# BOARD OF SUPERVISORS WORK SESSION GOVERNMENT CENTER BOARD ROOM

## DECEMBER 14, 2010 - 4 P.M.

**A. Call to Order**

**B. Roll Call**

**C. Board Discussions**

1. Rural Lands – Transfer of Development Rights (Summary) (Attachment 1) (Attachment 2)

**D. Adjournment**

## MEMORANDUM COVER

**Subject:** Transfer of Development Rights (TDR) Work Session - Successful Program Criteria and Key Issues

**Strategic Management Plan Pathway:** 3.e - Match community growth with the ability to maintain a high quality natural and man-made environment.

**Action Requested:** Shall the Board provide guidance on the Transfer of Development Rights (TDR) feasibility study based on the discussion points in Section D of the attached information?


**Summary:** James City County has hired the consultant firm Design, Community, and Environment (DC&E) to conduct a feasibility study for developing a TDR program. A dedicated work session on TDR was requested by the Board of Supervisors at its September 28, 2010, work session on Rural Lands. Objectives of this work session include a review of State enabling legislation, presentation of basic background information and case studies about TDR, and an overview of criteria that would be beneficial to create a successful TDR program in the County. Staff and DC&E will be seeking guidance on key issues related to these criteria from the Board and evaluating what the overall goal of the TDR program should be.

Mr. Leo Rogers will be presenting a segment of the work session centered on State enabling legislation. Mr. Aaron Engstrom and Mr. Bill Fulton from DC&E will be presenting the remainder of the information and discussion points. Ms. Leanne Reidenbach, Ms. Tammy Rosario, Mr. Allen Murphy, and Mr. Steven Hicks will also be present.


**Fiscal Impact:** N/A

**FMS Approval, if Applicable:** Yes ☐ No ☐

______

**Assistant County Administrator**

Doug Powell DP

**County Administrator**

Robert C. Middaugh

**Attachments:**
1. DC&E Memorandum - "Successful Program Criteria and Key Issues"
2. PowerPoint Presentation

**Work Session**

**Date:** December 14, 2010

TDRCritIssue_cvr.doc

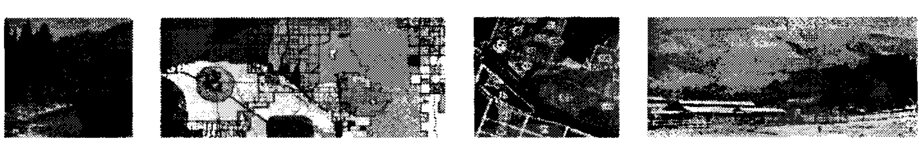
# TRANSFER OF DEVELOPMENT RIGHTS FEASIBILITY STUDY

*FOR JAMES CITY COUNTY*

DESIGN, COMMUNITY & ENVIRONMENT

## TODAY'S PRESENTATION WILL DISCUSS:

- Introduction to TDR
- Legal Framework
- Successful TDR Programs
- TDR Program Criteria for James City County
- Decision Points for Work Session



DESIGN, COMMUNITY & ENVIRONMENT

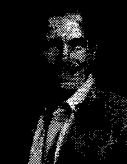
THE DC&E TEAM

**Bill Fulton, AICP**
Principal

**Aaron Engstrom, AICP**
Lead Representative

**Ben Noble, AICP**
Technical Advisor

**Rick Pruetz, FAICP**
Peer Review



*INTRODUCTION TO TDR*

# TRANSFER OF DEVELOPMENT RIGHTS FEASIBILITY STUDY

*FOR JAMES CITY COUNTY*

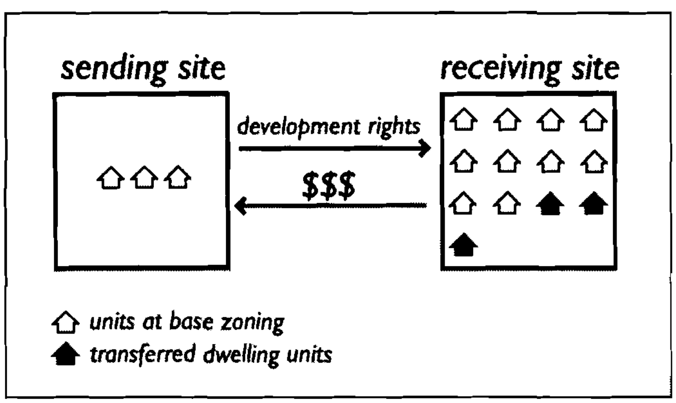
## WHAT IS A TDR PROGRAM?

