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## **Proposed Transfer of Development Rights Law**

### **Introductory Statement**

The Town of Stillwater Comprehensive Plan/GEIS recommends the Town adopt a Transfer of Development Rights (TDR) law to encourage development in appropriate locations, while reducing sprawl and the loss of farmland and key open space areas. The TDR law is intended to allow for unused development rights within existing and future T2 Zoning Districts to be transferred to areas where higher density development is being encouraged. The proposed local law provides a means for direct transfer between land owners and developers when combined with a site plan or subdivision review process. Sending districts must demonstrate eligibility of only unconstrained lands.

**Sending District:** The proposed TDR law identifies the T2 Zoning District as the Sending District. Available building rights may only be purchased and transferred from the T2 Zoning District.

**Receiving Districts:** The proposed TDR law identifies T3G, T4, and T5 Zoning Districts as Receiving Districts. Available building rights may only be transferred to these Receiving Districts.

The Planning Board is proposed to be given authority to review all proposed density transfers with a maximum increase of 3 TDR credits per unit transferred. No density transfer will be approved until the associated development project receives full approval. Available density rights are not unlimited and applicants seeking density rights must demonstrate that the proposed development site can accommodate the proposed increase in density. Transfer of development rights are not intended to be used as part of Planned Unit Development project.

**Town of Stillwater, NY**

**Local Law No. \_ of 2023**

**A Local Law Entitled “Transfer of Development Rights Law”**

**Local Law No. \_ of 2023**

**SECTION 1: TITLE.**

This local law shall be cited as Local Law No. \_ of 2023 of the Town of Stillwater and entitled “Transfer of Development Rights Law” establishing a new Article XXII Transfer of Development Rights and adding new definitions to existing Article II Terminology.

**SECTION 2: AUTHORITY.**

This Local Law is enacted pursuant to the authority of Municipal Home Rule Law 10, the New York State Town Law, and in accordance with the Chapter 210, Article XVI, Amendments.

**SECTION 3: REVISIONS TO CHAPTER 210.**

Chapter 210, Zoning, of the Code of the Town of Stillwater is hereby amended as follows:

**1. Definitions.** Article II: Terminology, § 210-7 Definitions, § 210-7.B is hereby amended through the addition of the following definitions in alphabetical order:

“Agricultural Building: A structure designed and constructed to house farm equipment, farm implements, poultry, livestock, hay, grain, or other horticultural products. This structure shall not be a place of human habitation but may be a place of employment where agricultural products are processed, treated, or packaged, provided said agricultural products were grown on the subject property.

Constrained Land: The total area of a parcel or lot that contains one or more of the following:

- Slopes in excess of 20% measured over a 50-foot horizontal distance.
- Lakes, ponds, and wetlands. These shall include field delineation and survey of both New York State Department of Environmental Conservation freshwater wetlands and their associated one-hundred-foot adjacent areas, and federal jurisdictional wetlands regulated by the United States Army Corps of Engineers.
- NYSDEC regulated streams including a fifty-foot buffer from the mean high-water mark of regulated streams. These shall include but are not limited to watercourses, streams, and other



drainage corridors as classified pursuant to the New York State Department of Environmental Conservation Stream Classification System.

- Entire floodways and 50% of 100-year flood zone.
- Land with known or suspected environmental contamination or other obstacles that would restrict the development of the land.

**Development Rights:** The number of available dwelling units per acre that may be transferred from a Sending District to a Receiving District.

**Receiving District:** The designated area of the Town where parcels may receive development rights from parcels in the Sending District to be used for increases in development rights above what is permitted in by this Chapter.

**Sending District:** The designated area of the Town where development rights for a parcel may be transferred to and be used by another parcel in a Receiving District.

**TDR Credits:** A calculated number of development rights that can be transferred from a Sending District to a Receiving District to increase the allowable development rights to be used by a developer.

**Transfer of Development Rights (TDR):** The process by which developments rights are transferred from a lot or parcel located in any Sending District to another lot or parcel located in a Receiving Districts.

**Unconstrained Land:** A lot, parcel, or portion thereof lacking constrained land as defined by this chapter.”

**2. New Article XXII Transfer of Development Rights.** Chapter 210, Zoning is hereby amended by the addition of a new Article XXII Transfer of Development Rights, as follows.

