TDR	R-60/TDR
59-C-1.332. Development Standards- Transferable Development Rights Zone:							
(a) Land uses. Uses allowed in the TDR zones are those uses allowed in the following zones:	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60
The optional method of development allows more residential uses. See subsection 59-C-1.395, chart.							
(b) Development standards- Standard method:							
Density limitations for cluster development (section 59-C-1.5) or MPDU development (section 59-C-1.6), applicable to the following zones, apply to similar development in the standard method TDR zones:	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60
All other development standards must be in accord with the development standards applicable to the following zones:	RE-2	RE-2C	RE-1	R-200	R-150	R-90	R-60
(c) Development standards- Optional method:							
-Maximum density of development (maximum number of dwellings per acre)	4	2	2	11	6	28	28
-All other development standards as specified in the special regulation provision of section 59-C-1.39.							

59-C-1.34. Existing buildings and building permits.

(a) Any building or structure for which a building permit was issued, and any lawful use which was instituted on property reclassified to the RE-2, RE-2C or RE-1 zone prior to the date of enactment of the last approved sectional zoning map amendment, where such lot was rezoned to the RE-2, RE-2C or RE-1 zone by sectional map amendment, shall not be regarded as a nonconforming use. Such building or use may be structurally altered, replaced or repaired, or may be enlarged in conformance with the requirements of the previous zone, so long as it remains an otherwise lawful use as previously allowed.

(b) Construction pursuant to a building permit validly issued and subsisting at the time of reclassification of the property to which it applies to the RE-2, RE-2C or RE-1 zone shall be permitted, provided all necessary excavation and piers and/or footings of one or more buildings covered by the permit are completed not more than 6 months subsequent to such reclassification. Buildings and structures so constructed shall not be considered nonconforming.

59-C-1.34.1. Lots fronting on private cul-de-sacs in RE-2 zone.

In the RE-2 zone, lots may front on a private cul-de-sac if the planning board finds, as part of the subdivision plan approval process, that the private cul-de-sac:

1. Provides safe and adequate access;

2. Has sufficient width to accommodate the dwelling units proposed;

3. Will better protect significant environmental features on and off site than would a public road; and

4. Has proper drainage.

Each private cul-de-sac must comply with the requirements of section 59-C-7.235 of the Zoning Ordinance and section 50-25(h) of the Subdivision Regulations pertaining to private roads. A subdivision with lots fronting on a private cul-de-sac may also be required to comply with the site plan review provisions of division 59-D-3.

59-C-1.35. Special regulations-R-fourplex zone.

59-C-1.351. Intent and Purpose. The purpose of the R-fourplex zone is to provide a better method of utilization of land for housing in all price ranges within reasonable walking distance of employment, shopping centers and public transportation while providing for compatibility with existing residential neighborhoods. In order to provide for compatibility with existing residential neighborhoods, the site plan review procedure shall include consideration of the degree to which fourplex development is harmonious in style, similarity, bulk and height with residential buildings on adjoining land. It is also the intent that fourplexes not be arranged in a row, facing in the same direction. In order to enable the council to evaluate the accomplishment of the purposes set forth herein, a special set of plans is required for each fourplex zone, and the district council is

empowered to approve such plans if they find them to be capable of accomplishing the above purposes and in compliance with the requirements of this zone.

59-C-1.352. Location. No application for the R-fourplex zone shall be granted unless the following conditions are satisfied:

(a) At least 50 percent of the land lies within 1,500 feet of:

(1)land zoned C-0, C-1, C-2, C-3, I-1, I-2, or R-CBD; or

(2)a central business district; or

(3)a subway station of the approved regional metro system or a bus route of a system established by the Washington Metropolitan Area Transit Authority or the county.

(b) The land is served by public water and sewer.

(c) The land has a frontage of more than 100 feet on a road of arterial or higher classification.

59-C-1.353. Streets. Interior streets which are not publicly dedicated shall be improved to the same standards as public streets.

59-C-1.36. Special regulations-RE-2 zone.

In addition to the special exception uses listed in subsection 59-C-1.31 the board of appeals may authorize, subject to the requirements of article 59-G, the continuation and expansion, including expansion on adjacent land, of any special exception that was lawfully existing in the RE-2 zone prior to October 2, 1973, except that airports, airparks, and airfields shall not be permitted to expand.

59-C-1.37. Special regulations-Mobile homes.

59-C-1.371. Intent and Purpose. The purpose of this section is to provide for the continued use of mobile homes, under certain conditions, which have hitherto existed in violation of existing zoning provisions. Continued use of such mobile homes is necessary and in the public interest and welfare due to the scarcity of low and moderate cost housing.