- GOAL: To preserve land while redirecting growth
- BY: Compensating landowners for decreased density in one area by capturing value from increased density in another area
- Programs can help preserve:
  - Agriculture/timbering
  - Open space and sensitive habitats,
  - Rural residential areas, and
  - Historical sites



## HOW TDR WORK

- *Sending Areas* (Example: agricultural land outside of PSA)
- *Receiving Areas* (Example: areas designated for growth within PSA)

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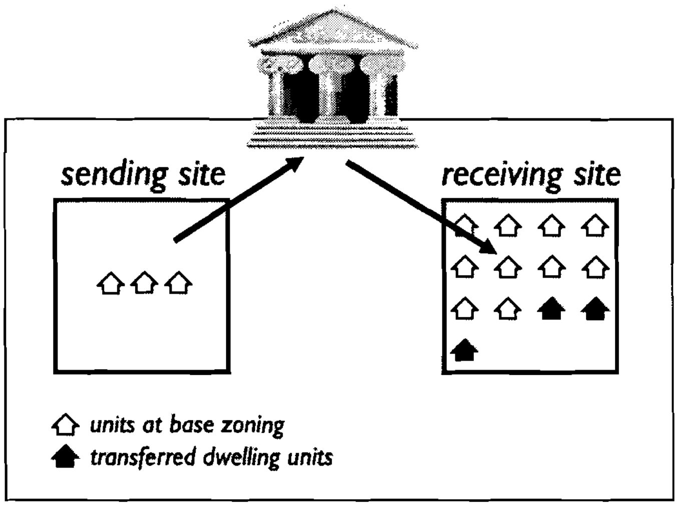
## HOW TDR WORK

- *A TDR Bank can be used to facilitate TDR transfers when the private market operates too slow or too fast.*






## WHAT'S REQUIRED TO MAKE TDR WORK

- An understanding that TDR is an *implementation tool*, not a *plan.*
- Clear *program goals*
- Economic and regulatory incentives for landowners and developers to participate

## WHEN TDR DOESN'T WORK

- When too few receiving areas are designated
- When there is insufficient demand for higher densities in the receiving area
- When landowners do not have strong economic incentives to participate
- When developers can obtain higher densities in other ways
- When local governments ask too much of this policy tool

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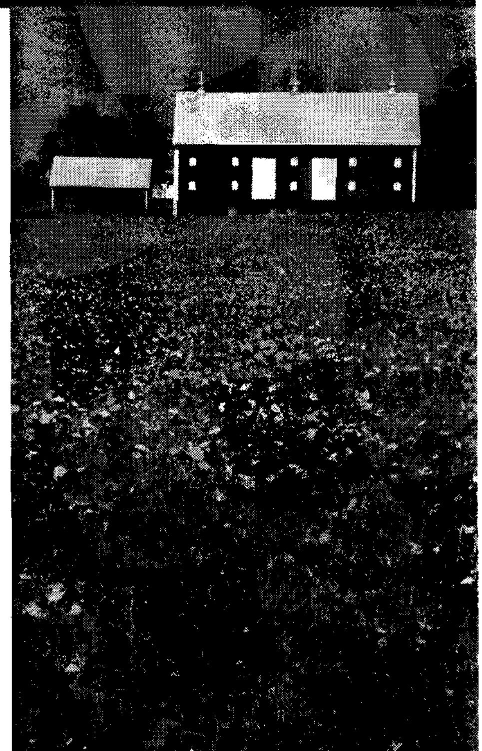
# TDR PROGRAM CASE STUDIES

TRANSFER OF DEVELOPMENT RIGHTS FEASIBILITY STUDY
FOR JAMES CITY COUNTY

## TDR PROGRAM CASE STUDY

Montgomery County, Maryland

- Most successful TDR program in the United States
- Protects farmland from development (50,000 acres)
- Development rights are transferred from rural areas to existing suburbs and newly developing areas of the county
- Designed to compensate landowners for a downzoning

