

**A RESOLUTION TO AMEND CHAPTER 58 OF THE FULTON COUNTY CODE OF
LAWS TO ADD ARTICLE VI TO ENACT AN ORDINANCE TO CREATE A
TRANSFER OF DEVELOPMENT RIGHTS PROGRAM**

WHEREAS, the Board of Commissioners is charged with protecting the health, safety and well being of the citizens of Fulton County; and with population growth, economic prosperity, and increased development activities, the strategic protection of the natural and cultural resources of the environment becomes increasingly difficult; and

WHEREAS, in 1998 the Georgia General Assembly passed legislation which authorizes local governments to implement a transfer of development rights program, commonly referred to as TDR; and

WHEREAS, the TDR program allows a local government to preserve a community's rural, natural, historic and scenic resources, while protecting property values and accommodating growth; and

WHEREAS, the Fulton County Board of Commissioners has the authority and responsibility to protect county resources and property values and direct growth to appropriate locations in unincorporated Fulton County; and

WHEREAS, approved by the Board of Commissioners on August 8, 2002 and subsequently amended on October 2, 2002, the South Fulton 2015 Comprehensive Plan and Plan Map, established the Chattahoochee Hill Country (CHC) planning area, identified growth areas and set forth policies that promote preservation of areas surrounding the growth areas; and

WHEREAS, the amended Comprehensive Plan policies promote the creation of a Transfer of Development Rights Program to implement the desired goal in the CHC planning area to encourage preservation of the rural, natural and scenic resources while allowing for growth.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of Fulton County, Georgia as follows:

Transfer of Development Rights Ordinance

- Sec. 58-240. PURPOSE AND INTENT.** It is the purpose and intent of this ordinance to provide for the transfer of development rights (the maximum development that would be allowed on a parcel under its current zoning) from one property to another to promote the conservation of natural, agricultural, environmental, historical and cultural resources and encourage smart growth in appropriate areas. Further this ordinance provides a means to achieve the visions and goals of the South Fulton 2015 Comprehensive Land Use Plan and the Chattahoochee Hill Country Overlay District.
- Sec. 58-241. APPLICABILITY OF REGULATIONS.** The provisions of this ordinance apply only to the Chattahoochee Hill Country, which is that portion of South Fulton County bordered to the west by the Chattahoochee River, to the south by Coweta County, and to the east by Cascade-Palmetto Highway (SR 154), as illustrated on the attached map. Compliance with all other applicable Fulton County ordinances, regulations and resolutions is required; however, when in conflict, the provisions of this ordinance shall prevail.
- Sec. 58-242. TRANSFER OF DEVELOPMENT RIGHTS.** The transfer of development rights is a method for permanently conserving and protecting land by transferring the rights to develop from one property (sending area) to another (receiving area).
- Sec. 58-243. SENDING AREA.** Sending areas are those properties from which development rights may be transferred to a receiving area. Sending areas may be any properties in the Chattahoochee Hill Country except those areas designated as receiving areas or as otherwise prohibited by this ordinance. Additional sending areas may be designated through the amendment process as set forth in Section XXVIII of the Zoning Resolution of Fulton County and the procedures and requirements set forth in O.C.G.A. §36-66A-2.
- Sec. 58-244. RECEIVING AREA.** Receiving areas are those properties which may receive development rights from a sending area. Receiving areas are those properties intended for mixed-use development, specifically the three Living Working Areas in the Chattahoochee Hill Country designated on the South Fulton 2015 Land Use Plan. Additional receiving areas may be designated through the amendment process as set forth in Section XXVIII of the Zoning Resolution of Fulton County and the procedures and requirements set forth in O.C.G.A. §36-66A-2.

Sec. 58-245. ELIGIBILITY. Landowners or representatives with the authority to transfer fee simple ownership of any parcel in the Chattahoochee Hill Country (except as noted below) may apply for a Transfer of Development Rights Certificate. Parcels not eligible are as follows:

- (a) any parcel from which all development rights have previously been sold or transferred;
- (b) any parcel on which a conservation easement (legally binding agreement between a property owner and a governmental body or charitable organization qualified under O.C.G.A. § 44-10-2(2) that restricts the type and amount of development and use that may take place on a property) or other permanent deed restriction has been previously granted;
- (c) any parcel fully developed based on its existing zoning;
- (d) any parcel or portion of a parcel that has been designated as open space (land on which no additional development associated with residential, industrial or commercial purposes is allowed, except in compliance with this ordinance and other Fulton County zoning and planning regulations) in a hamlet or conservation subdivision;
- (e) any publicly owned parcel; and
- (f) any land within riparian buffers mandated by state or local law.