59-C-1.372. Continuation in Present Locations. One-family mobile homes certified by the Department of Permitting Services or the Department of Housing and Community Affairs to have been installed on their sites as of August 15, 1978, may legally be retained on their sites as long as they conform to all County housing and building codes. The units may be repaired, reconstructed or replaced as needed to conform to these codes. The units may continue to be located on sites not in conformance with the minimum lot size and density of the zones in which they are located only while the land remains in the

same ownership as on August 15, 1978. After August 15, 1978 a lot in a one-family zone or in the rural zone must not contain more than one dwelling unit per lot of the appropriate minimum size after the owner of record on August 15, 1978 sells or otherwise transfers ownership of the lot unless a lot of less than the minimum size for the zone has been created for use as a one-family residence for a person for whom the property owner is legal guardian, or the parent, child or the spouse of a child of the property owner of record on August 15, 1978, in the following manner:

(a) Such lot is recorded on or before July 1, 1981; and

(b) One lot only has been created for each mobile home certified by the Department of Permitting Services or the Department of Housing and Community Affairs to have been in place on the property on August 15, 1978; and

(c) Such lot shall have a minimum area of 10,000 square feet. A lot created for a one-family residence or a single residence thereon, pursuant to this section, shall not be deemed to be a nonconforming use. Nothing in this section shall be held to contradict Section 59-C-9.3.

59-C-1.37.1 Special regulations-Life sciences center.

(a) All uses shown on the development plan for the life sciences center are permitted in the R-200 zone subject to the approval of a site plan by the planning board in accordance with the procedures contained in division 59-D-3. At the time of site plan review, the following additional requirements must be met:

(1) An adequate public facilities test, as specified in section 50-35 of the subdivision regulations, is be required to demonstrate that existing and/or planned facilities are adequate to support and service a proposed use. The adequate public facilities test may occur prior to site plan review under either of the following circumstances:

A. If a preliminary subdivision plan is submitted prior to submission of a site plan; or

B. If the county executive submits a concept plan for a site to the planning board for review. The planning board must specify a time limit for the submission of a site plan without additional adequate public facilities test.

(b) The special regulations of this section do not apply to life sciences center uses that have a signed lease agreement or a memorandum of understanding with the county dated prior to June 30, 1984.

(c) For property that does not require the submission and approval of a preliminary plan and/or record plat, a site plan approved for the property will be valid for 36 months

from the initiation date of the site plan. Commencement of construction must occur within the validity period.

59-C-1.38. RMH-200 zone.

59-C-1.381. Purpose. The purpose of the residential mobile home option zone is to provide for the coordinated development of residential mobile home areas at appropriate locations in the regional district by permitting the residential use of mobile homes or conventionally constructed homes. Concentrated development of mobile homes or the development of mobile homes on individual parcels in excess of 5 acres would be inconsistent with the purpose of this zone. Parcels in excess of 5 acres would only be appropriate for development in the RMH-200 zone if such use is recommended on an approved and adopted master or sector plan or other form of comprehensive study approved or otherwise deemed sufficient by the district council.

59-C-1.382. Reclassification. Map amendment applications for rezoning to the RMH-200 zone are limited to parcels of 5 acres or less in size unless such parcels are recommended for the RMH-200 zone in an approved and adopted master or sector plan or other form of comprehensive study approved or otherwise deemed sufficient by the district council.

59-C-1.39. Special regulations for optional method development using transferable development rights.

59-C-1.391. Applicability. The following procedures and regulations apply to the transfer of development rights from land classified in the rural density transfer zone (RDT) to land classified in the transferable development rights (TDR) zones. The planning board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable TDR zone and conforming to the guidelines contained in the applicable master plan approved by the district council. Any increase in density above the density applicable to the standard method of development must be based on a ratio of one single-family dwelling unit for each transferable development right (TDR), and 2 multi-family dwelling units for each transferable development right (TDR).

59-C-1.392. General Provisions.

(a) A development right shall be created, transferred and extinguished only by means of documents, including an easement and appropriate releases, in a recordable form approved by the planning board. The easement shall limit the future construction of one-family dwellings on a property in the RDT zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this section, the number of development rights to be transferred by the instant transaction, and the number of existing one-family detached dwellings on the property.

(b) The transfer of development rights shall be recorded among the land records of Montgomery County, Maryland.

(c) The development density of a property under the TDR optional method may not be increased above the maximum density permitted in the zone (section 59-C-1.332(c)) nor beyond the density or number of dwelling units recommended for such property by the land use plan of the applicable master plan approved by the district council.

(d) A property developed with the transfer of development rights shall conform to the requirements of chapter 25A of the Montgomery County Code requiring MPDU's. The applicability of chapter 25A and the MPDU density increase provided by section 59-C-1.6 shall be calculated after the base density of a property has been increased by a transfer of development rights. The density increase provided by section 59-C-1.6 may be made without the acquisition of additional development rights.

59-C-1.393. Development Approval Procedures Under the Optional Method of Development.

(a) A request to utilize development rights on a property under the optional method must be in the form of a preliminary subdivision plan submitted in accordance with the subdivision regulations contained in chapter 50 of the County Code.

(b) Such a preliminary plan must include at least two-thirds of the number of development rights permitted to be transferred to the property under the provisions of the applicable master plan approved by the district council. However, upon a finding by the planning board that for environmental or compatibility reasons it would be desirable to permit a lower density, the two-thirds requirement may be waived.

(c) A site plan shall be submitted and approved in accordance with the provisions of division 59-D-3.