**“§ 210-168 Statutory authority**

This article is adopted pursuant to § 261-a of the New York State Town Law and the Town of Stillwater Comprehensive Plan. All of the powers and conditions set forth in Town Law § 261-a are hereby adopted. The Stillwater Town Board hereby designates the Stillwater Planning Board as the Town body authorized to implement the transfer of development rights program as set forth herein

**§ 210-169 Purpose and Intent**

- A. The purpose of this local law is to permit the transfer of development rights from one property in a Sending District to another property in a Receiving District while simultaneously restricting future development of the property from the Sending District.
- B. The Transfer of Development Rights (TDR) program is consistent with the goals and recommendations established in the Stillwater 2020 Comprehensive Plan and Generic Environmental Impact Statement.

- C. The TDR program will allow for the preservation of farmland, open space, critical environmental resources, and other sensitive features in the Sending District, while also increasing opportunities for development in the Town's Receiving Districts that have adequate access to municipal services and utilities appropriate for the level of growth.
- D. The intent for the creation of Sending Districts is to further the conservation of farmland, natural and undeveloped areas, wildlife, flora, underground and surface water sources, and other natural resources, and the preservation of historical, cultural, recreational, archaeological, and scenic areas in Stillwater.
- E. The intent for the creation of Receiving Districts is to provide opportunities in the Town for economic growth, improve efficiencies in the use of infrastructure and utilities, and the development of an adequate supply of affordable housing.

#### **§ 210-170 Objectives**

The transfer of the development rights system herein established shall have the following specific objectives:

- A. To maintain the natural and scenic qualities of open land and the agricultural productivity of farmland in the Town by preserving a desired 1,000 acres of land in accordance with the 2020 Comprehensive Plan.
- B. To encourage developers to develop land in areas identified by the Town as best suited for increased densities while also providing economic returns to owners of property restricted from further development.
- C. To reduce sprawl and improve the economic efficiencies of infrastructure and utilities in the Town.

#### **§ 210-171 General Requirements and Applicability.**

- A. Transfer of development rights shall only occur between the owner of eligible property within the T2 Zoning District and the owner/developer or duly assigned representative (herein after referred to as the "Applicant") of land within the Receiving District.
- B. The monetary amount for the sale of each development right shall be established through an agreement between the Sending District owner and the Receiving District applicant.
- C. In a Sending District, only unconstrained land equal to or greater than four (4) acres in a T2 district with a minimum of one available dwelling unit may be eligible to transfer a development right pursuant to this section.
- D. Land previously restricted against development by covenant, easement or deed restriction shall not be eligible for transferable development rights unless and until such time as said covenant, restriction or easement is dissolved or rescinded. In the event said covenant, restriction or easement is dissolved or rescinded, such land shall be eligible for generation of TDR credits and the transfer of development rights.



- E. Any parcel of land that falls within a T3G, T4, and T5 Zoning District may be eligible to receive TDR credits from Sending Districts.
- F. After development rights have been severed from a sending parcel and transferred to a Receiving District, the following uses are the only uses that may be permitted on the sending parcel:
  - (1) Open space conservation.
  - (2) Passive recreation.
  - (3) Agricultural fields, with or without one or more agricultural building(s), as defined in this chapter.
- G. Minimum requirements for the parcel in the Receiving District. After development rights have been acquired and transferred to a receiving parcel, the following uses are the only uses permitted for the application of TDR credits:
  - (1) Three-and Four-family dwellings.
  - (2) Multifamily dwellings.
  - (3) Townhouse dwellings with a minimum of three (3) dwelling units.
  - (4) Condominium buildings.
  - (5) Mixed-use & live-work buildings with a minimum of three (3) dwelling units. Nonresidential uses shall not occupy more than 75% of the net land area of development.
- H. Development rights calculation.
  - (1) The Planning Board shall use the following process to calculate the total number of development rights (dwelling units) that may be available on a subject parcel for transfer:
    - (a) Step 1: Determine the acreage of constrained land.
    - (b) Step 2: Calculate the gross buildable acreage by subtracting the constrained acreage from the total acreage of the parcel.
    - (c) Step 3: Calculate the number of eligible dwellings units by dividing the gross buildable acreage by the minimum lot area for the involved Zoning District as set forth in Table 2, (Dimensional Schedule).
    - (d) Step 4: Resulting dwelling units having fractional units equal to or greater than 0.5 may be rounded up.
- I. Number of units permitted.
  - (1) The actual number of dwelling units permitted for development at increased density limits in Receiving Districts shall be determined by the Planning Board. Consideration will be given to the potential increase in demand for utilities such as roadway network and water and sewer usage.
  - (2) Every (1) dwelling unit transferred shall equal three (3) TDR Credits.