Sec. 58-246. APPLICATION REQUIREMENTS FOR A TRANSFER OF DEVELOPMENT RIGHTS CERTIFICATE. An eligible landowner or authorized representative must provide the following:

- (a) name, address and telephone number of applicant and applicant's agent, if any;
- b) proof of ownership of the sending property;
- c) metes and bounds written legal description and plat prepared within 90 days of the date of application by a licensed surveyor;
- d) written description of the physical characteristics of the property;
- e) site plan which illustrates existing or proposed dwellings, historic structures, easements or other encumbrances; and

- f) the processing fee as established by the Department of Environment and Community Development (“the Department”).

Sec. 58-247. CALCULATION OF DEVELOPMENT RIGHTS. Within 95 days of the receipt of a complete application for a Transfer of Development Rights Certificate, the Department shall certify the number of transferable development rights, assign serial numbers accordingly, and issue a Transfer of Development Rights Certificate. Development rights shall be calculated in accordance with the formula included in the South Fulton 2015 Land Use Plan on a gross acreage basis. For each eligible gross acre of the sending area, one development right (TDR) will be issued. The area of a parcel with fractional acreage will be calculated by rounding the total acreage down to the nearest whole number and issuing one TDR per acre.

Sec. 58-248. CALCULATION METHODS FOR ACQUISITION OF DEVELOPMENT RIGHTS. The following formulas shall be used to compute the amount of land that must be preserved in the sending areas to develop a receiving area:

- a. Residential:

Total number of proposed residential units in the receiving area (Living Working) minus the total gross acreage of the area to be developed (excluding the acreage required for the 300-foot rural protection development setback) = Total Number of Acres to be Preserved in the Sending Areas

Example #1:

Suppose 500 acres in a Living Working Area are to be developed at 14 units per acre (the maximum residential density permitted in a Living Working area). Therefore, 500 acres x 14 units per acre = 7,000 units to be developed.

7,000 Units minus 500 acres (acreage of Living Working Area to be developed) = 6,500 Acres to be preserved in the sending areas

1 TDR = 1 Acre. Therefore, 6,500 TDRs must be transferred to the receiving area.

b. Commercial:

Total square feet of commercial space in the receiving area divided by 2,000 = Total Number of Acres to be Preserved in the Sending Area

Example #1:

Suppose 30,000 square feet of commercial uses are proposed to be developed in a receiving area: $30,000 / 2,000 = 15$ TDRs

1 TDR = 1 Acre. Therefore, 15 TDRs must be transferred to the receiving area.

Sec. 58-249. APPEAL OF CALCULATION. Any landowner or authorized representative aggrieved by a final decision of the Department related to the certification of Transfer of Development Rights may appeal such final decision to the Board of Zoning Appeals by filing, in writing, setting forth plainly and fully why the calculation is in error. Such appeal shall be filed no later than thirty (30) days after the date of the Department's final decision.

Sec. 58-250. APPROVAL OF TRANSFER OF DEVELOPMENT RIGHTS AND APPEAL PROCESS. Any proposed transfer of development rights shall be subject to the notice, hearing and approval requirements of O.C.G.A. § 36-66A-2. A transfer of development rights shall be approved by the Board of Commissioners if it meets the requirements of this ordinance.

Sec. 58-251. APPEAL OF TRANSFER DECISION. Any appeal or other legal challenge to the Board of Commissioners' final decision regarding a Transfer of Development Rights shall be pursued by petition for writ of certiorari filed with the Superior Court of Fulton County within thirty (30) days of the date of the Board of Commissioners' decision. The applicant's petition and all other initial filings with the Superior Court shall be served upon the named defendants/respondents in accordance with O.C.G.A. § 9-11-4.

Upon filing such appeal, the Clerk of Superior Court shall give immediate notice thereof to the Director of the Department. Within thirty (30) days of such notice, the Director shall cause to be filed with the Clerk of the Superior Court a certified copy of the proceedings before the Commission and the decision of the Commission.