(d) The planning board must approve a request to utilize development rights if the request:

(1) Does not exceed the limitation on the density or number of dwelling units permitted in the zone and in the applicable master plan approved by the district council;

(2) Is in accordance with the provisions of this chapter;

(3) Is in accordance with chapter 50, title "Subdivision of Land;"

(4) Is consistent with other recommendations of the master plan approved by the district council; and

(5) Achieves a desirable development compatible with both site conditions and surrounding existing and future development.

(e) Prior to recordation of a final record plat for a subdivision using transferred development rights, an easement to the Montgomery County Government in the form required by Section 59-C-1.392(a) limiting future construction of dwellings on a property in the RDT zone by the number of development rights received must be recorded among the land records of Montgomery County, Maryland.

(f) A final record plat for a subdivision using transferred development rights shall contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance required by Section 59-C-1.392(b).

59-C-1.394. Development Standards Applicable to the Optional Method of Development.

(a) Development under the TDR optional method density provisions of section 59- C-1.332(c) must conform to the development standards and permitted residential uses as indicated in section 59-C-1.395.

(b) For TDR densities of 3 or more per acre, the lot sizes and other development standards will be determined at the time of preliminary plan and site plan for conformance with applicable master plan guidelines and in accordance with the purposes and provisions of the PD zone, except as may be specified in section 59-C-1.395.

(c) The compatibility requirements of Section 59-C-7.15(b) may be waived by the Planning Board upon a finding that: 1) the immediately adjoining property is recommended for institutional use on the approved and adopted master or sector plan; and 2) the immediately adjoining property will not be adversely affected by the waiver for present or future use. Under the waiver, the Board may not permit any building other than a one-family detached residence to be constructed within 25 feet of adjoining land for which the area master plan recommends a one-family detached zone.

(d) The final density achieved for any property located in a TDR receiving area developed under the optional method procedures must be determined by the planning board at site plan and/or subdivision review and must conform to the site plan provisions (division 59-D-3 of the zoning ordinance) and subdivision regulations (chapter 50 of the Montgomery County Code).

(e) In making this determination as to the final density, the planning board will consider whether a proposed plan has the flexibility in design to provide an appropriate range of housing types, taking advantage of existing topography and other natural features, to achieve a mutually compatible relationship between the proposed residential development and adjoining land uses, while implementing the area master plan approved by the district council.

59-C-1.395. Special provisions for TDR developments. The following development standards for the development of a property under the optional method apply to the TDR density shown on the master plan for that area. Where moderately priced dwelling units are included in accordance with the requirements of chapter 25A of this Code, as amended, the MPDU development standards apply. The increase in density must not exceed 22 percent of the TDR density.

TDR Density per Acre Shown on Master Plan		***Development Standards and Permitted Residential Uses***			
		Without MPDU's		With MPDU's	
1		RE-1, RE-1 cluster		Not applicable	
2		R-200, R-200 cluster, R-150		R-200 MPDU	
		Minimum (Maximum) percentage required[1]			
TDR Density per Acre Shown on Master Plan	Size of Development[3]	***One-Family Detached***	One-Family Townhouse and Attached	Multiple Family[2] ***Four-Story or Less***[4]	***Green Area***
3-5	Less than 800 dwelling units	30[6]	P	NP	35
3-5	800 dwelling units or more	30[6]	P	P(20)	35
6-10		15	P	P(35)	40
11-15	Less than 200 dwelling units	P	P	P	50
11-15	200 dwelling units or more	P	P	35(60)	50
16-28	less than 200 units	P	P	P[5]	50
16-28	200 dwelling units or more	P	P	25[5]	50

P Permitted but not required.

( ) Maximum percentage permitted.

1 Upon a finding by the planning board that a proposed development is more desirable for environmental reasons or is more compatible with adjacent development than that which would result from adherence to these standards, the percentage requirements for one-family and multiple-family stated herein may be waived.

2 Permitted only where specifically recommended as a unit type in the area master or sector plan for the receiving area. In any instance where the minimum percentage requirement would yield a total of 150 multiple-family dwelling units or less, this requirement does not apply, and no such units are required. Whenever the minimum percentage would yield 151 units or more, the full number must be required except in cases covered by footnote number 1.

3 Total number of dwelling units planned.

4 One-family attached may be substituted for all or part of this requirement.

5 The four-story height limit may be waived upon a finding by the Planning Board that a proposed development can achieve greater compatibility with adjacent development than which would result from adherence to the standards.

6 Development may utilize the R-60/MPDU standards as set forth in Sec. 59-C-1.625(a)(1).

59-C-1.396. Special Provisions for TDR Developments Approved Prior to April 1, 1987. Any property in the RE-2C, RE-2, RE-1, R-200, R-150, R-90 or R-60 zones which, prior to April 1, 1987, received preliminary plan of subdivision approval, and which contained lots attributable to the TDR regulations as they existed in this chapter prior to April 1, 1987, may continue to be developed in accordance with the requirements of the corresponding TDR zones at a density not to exceed the maximum densities set forth in section 59-C-1.332. Governmental approvals granted prior to April 1, 1987, for developments utilizing TDR's on property zoned in those zones shall remain and be in full force and effect at all times notwithstanding such property's subsequent rezoning to the RE-2C/TDR, RE-2/TDR, RE-1/TDR, R-200/TDR, R-150/TDR, R-90/TDR or R-60/TDR zones respectively. In addition, any building or structure constructed or to be constructed on a building lot in accordance with a TDR preliminary plan of subdivision approved for such property prior to April 1, 1987, shall not be considered nonconforming. Preliminary plan applications duly filed with and accepted as a completed filing by the Maryland-National Capital Park and Planning Commission on or before April 1, 1987, are deemed duly filed.