(3) Land in the Sending District shall be assigned development rights for the purpose of transfer as follows:

(i) One dwelling unit in a Sending District shall equal three TDR credits that can be used in a Receiving District.

(2) The total number of TDR credits available from a plot of land in a Sending District is calculated using the following formula:

$$(\text{Area of land/Sending Area Dwelling Unit Density}) * (\text{Transfer Ratio}) = \text{TDR Credits}$$

Example: If a property owner in a Sending District wants to transfer the development rights of 10 acres of their land, the number of TDR credits generated would be calculated as follows:

$$(10 \text{ acres}/(1 \text{ d.u./ 2 acres})) * (3 \text{ TDR Credits}) = 15 \text{ TDR Credits}$$

J. Management of land under conservation easements. The Town Board reserves the right to designate one or more persons or organizations to manage land placed under conservation easement along with all associated legal restrictions through the transfer of development rights pursuant to this Chapter.

#### **§ 210-172 Procedures.**

##### **A. Application**

(1) Participation in the TDR Program is voluntary and the application process and sale of development rights from a Sending District can only be initiated through an agreement between the Sending District property owner and the owner or duly assigned representative of land within a Receiving District, the "Applicant."

(2) The Applicant proposing to develop land within a Receiving District through a transfer of development rights shall submit a Density Transfer Application, inclusive of an existing conditions map identifying all constrained lands along with a subdivision application, to the Town of Stillwater Building, Planning, and Development Department (the "Planning Department"). Each application shall be co-signed by the Sending District landowner.

(3) The existing conditions map of the proposed sending area parcel(s) shall be of sufficient detail to show its general location, streets, available infrastructure and shall identify all constrained lands and agricultural and/or other sensitive environmental features.

(4) Utilizing the information provided, the Planning Department will calculate the total number of transferable TDR credits available from the sending site using the process described §§ 210-171.I and J above. The Planning Department shall advise the Planning Board of its findings and required adjustments to the application as necessary. The Planning Board shall establish an escrow account for engineering, legal, and planning reviews.



B. Planning Board Review Procedure.

- (1) The number of dwelling units that qualify for the transfer shall be verified and approved by the Planning Board. The Planning Board shall provide their determination in writing to the applicant.
- (2) Upon confirmation of the availability of one or more dwelling units by the Planning Board, the developer shall submit to the Planning Board a valid instrument granting to the Town an open space transfer of eligible land, inclusive of a map. The instrument shall be in the form and contain the terms and conditions provided in Subsection C of this section and shall cover an area of eligible land. The applicant shall furnish to the Planning Board a certificate of title by a duly licensed attorney or qualified title agent, or title insurance company and such other further evidence or assurance of title as may be satisfactory to the Planning Board.
- (3) Upon advice from the attorney for the Town that the open space land transfer document is valid and sufficient, the Planning Board may accept said document and request the Applicant submit for recording in the Saratoga County Clerk's office with Record and Return to the Town Clerk. Upon final approval of the related subdivision plat and site plans, the Planning Board shall issue a Transfer of Development Permit permitting the development of the specified land at the increased density.

- C. The grant of a Transfer of Development Rights pursuant to this section shall be on the terms and conditions approved by the Planning Board and attorney for the Town. Whether to approve and accept any proposed transfer shall be at the sole discretion of the Planning Board."