Upon appeal there is a presumption of correctness of the Commission's decision which must be overcome by the appealing party.

Sec. 58-252. RECORDATION OF TRANSFER OF DEVELOPMENT RIGHTS TRANSACTIONS (SENDING AREAS).

Deed of Transfer. A Deed of Transfer shall be required to convey development rights from a sending parcel to a purchaser. The Deed shall be valid only if it is signed by the owner or authorized representative of the sending parcel, complies with all legal requirements for the transfer of real estate, contains provisions established by the Department and is recorded in the chain of title after the conservation easement is secured against the sending parcel.

A Deed of Transfer shall contain a metes and bounds written legal description and a plat prepared by a licensed surveyor, the names and addresses of the Grantor and the Grantee of the development rights, the serial numbers of the TDRs being conveyed along with a copy of the TDR certificate issued by the Department and proof of the execution and recordation of a conservation easement on the sending parcel.

Conservation Easement. To convey the certified development rights on a sending area, a conservation easement between the owner of the sending area and an organization authorized by the laws of the State of Georgia to accept, hold and administer conservation easements, pursuant to O.C.G.A. § 44-10-1 Georgia Uniform Conservation Easement Act must be signed and recorded with the Fulton County Clerk, prior to the Deed of Transfer. Conservation easements established pursuant to this section may not be released or nullified by any party.

The Department may develop a model conservation easement form and require it be used to fulfill the requirements of this section.

In addition to the provisions of the Georgia Uniform Conservation Easement Act, each conservation easement shall contain:

- (a) a metes and bounds written legal description and plat prepared by a licensed surveyor;
- (b) prohibitions against the use and development of the sending area property which are inconsistent with open space as defined in Sec. 58-245.(d);
- (c) assurances that prohibitions will run with the land and bind the landowner and every successor in interest to include a statement that the easement shall survive any merger of the easement interest and the fee simple interest of the property;

- (d) the serial numbers of the TDRs being transferred in the Deed of Transfer from the sending area property subject to the conservation easement; and
- (e) a statement that nothing in the easement shall be construed to convey to the public a right of access or use of the property and that the owner of the property, his heirs, successors and assignees will retain exclusive right to such access or use subject to the terms of the easement.

Sufficiency of Documents. Prior to the recordation of the Deed of Transfer and the conservation easement, parties to the transaction must obtain an opinion from a licensed Georgia attorney that the Deed and easement have been executed by all necessary parties and is perpetual and binding on the property owner and every successor in interest. A copy of this document shall be provided to Fulton County.

Re-issuance of TDR Certificates. In the event of the transfer of fewer than all of a landowner's development rights, the landowner must return the original TDR certificate to the Department upon the recordation of the conservation easement and Deed of Transfer. The landowner must provide a copy of the Deed of Transfer that contains the serial numbers of the development rights transferred.

Within 95 days of the receipt of the complete TDR certificate, the Department shall reissue a certificate to the landowner reflecting the remaining TDRs and the corresponding serial numbers.

Sec. 58-253. RECORDATION OF TRANSFER OF DEVELOPMENT RIGHTS TRANSACTIONS (RECEIVING AREAS).

The following information shall be recorded on the face of any plat for property which receives development rights under the provisions of this Ordinance:

- (a) A statement that the development rights used in the plat have been transferred in accordance with the Deed of Transfer, prescribed in Sec. 58-252.
- (b) The serial numbers of the TDRs conveyed along with a copy of the TDR certificate issued by the Department.

Sec. 58-254. TRANSFER OF DEVELOPMENT RIGHTS BANK. Subsequent to the adoption of this ordinance, Fulton County may create a Transfer of Development Rights Bank ("the Bank") to encourage the exchange of development rights in the

private market and encourage the preservation of land. The Bank will facilitate the exchange by purchasing and selling development rights. Also for the purposes of conserving land, the Bank may hold TDRs for any length of time to include in perpetuity.