(Legislative History: Ord. No. 8-53, §§ 3-7; Ord. No. 8-54, §§ 1-4; Ord. No. 8-55, §§ 3-5; Ord. No. 8-58, §§ 2-5; Ord. No. 8-59, §§ 1-6; Ord. No. 68, § 1; Ord. No. 8-71, §§ 1-8; Ord. No. 8-74, § 1; Ord. No. 8-81, §§ 3, 4, 5, 6, 7, 8, 9; Ord. No. 9-2, § 1; Ord. No. 9-9, § 1; Ord. No. 9-15, § 2; Ord. No. 9-16, § 1; Ord. No. 9-20, § 1; Ord. No. 9-32, § 1; Ord. No. 9-58, § 1; Ord. No. 9-62, § 1; Ord. No. 9-63, §1; Ord. No. 9-74, § 3; Ord. No. 9-83, § 1; Ord. No. 9-89, § 1; Ord. No. 10-3, § 1; Ord. No. 10-6, § 3; Ord. No. 10-8, § 1; Ord. No. 10-13, § 4; Ord. No. 10-24, § 2; Ord. No. 10-29, §§ 2, 3; Ord. No. 10-31, § 2; Ord. No. 10-39, § 3; Ord. No. 10-40, § 1; Ord. No. 10-53, § 4; Ord. No. 10-58, § 2; Ord. No. 10-69, § 4; Ord. No. 10-74, § 1; Ord. No. 10-82, § 2; Ord. No. 10-85, § 2; Ord. No. 10-86, § 1; Ord. No. 11-4, §§3--5; Ord. No. 11-6, § 2; Ord. No. 11-14, § 2; Ord. No. 11-29, § 2; Ord. No. 11-33, § 2; Ord. No. 11-34, § 2; Ord. No. 11-36, § 1; Ord. No. 11-38, § 1;

Ord. No. 11-40, § 2; Ord. No. 11-41, § 2; Ord. No. 11-42, § 1; Ord. No. 11-43, § 1; Ord. No. 11-61, § 3; Ord. No. 11-65, § 1; Ord. No. 11-67, § 5; Ord. No. 11-70, § 2; Ord. No. 11-72, § 2; Ord. No. 11-73, § 2; Ord. No. 12-1, § 1; Ord. No. 12-4, § 1; Ord. No. 12-22, § 2; Ord. No. 12-40, § 1; Ord. No. 12-43, §§ 1-3; Ord. No. 12-51, § 2; Ord. No. 12-53, § 1; Ord. No. 12-57, § 1; Ord. No. 12-59, § 1; Ord. No. 12-61, § 2; Ord. No. 12-71, § 1; Ord. No. 12-72, § 1; Ord. No. 13-1, § 5; Ord. No. 13-10, § 1; Ord. No. 13-12, § 2; Ord. No. 13-14, § 2, 3; Ord. No. 13-14, § 2; Ord. No. 13-21, § 2; Ord. No. 13-27, § 3; Ord. No. 13-28, § 1; Ord. No. 13-31, § 3; Ord. No. 13-34, § 1; Ord. No. 13-35, § 1; Ord. No. 13-47, § 2; Ord. No. 13-49, § 1; Ord. No. 13-69, §3; Ord. No. 13-75, §1; Ord. No. 13-98, § 5; Ord. No. 13-108, § 2; Ord. No. 13-110, § 2; Ord. No. 13-112, § 1; Ord. No. 14-25, § 2; Ord. No. 14-26, § 1; Ord. No. 14-36, § 1; Ord. No. 14-44, § 2; Ord. No. 14-47, § 1; Ord. No. 14-49, § 1; Ord. No. 14-66, § 1; Ord. No. 15-12, § 1; Ord. No. 15-21, § 3; Ord. No. 15-28, § 3; Ord. No. 15-38, § 1; Ord. No. 15-48, § 1; Ord. No. 15-53, § 3; Ord. No. 15-54, § 3; Ord. No. 15-70, § 1; Ord. No. 15-74, § 3.)