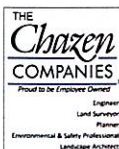
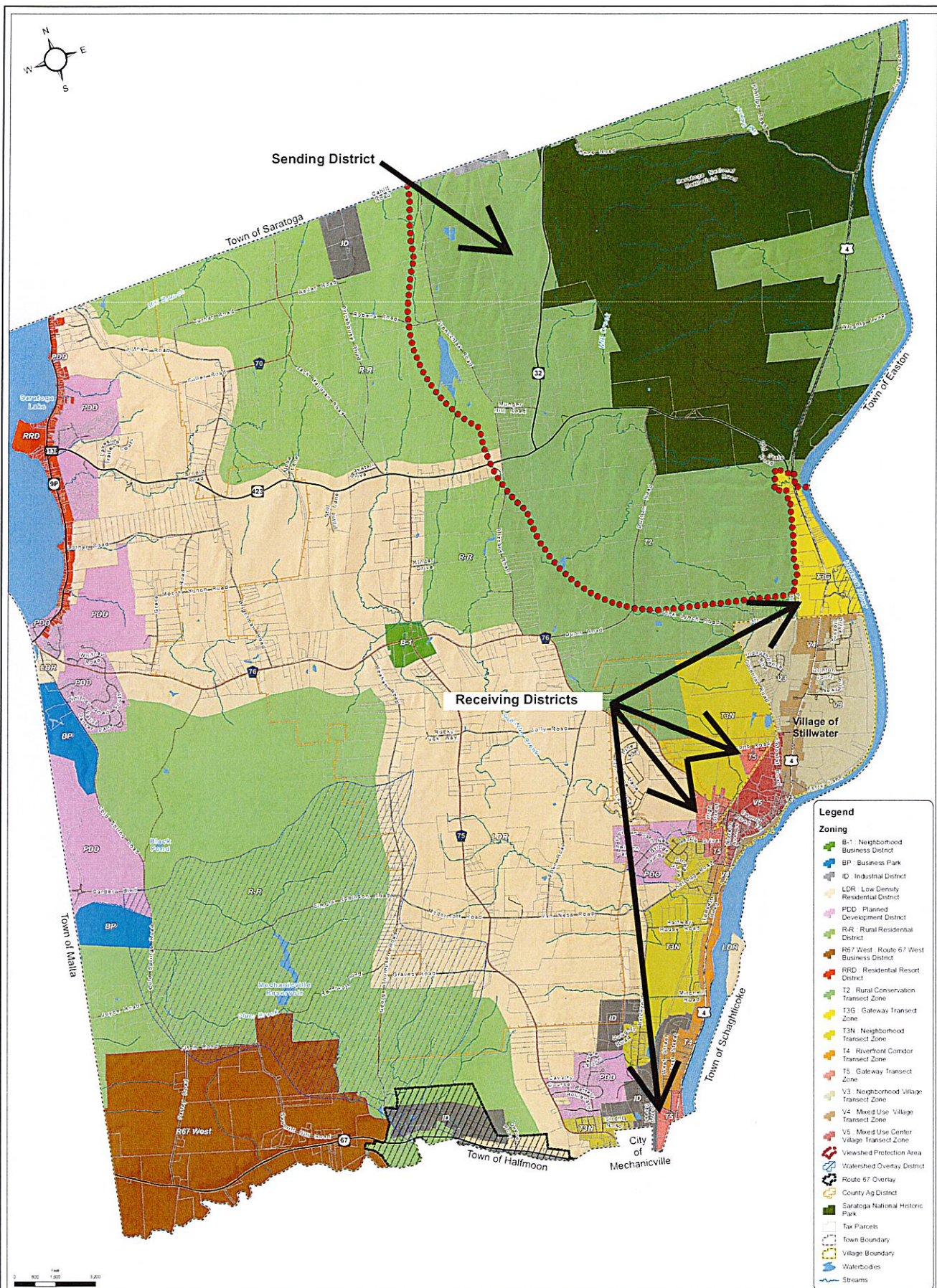
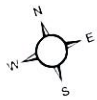
**SECTION 4: SEVERABILITY**

If any clause, sentence, paragraph, section, article, or part of this Local Law shall be adjudicated in any court of competent jurisdiction to be invalid, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, article or part thereof directly involved in the controversy in which such invalidity shall not be deemed to affect the remaining portions thereof.

**SECTION 5: EFFECTIVE DATE**

This law shall take effect immediately upon filing with the Secretary of State.





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Stillwater Comprehensive Plan and GEIS

Town and Village Zoning Map

Town and Village of Stillwater - Saratoga County, New York

Drawn	RL-B
Date	06/06/2017
Scale	1 inch = 1,600 feet
Project	31600-19
Sheet	X