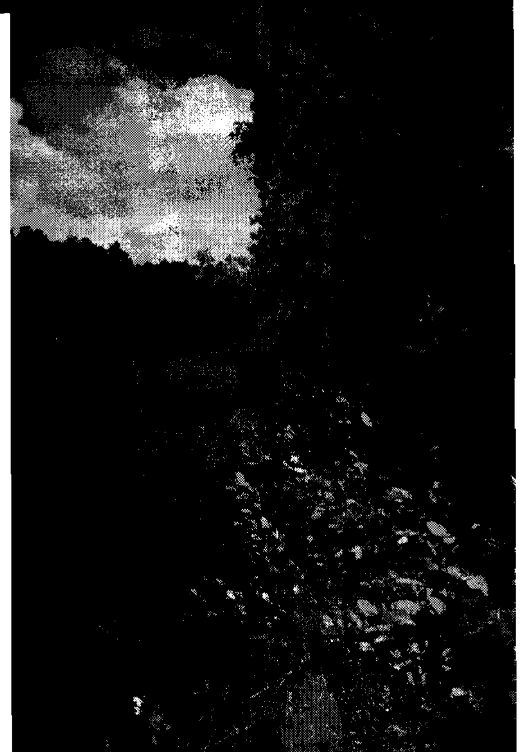




## TDR PROGRAM CASE STUDY

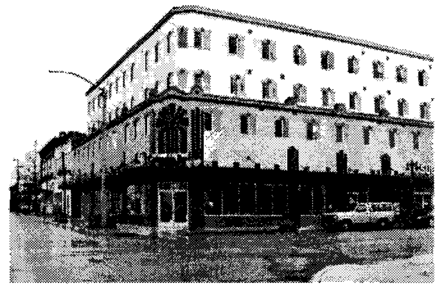
New Jersey Pinelands

- Helps maintain active agriculture
- Protects environmentally sensitive areas
- Has preserved 55,000+ acres of land
- More than 40 transfers per year
- Formula for calculating rights that accounts for environmentally sensitive areas

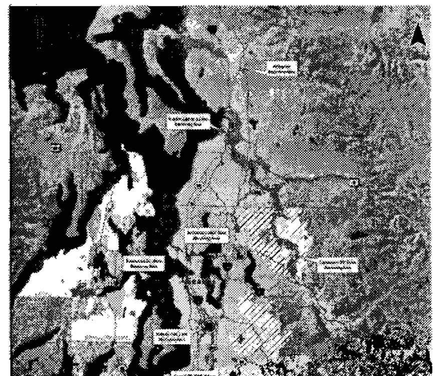


## TDR PROGRAM CASE STUDY

King County, Washington



- Most area preserved (140,000 acres)
- Connected sending and receiving areas through a regional bank
- County funds infrastructure improvements and provides amenities for receiving areas that must be within growth boundaries
- Offers other receiving area amenities (aside from density)





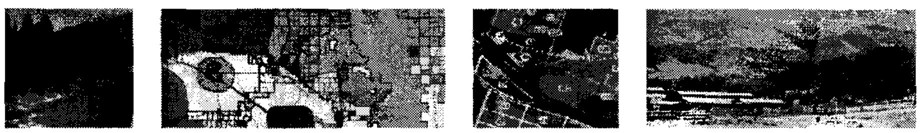
*SUCCESSFUL TDR PROGRAM CRITERIA*

# TRANSFER OF DEVELOPMENT RIGHTS FEASIBILITY STUDY

*FOR JAMES CITY COUNTY*

## SUCCESSFUL CRITERIA

- Clear Program Goals
- Suitable Sending and Receiving Sites
- Adequate Incentives for Landowners and Developers
- Use of Banks and Other "Market-Making" Mechanisms

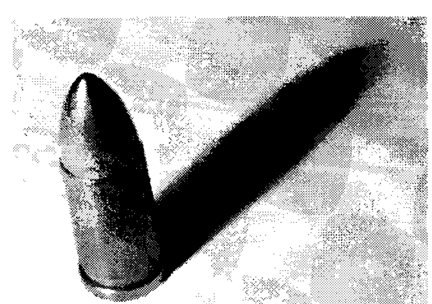




## SUCCESSFUL CRITERIA: CLEAR PROGRAM GOALS

- County goal for agricultural and forestal lands should be clear
- TDR will be an implementation tool for the Comprehensive Plan
- TDR must be used with other growth management tools
- If objectives align with public support as reflected in the Comprehensive Plan, program has better chance for success
- Local leaders should support community preferences for areas to preserve as reflected in the Comprehensive Plan

**TDR is not a silver bullet!!! Rarely are all targeted sending areas preserved through the TDR program. It is best used as one of many growth management tools.*



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## SUCCESSFUL CRITERIA: SENDING AND RECEIVING AREAS

- Sending areas should be clearly designated in the Comprehensive Plan as preservation areas
- Receiving areas should be identified in the Comprehensive Plan as targeted areas for growth.
- Virginia TDR law requires adequate capacity in receiving areas, which means:
  - There must be enough capacity in the receiving areas to accommodate all TDR.
  - Receiving areas must have adequate infrastructure to accommodate additional development.