Editor's note—Subsection 59-C-1.327 is cited in Remes v. Montgomery County, 387 Md. 52, 874 A.2d 470 (2005). Subsection 59-C-1.393 is cited in Pleasant Investments Ltd. Partnership v. Dept. of Assessments & Taxation, 141 Md. App. 481 (2001). Section 59-C-1.31 is cited in Renzi v. Connelly School of the Holy Child, 2000 WL 1144595 (filed August 14, 2000). Section 59-C-1.31, regarding "offices, professional nonresidential," is cited in Custer Environmental, Inc. v. 9305 Old Georgetown Road Partnership, 345 Md. 284, 691 A.2d 1336 (1997), a landlord-tenant case. Section 59-C-1.3 [formerly §§111-9 and 111-10] is interpreted in St. Luke's House, Inc. V. Digiulian, 274 Md. 317, 336 A.2d 781 (1975). Section 59-C-1.3 [formerly §111-12] is quoted in F & B Development Corporation v. County Council for Montgomery County, 22 Md.App. 488, 323 A.2d 659 (1974) and in Wahler v. Montgomery County Council, 249 Md. 62, 238 A.2d 266 (1968); and cited and described in O. F. Smith Brothers Development Corporation v. Montgomery County, 246 Md. 1, 227 A.2d 1 (1967); and cited in Malasky v. Montgomery County Council, 258 Md. 612, 267 A.2d 182 (1970) and Bayer v. Siskind, 247 Md. 116, 230 A.2d 316 (1967). Section 59-C-1.3 [formerly §§59-36, 59-41 and 59-42] is cited in Logan v. Town of Somerset, 271 Md. 42, 314 A.2d 436 (1974). Section 59-C-1.3 [formerly §§111-9 and 111-10] is cited in Cohen v. Willett, 269 Md. 194, 304 A.2d 824 (1973). Sections 59-C-1.3 to 59-C-1.6 [formerly §111-7] are quoted and interpreted in Gruver-Cooley Jade Corporation v. Perlis, 252 Md. 684, 251 A.2d 589 (1969); discussed in Leet v. Montgomery County, 264 Md. 606, 287 A.2d 491 (1972); and cited in Cabin John Limited Partnership v. Montgomery County Council, 259 Md. 661, 271 A.2d 174 (1970); in Marathon Builders, Inc. v. Montgomery County Planning Board of the Maryland- National Capital Park & Planning Commission, 246 Md. 187, 227 A.2d 755 (1967); and in Hertelendy v. Montgomery County Board of Appeals, 245 Md. 554, 226 A.2d 672 (1967). Section 59-C-1.3 [formerly §104-5(a)] is quoted in part in Creative Country Day School of Sandy Spring, Inc. v. Montgomery County Board of Appeals, 242 Md. 552, 219 A.2d 789 (1966). Section 59-C-1.3 [formerly §59-44] is quoted in part in Kanfer v. Montgomery County Council, 35 Md.App. 715, 373 A.2d 5 (1977). Section 59-C-1.3 [formerly §§111-5(a) and 111-7(a)] is cited in Montgomery County Council v. Kacur, 253 Md. 220, 252 A.2d 832 (1969). Section 59-C-1.31 is cited in Custer Environmental, Inc. V. 9305 Old Georgetown Partnership, 345 Md. 284, 691

A.2d 1336 (1997). Section 59-C- 1.31(d) is cited in Pan American Health Organization v. Montgomery County, 889 F.Supp. 234 (D.Md. 1994). Section 59-C-1.31 is cited in Pan American Health Organization v. Montgomery County, 338 Md. 214, 657 A.2d 1163 (1995)—Certified question to Court of Appeals of Maryland from the Fourth Circuit Court of Appeals inquiring whether Montgomery County had the authority to enact the zoning text amendment that had the effect of prohibiting PAHO from locating its headquarters in a residentially zoned area of the County. The Court of Appeals held that the enactment was within the authority of the District Council to enact under the Regional District Act. The Court further explained that PAHO was not a publicly owned or publicly operated use that would remain exempt from zoning restrictions, despite its status as a public international organization. References to ZTA 93014 appear in the Zoning Ordinance at §§59-A-2.1, 59-C-1.31, 59-C-2.3, 59-C-4.2(e), 59-C-6.22(a) and (e), 59-C-7.5 and -7.52, 59-C-8.1, 59-C-8.3(a) and (d), and 59-G-2.00. Section 59-C-1.39 is interpreted in West Montgomery County Citizens Association v. Maryland-National Capital Park and Planning Commission, 309 Md. 183, 522 A.2d 1328 (1987)—The provision in the Zoning Ordinance delineating the creation of transfer of development rights (TDRs) was analyzed by the Court of Appeals and found to involve an invalid exercise of legislative authority. The provision did not establish the maximum density for the affected properties and violated the division between zoning and planning, procedurally and substantively. The Court of Appeals invalidated the zoning decision concerning density of residential development because that decision was made by the District Council through the planning process, rather than through the zoning process mandated by State law.

See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion dated 10/2/90 explaining that, without a main dwelling or a transferable development right to support it, no farm-tenant house may be constructed.

Montgomery County's TDR program, now covered in §§ 59-C-1.33, -1.39 and also in §§ 59-C-9 and -10 (formerly treated in § 59-A-6.1 and §§ 59-C-11.1 through -11.5) is referred to in connection with a discussion of the County's growth policy in P. J. Tierney, Maryland's Growing Pains: The Need for State Regulation, 16 U. of Balt. L. Rev. 201 (1987), at p. 224.

59-C-2.43. Transferable development rights zones.