Sec. 58-255. ORGANIZATION OF THE BANK. The Bank shall be directed and managed by a Bank Board to consist of 5 members who shall be residents of Fulton County, nominated by the Department and approved by the Fulton County Board of Commissioners. Specifically, one member shall be experienced in the banking or financial industry, one member shall be a private landowner in the CHC area, one member shall be experienced in the legal industry, one member shall represent a conservation organization, and one member shall be a representative from the real estate development industry. The terms of office for the Bank Board members shall be four years and staggered.

Three (3) members shall constitute a quorum. A majority vote shall be required for any action before the Bank Board.

The Bank Board may adopt procedural and substantive rules to govern its powers, duties and functions. Staff support shall be provided by the Department.

Empowerments. The Bank Board shall be empowered to:

- (a) enter into agreements for professional services, e.g. consulting, appraising, accounting, subject to available funding;
- (b) apply for and accept grants or loans for the Bank Board's authorized purposes;
- (c) purchase, receive, sell or hold TDRs;
- (d) purchase properties in fee simple to preserve them through conservation easements and resell the restricted properties at fair market value; and
- (e) do all other things necessary to carry out the functions and operations of the Bank.

Authority and Compensation. The members of the Bank Board shall receive no compensation from the Bank except reimbursement for expenses incurred for the performance of their duties as Board members.

Registry of TDRs. For the purposes of tracking and marketing transfer of development rights, a central registry of available Transfer of Development Rights Certificates shall be established by the Bank or the Department in the event the Bank is not established.

Acquisition Priorities. The following priorities shall be considered by the Bank Board for purchasing TDRs:

- (a) properties adjacent to the Living Working Areas (outside the 300-foot rural protection setback);
- (b) properties that border the Chattahoochee River, its tributaries, and any associated water features such as wetlands.
- (c) development pressures on the land;
- (d) price of the development rights;
- (e) pre-existing perpetual restrictions against development;
- (f) proximity to other properties with easement restrictions for the purpose of creating large, contiguous tracts of conserved land;
- (g) environmental assessments; and
- (h) other factors of public interest determined by the Bank Board.

Purchase, Sale and Value of TDRs. To determine purchase and/or sales price of development rights, the Bank Board may negotiate, use a competitive bid process, or any other method deemed fair and equitable by the Bank Board.

Purchase and sale prices must be supported by an appraisal paid for by the Bank Board.

Any eligible landowner may approach the Bank Board with an offer to sell TDRs. The Bank Board shall have 60 days to consider and respond to such offers.

Landowners shall follow the procedures and requirements for certification of TDRs as prescribed by this ordinance.

All transactions through the Bank Board must follow the recordation requirements prescribed by this ordinance.

The Bank Board may, as a preservation measure, acquire fee simple interest in sending area parcels on a competitive basis in the open market.

The intent of a purchase is to place a perpetual conservation easement on a property and then resell the restricted parcel for fair market value. Purchase and resale of sending area parcels is limited to those parcels where development pressures or the prospects of a change of the use of the property are high and/or whose location and/or quality are such that the property's preservation is important to the continued viability of the Chattahoochee Hill Country.

Right of First Refusal. The Bank Board shall have the authority to enter into Right of First Refusal Agreements with sending area landowners for the purchase of either TDRs or property in fee simple.

The Right of First Refusal Agreement is an instrument that is recorded in the chain of title for the subject property, and is to be effective concurrent with the ownership of the signer(s) of the agreement and to be renewed by immediate family members who may become successive owners.

In the event that all or a portion of the TDRs or property may be sold to someone other than an immediate family member or developed or subdivided, notification by the landowner to the Bank Board shall be required.

Within 90 days of notification, the Bank Board may exercise the right of first refusal by acquiring either the development rights or the property in fee simple at a price which is equal to any bona fide offer which has been tendered to the landowner or the appraised fair market value, if an offer has not been tendered, plus \$1.00.

BE IT FURTHER RESOLVED, THAT the Transfer of Development Rights program shall be implemented only for the Chattahoochee Hill Country sixty (60) days following the adoption of this Resolution.

BE IT SO RESOLVED, THIS second day of April, 2003.

**BOARD OF COMMISSIONERS
OF FULTON COUNTY, GEORGIA**

Chairman Mike Kenn

ATTEST:

APPROVED AS TO FORM:

Mark Massey, Clerk to Commission

O. V. Brantley, County Attorney

SPONSORED BY:

William "Bill" Edwards, Commissioner