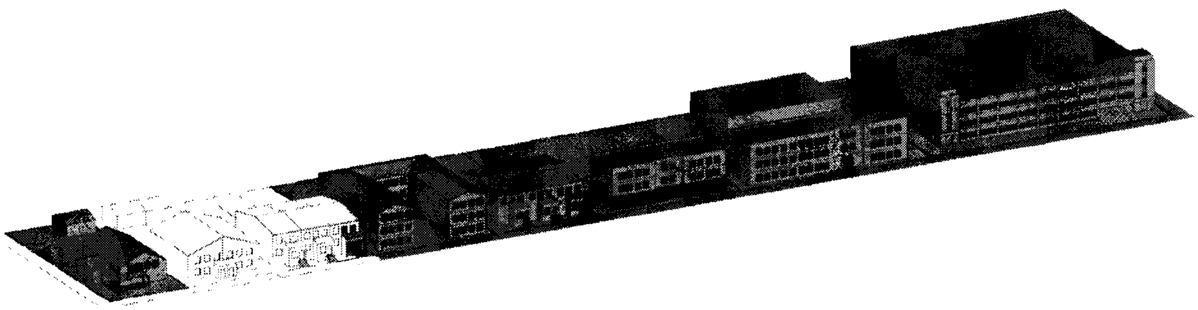


## SUCCESSFUL CRITERIA: ADEQUATE SENDING INCENTIVES

- Selling TDR must be attractive in comparison to developing land
- Sending landowners may want to sell their TDR if:
  - Doing so is relatively easy
  - They have a sentimental connection to the current land use (i..e.., farming)
  - Continuing current use will generate revenue or provide tax advantages
- Sending landowners may not want to sell their TDR if:
  - Doing so is costly and cumbersome
  - The site is already owned by a developer who plans to develop at currently allowed 3-acre lot size
  - They are wary of government programs

## SUCCESSFUL CRITERIA: ADEQUATE RECEIVING INCENTIVES

- The TDR program must be stable and easy to use, with good market information about TDR values and transactions
- Developing at higher densities with TDR must be more profitable than developing at lower densities without TDR.
- Purchase of TDR must be more attractive than obtaining additional density any other way (i.e. affordable housing, green building, or cluster density bonuses).





## SUCCESSFUL CRITERIA: CARROTS AND STICKS

**Carrots**

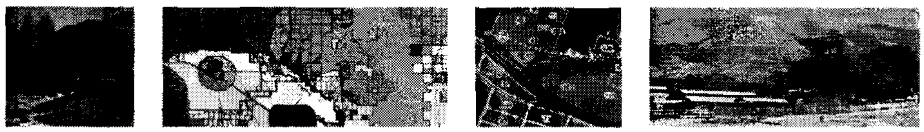
- Provide sending-area landowners with more development rights if they sell them as TDR than if they use them on-site.
- Designate receiving areas in locations with high demand for new development
- Designate receiving areas in locations with new infrastructure in place so developer does not have to bear cost

**Sticks**

- Downzone sending areas
- Limit receiving-area density increases to TDR situations

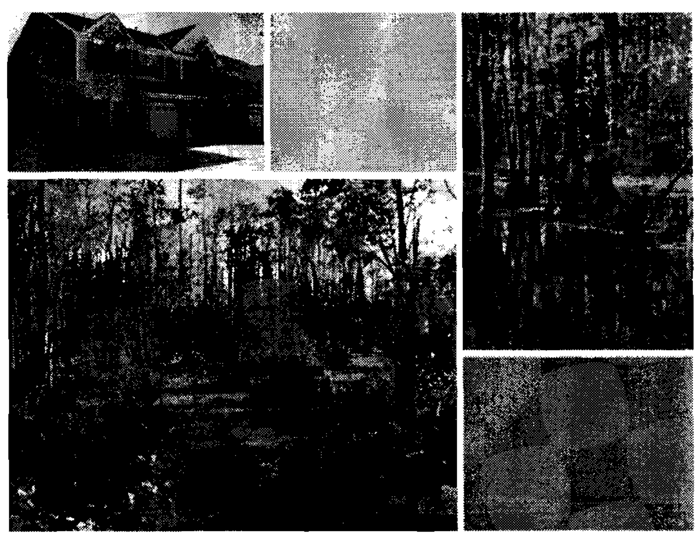
## SUCCESSFUL CRITERIA: MARKET-MAKING MECHANISMS