59-C-2.431. Method of development. The following 2 methods of development are possible in each of the TDR zones:

(a) **Standard method of development.** Development under the standard method for TDR zones must comply with the requirements for development and density limitations contained in the corresponding zones as identified in section 59-C-2.41. In addition, standard method development may be approved under the procedures for

development including moderately priced dwelling units, as contained in section 59-C-2.42, if the property satisfies the minimum requirements for these development options.

(b) **Optional method of development.** Under the optional method of development for the TDR zones, greater densities may be permitted up to the maximum density established in the development standards of section 59-C-2.432 of the zone, but development must also conform to the special regulations for optional method developments using transferable development rights as contained in section 59-C-2.44. The special regulations require compliance with the density, numerical limitations, and other guidelines contained in the applicable master or sector plan approved by the district council.

	R-30 TDR	R-20 TDR	R-10 TDR
59-C-2.432. Development Standards-Transferable Development Rights Zones:			
(a) Land uses. Uses allowed in the TDR zones are those uses allowed in the following zones:	R-30	R-20	R-10
(b) Development standards-Standard method: Density limitations for MPDU development (section 59-C-2.42) apply to similar development in the standard method TDR zones:	R-30	R-20	R-10
All other development must be in accord with the development standards applicable to the following zones:	R-30	R-20	R-10
(c) Development standards-Optional method of development:			
-Maximum density of development (maximum number of dwellings per acre):	40	50	100
-All other development standards as specified in the special regulation provisions of section 59-C-2.44.			

59-C-2.44. Special regulations for optional method development using transferable development rights.

59-C-2.441. Applicability. The following procedures and regulations apply to the transfer of development rights from land classified in the rural density transfer zone (RDT) to land classified in the transferable development rights (TDR) zones. The Planning Board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable TDR zone and conforming to the guidelines contained in the applicable master or sector plan approved by the district council. Any increase in density above the density applicable to the standard method of development must be based on a ratio of two multi-family dwelling units for each transferable development right (TDR), except within a designated Metro station policy area, where a

ratio of three multi-family dwelling units for each TDR and two one-family detached units for each TDR applies.

59-C-2.442. General provisions.

(a) A development right must be created, transferred and extinguished only by means of documents, including an easement and appropriate releases, in a recordable form approved by the Planning Board. The easement must limit the future construction of one-family dwellings on a property in the RDT zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this section, the number of development rights to be transferred by the instant transaction, and the number of existing one-family detached dwellings on the property.

(b) The transfer of development rights must be recorded among the land records of Montgomery County, Maryland.

(c) The development density of a property under the TDR optional method may not be increased above the maximum density permitted in the zone (section 59-C-2.432) nor beyond the density or number of dwelling units recommended for such property by the land use plan of the applicable master or sector plan approved by the district council.

(d) A property developed with the transfer of development rights must conform to the requirements of chapter 25A of the Montgomery County Code requiring MPDU's. The applicability of chapter 25A and the MPDU density increasedprovided by section 59-C-2.42 must be calculated after the base density of a property has been increased by a transfer of development rights. The density increase provided by section 59-C-2.42 may be made without the acquisition of additional development rights.

59-C-2.443. Development approval procedures under the optional method of development.

(a) A request to utilize development rights on a property under the optional method must be in the form of a preliminary subdivision plan submitted in accordance with the subdivision regulations contained in chapter 50 of the County Code.

(b) Such a preliminary plan must include at least two-thirds of the number of development rights permitted to be transferred to the property under the provisions of the applicable master or sector plan approved by the district council. However, upon a finding by the Planning Board that for environmental or compatibility reasons it would be desirable to permit a lower density, the two-thirds requirement may be waived.

(c) A site plan must be submitted and approved in accordance with the provisions of division 59-D-3.

(d) The Planning Board must approve a request to utilize development rights if the request:

(1) does not exceed the limitations on the density or number of dwelling units permitted in the zone and in the applicable master or sector plan approved by the district council;

(2) is in accordance with provisions of this chapter;

(3) is in accordance with chapter 50, title "Subdivision of Land";

(4) is consistent with other recommendations of the master or sector plan approved by the district council; and

(5) achieves a desirable development compatible with both site conditions and surrounding existing and future development.

(e) Prior to Planning Board approval of a final record plat for a subdivision using transferred development rights, an easement to the Montgomery County Government in the form required by subsection (a) above limiting future construction of dwellings on a property in the RDT zone by the number of development rights received must be recorded among the land records of Montgomery County, Maryland.

(f) A final record plat for a subdivision using transferred development rights must contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of this conveyance required by section 59-C-2.442(b).

59-C-2.444. Development standards applicable to the optional method of development.

(a) Development under the TDR optional method density provisions of section 59- C-2.432(c) must conform to the development standards and permitted residential uses as indicated in section 59-C-2.445.

(b) The final density achieved for any property located in a TDR receiving area developed under the optional method procedures must be determined by the Planning Board at site plan and/or subdivision review and must conform to the site plan provisions (division 59-D-3 of the Zoning Ordinance) and subdivision regulations (chapter 50 of the Montgomery County Code).

(c) In making the determination as to the final density, the Planning Board will consider the following factors:

(1) provides an appropriate range of housing types;

(2) preserves environmentally sensitive and priority forest areas, and mitigates unavoidable impacts on the natural environment;

(3) facilitates good transit serviceability and creates a desirable and safe pedestrian environment;

(4) achieves compatibility with surrounding land uses; and

(5) conforms to the relevant master or sector plan approved by the district council.

59-C-2.445. Special provisions for TDR developments. The following development standards for the development of a property under the optional method apply to the TDR density shown on the master or sector plan for that area. Where moderately priced dwelling units are included in accordance with the requirements of chapter 25A of this Code, as amended, the MPDU development standards apply. The increase in density must not exceed 22 percent of the TDR density.

Minimum Percentage Required[1]						
TDR Density per Acre Shown on Master Plan	Size of Development[3]	One-Family Detached	One-Family Townhouse and Attached	Multiple Family[2] Four-Story or Less[4]	Over 4-Story	Green Area (Percent of gross area)
16-30	Less than 200 units	P	P	P[5]	50	40
16-30	200 units or more	P	P	25[5]	50	40
35-50	Less than 200 units	P	P	25	50	30
35-50	200 units or more	P	P	35	50	30
60-100	Less than 200 units	NP	P	P	P	30
60-100	200 units or more	NP	P	P	P	30

P Permitted but not required.

( ) Maximum percentage permitted.

1 Upon a finding by the Planning Board that a proposed development is more desirable for environmental reasons or is more compatible with adjacent development than that which would result from adherence to these standards, the percentage requirements for one-family and multiple-family stated herein may be waived.

2 Permitted only where specifically recommended as type in the area master or sector plan for the receiving area. In any instance where the minimum percentage requirement would yield a total of 150 multiple-family dwelling units or less, this requirement does not apply, and no such units will be required. Whenever the minimum percentage would yield 151 units or more, the full number is required except in cases covered by footnote number 1.

3 Total number of dwelling units planned.

4 One-family attached may be substituted for all or part of this requirement.

5 The four-story height limit may be waived upon a finding by the Planning Board that a proposed development can achieve greater compatibility with adjacent development that would result from adherence to the standards.

(Legislative History: Ord. No. 8-54, § 5; Ord. No. 8-55, § 6; Ord. No. 8-58, § 6; Ord. No. 8-59, § 7; Ord. No. 9-40, § 1; Ord. No. 9-41, § 1; Ord. No. 9-74, § 5; Ord. No. 9-83, § 2; Ord. No. 10-6, § 3; Ord. No. 10-30, § 1; Ord. No. 10-31, § 4; Ord. No. 10-32, § 2; Ord. No. 10-53, § 10; Ord. No. 10-88, § 1; Ord. No. 11-38, § 4; Ord. No. 12-1, § 1; Ord. No. 12-71, § 2; Ord. No. 13-71, §§2 and 3; Ord. No. 13-103, § 1; Ord. No. 15-34, § 1.)

59-C-9.23. Intent of the Rural Density Transfer zone.

The intent of this zone is to promote agriculture as the primary land use in sections of the County designated for agricultural preservation in the General Plan and the Functional Master Plan for Preservation of Agriculture and Rural Open Space. This is to be accomplished by providing large areas of generally contiguous properties suitable for agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.

Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural operations are permitted at any time, including the operation of farm machinery. No agricultural use can be subject to restriction on the grounds that it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural in nature are subject to the regulations prescribed in this division 59-C-9 and in division 59-G-2, "Special Exceptions-Standards and Requirements."

59-C-9.584. Optional method of development using transferable development rights.

59-C-9.584.1. Applicability. The following procedure and regulations apply to the transfer of development rights from land classified in the Rural Density Transfer

(RDT) Zone to land classified in the RNC/TDR Zone. A subdivision approved for development under the optional method must not exceed the maximum density permitted in the RNC/TDR Zone and must conform to the guidelines contained in the applicable master plan. Any increase in density above the density applicable to the standard method of development must be based on a ratio of one single-family dwelling unit for each transferable development right (TDR).

59-C-9.584.2. General Provisions.

(a) A development right must be created, transferred and extinguished only by means of documents, including an easement and appropriate releases, in a recordable form approved by the planning board. The easement must limit the future construction of one-family dwellings on a property in the RDT zone to the total number of development rights established by the zoning of the property minus all development rights previously transferred in accordance with this section, the number of development rights to be transferred by the instant transaction, and the number of existing one-family detached dwellings on the property.

(b) The transfer of development rights must be recorded among the land records of Montgomery County, Maryland.

(c) The development density of a property under the TDR optional method may not be increased above the maximum density permitted in the zone nor beyond the density or number of dwelling units recommended for such property by the land use plan of the applicable master plan approved by the district council, except as required to provide MPDU's.

(d) A property developed with the transfer of development rights must conform to the requirements of chapter 25A of the Montgomery County Code requiring MPDU's. The applicability of chapter 25A and the MPDU density increase provided by 59-C-9.574 must be calculated after the base density of a property has been increased by a transfer of development rights. The density increase provided by 59-C-9.574 may be made without the acquisition of additional development rights. The density of development, including the provision of MPDU's must not exceed 1.22 dwelling units per gross acre.