- TDR banks are used by other TDR programs to even out the market
  - Purchase TDR when developer demand is low
  - Sell TDR when developer demand is high
- Brokers and realtors are private intermediaries that can serve similar role
- Current state TDR law probably allows TDR banks





*Key Decision Points for Board of Supervisors*



# TRANSFER OF DEVELOPMENT RIGHTS FEASIBILITY STUDY

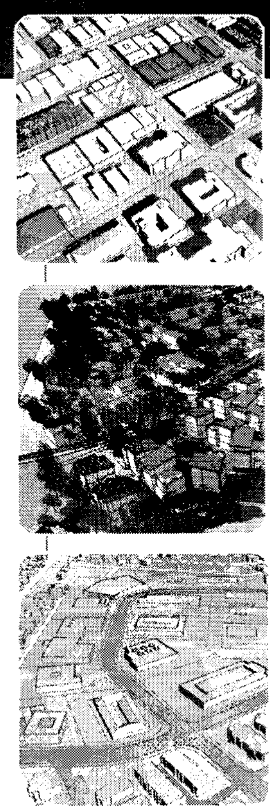
*FOR JAMES CITY COUNTY*

## DECISION POINTS

1. What is the purpose of the TDR program?
2. What is the role of the TDR program in pursuing land conservation goals?
3. Should rural lands be downzoned?
4. Will the TDR program be the only way to achieve higher density?
5. Should TDR be redeemable for other benefits in receiving areas besides residential units?
6. How could a TDR bank be used?
7. Where are the sending and receiving areas?
8. Can amenities and services be provided to receiving areas along with increased density from TDR?



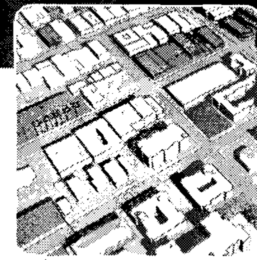
## DECISION POINTS

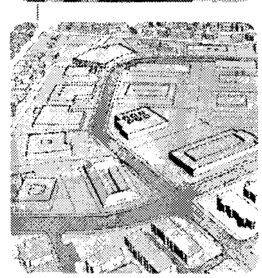


**What is the purpose of the TDR program?**

- Protect agricultural land
- Protect forestal land
- Reconfigure land uses to align with the PSA
- Promote economic development in receiving areas
- Make landowners whole in exchange for a reduction in permitted density
- Fill implementation gaps left by Greenspace, PDR and other preservation programs

## DECISION POINTS





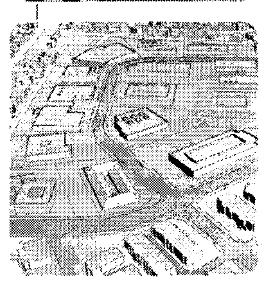
**What is the role of the TDR program in pursuing land conservation goals?**

- PDR, Greenspace, and zoning are already in place
- All these efforts must work together to achieve conservation goals
- What role should TDR play that other programs cannot play?



## DECISION POINTS





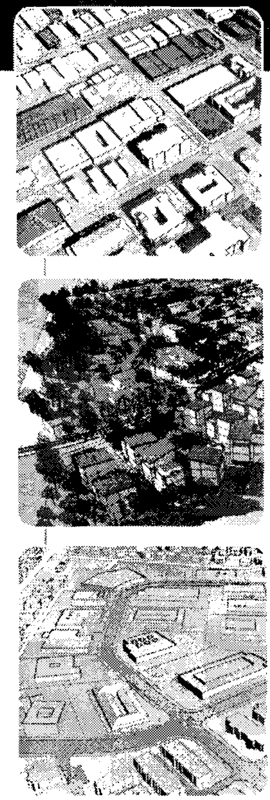
**Should rural lands be downzoned?**

- Current zoning will support subdivision but not agriculture
- Downzoning may support agricultural activity but may not be supported by agricultural landowners.
- TDR could be used to compensate landowners for a downzone and "make them whole."