59-C-9.584.3. Approval Procedures Under the Optional Method of Development.

(a) Standards for approval under the Optional Method are as provided in 59-C-9.574 for the Rural Neighborhood Cluster Zone. These standards include the minimum area of development, the standards for diversity of lot sizes and house sizes, development standards, common open space requirements, standards for the use of private streets, sewage treatment requirements, and rural open space guidelines.

(b) A request to utilize development rights on a property under the optional method must be in the form of a preliminary subdivision plan submitted in accordance with the subdivision regulations contained in Chapter 50.

(c) A site plan must be submitted and approved in accordance with the provisions of Division 59-D-3.

(d) The Planning Board must approve a request to utilize development rights if the request:

(1) Does not exceed the limitation on the density or number of dwelling units permitted in the zone and in the applicable master plan approved by the district council;

(2) Is in accordance with the provisions of this chapter;

(3) Is in accordance with chapter 50, title "Subdivision of Land;"

(4) Is consistent with other recommendations of the master plan approved by the district council; and

(5) Achieves a desirable development compatible with both site conditions and surrounding existing and future development.

(e) Prior to recordation of a final record plat for a subdivision using transferred development rights, an easement to the Montgomery County Government in the form required by 59-C-1.392(a) limiting future construction of dwellings on a property in the RDT zone by the number of development rights received must be recorded in the land records of Montgomery County, Maryland.

(f) A final record plat for a subdivision using transferred development rights must contain a statement setting forth the development proposed, the zoning classification of the property, the number of development rights used, and a notation of the recordation of the conveyance required by 59- C-9.584.2(b).

59-C-9.584.4. Reserved.

59-C-9.584.5. Reserved.

59-C-9.584.6. Off-street parking. Parking must be provided in accordance with the provisions of 59-C-9.75 for the Rural Neighborhood Cluster zone.

(Legislative History: Ord. No. 10-69, § 5; Ord. No. 11-70, § 3; Ord. No. 13-13, § 1; Ord. No. 13-45, § 1; Ord. No. 13-94, § 1; Ord. No. 15-31, §1; Ord. No. 15-38, § 2; Ord. No. 15-69, § 1; Ord. No. 15-73, § 1.)

Sec. 59-C-9.6. Transfer of density-Option in Rural Density Transfer zone.

In accordance with section 59-C-1.39 and in conformance with an approved and adopted general, master, sector, or functional plan, residential density may be transferred at the rate of one development right per 5 acres minus one development right for each existing dwelling unit, from the Rural Density Transfer zone to a duly designated receiving zone, pursuant to section 59-C-1.39. The density transfer provisions are not applicable to publicly owned rights-of-way for roads, streets, alleys, easements, or rapid transit routes classified in the Rural Density Transfer zone. The following dwelling units on land in the RDT zone are excluded from this calculation, provided that the use remains accessory to a farm. Once the property is subdivided, the dwelling is not excluded:

(a) A farm tenant dwelling, farm tenant mobile home, or guest house as defined in section 59-A-2.1, title "Definitions."

(b) An accessory apartment or accessory dwelling regulated by the special exception provisions of divisions 59-G-1 and 59-G-2.

(Legislative History: Ord. No. 10-69, § 5; Ord. No. 10-75, § 3; Ord. No. 11-4, § 6; Ord. No. 12-61, § 4; Ord. No. 15-69, § 1.)

Editor's note—See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed. See County Attorney Opinion dated 8/11/98 describing the effect of annexation of land into Town of Poolesville on transferable development rights existing on the land prior to annexation. See County Attorney Opinion dated 10/2/90 explaining that, without a main dwelling or a transferable development right to support it, no farm-tenant house may be constructed.

59-C-9.74. Exempted lots and parcels-Rural Density Transfer zone.

(a) The number of lots created for children in accordance with the Maryland Agricultural Land Preservation Program must not exceed the development rights assigned to the property.

(b) The following lots are exempt from the area and dimensional requirements of section 59- C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the Rural Density Transfer zone.

(1) A recorded lot created by subdivision, if the record plat was approved for recordation by the Planning Board prior to the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.

(2) A lot created by deed executed on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone.

(3) A record lot having an area of less than 5 acres created after the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone by replatting 2 or more lots; provided that the resulting number of lots is not greater than the number which were replatted.

(4) A lot created for use for a one-family residence by a child, or the spouse of a child, of the property owner, provided that the following conditions are met:

(i) The property owner can establish that he had legal title on or before the approval date of the sectional map amendment which initially zoned the property to the Rural Density Transfer Zone;

(ii) This provision applies to only one such lot for each child of the property owner; and

(iii) Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.

(Legislative History: Ord. No. 10-69, § 5; Ord. No. 12-1, § 1; Ord. No. 12-76, § 1; Ord. No. 13-13, § 1.)

Editor's note—See County Attorney Opinion dated 4/26/99 explaining that a transfer of development rights easement continues to restrict development even when the underlying zoning of the property is changed.