## DECISION POINTS

**Will the TDR program be the only way to achieve higher density?**

- Is there sufficient political momentum to require TDR for all upzones?
- If not, then will other methods undermine TDR program?
- Conversely, would participation in the TDR program reduce the value of other things provided in exchange for higher density, such as proffers and affordable housing?





## DECISION POINTS

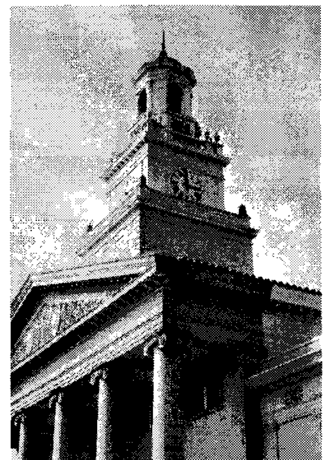
**Should TDR be redeemable for other benefits in receiving areas besides residential units?**

- Receiving-area developers could use TDR not just for increased residential density but also for:
    - Commercial floor area
    - Increased height or impervious surface area
    - Decreased parking requirements, setbacks, or open space requirements
- If these options were available, would this increase receiving-area developers' interest (and hence the price)?

## DECISION POINTS

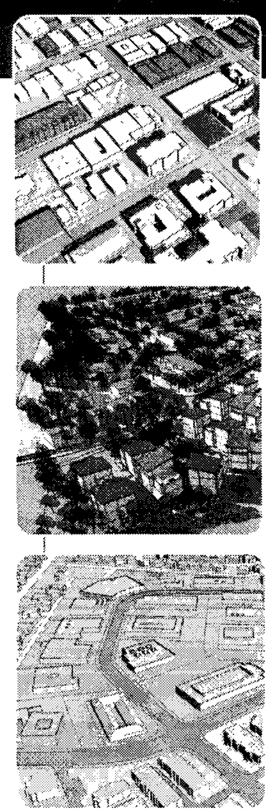
**How could a TDR bank be used, if it is allowed by the State TDR law?**

- What role can it play?
- Who should run it?
- How can it be funded?





## DECISION POINTS



**Where are the sending and receiving areas?**

- Sending areas should be consistent with program goals – mostly outside the PSA
- Receiving areas can be identified according to:
  - Areas inside of the PSA
  - Economic opportunity areas that may or may not require PSA amendments
  - Areas outside of the PSA
- Is there a different methodology or set of criteria that should be used to select receiving areas?

## DECISION POINTS

**Can amenities and services be provided to receiving areas along with increased density from TDR?**

- TDR program may permit additional density by right or through legislative review
- Proffer program permits mitigation of the impacts of additional density through legislative review
- How can amenities and services continue to be delivered if greater density is permitted by right through TDR?

DESIGN, COMMUNITY & ENVIRONMENT

# TRANSFER OF DEVELOPMENT RIGHTS FEASIBILITY STUDY

*FOR JAMES CITY COUNTY*

DESIGN, COMMUNITY & ENVIRONMENT

**DESIGN, COMMUNITY & ENVIRONMENT**

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**MEMORANDUM**

DATE December 14, 2010

TO Board of Supervisors
James City County

FROM Bill Fulton & Aaron Engstrom, DC&E

RE **Draft Successful Program Criteria and Key Issues**

This draft memorandum is the first work product for the James City County TDR Feasibility Study. This memorandum serves two purposes:

First, it highlights key issues and decision points that our team believes will be important for James City County to address which will be the topic of the work session.

Second, it provides some profiles of successful TDR programs that share characteristics in common with the TDR program envisioned for James City County. From these programs, preliminary work completed by the County Planning Division, and our knowledge of TDR programs nationwide, successful program criteria are discussed and summarized in terms relative to James City County.

### *A. Key Issues*

As DC&E moves forward in collaboration with the County on the TDR feasibility study, we believe several key issues must be addressed. These include:

#### 1. Demand to make a TDR program work given the enormous number of units in the pipeline.

James City County currently has thousands of housing units in the pipeline. It is reasonable to assume that, given the pipeline and the state of the market, there will be limited demand for additional housing development in the foreseeable future. This could delay effective TDR transfers for several years. As DC&E conducts additional research for the County, this potential delay caused by pipeline units will get better defined.

#### 2. Expectations of rural landowners.

Most rural landowners currently have 3-acre zoning. The TDR program may call for a downzoning in these areas and offer landowners the option of selling their development rights to receiving areas. This choice may conflict with landowner expectations that they will be able to retain the 3-acre zoning onsite. In addition, this choice may conflict with the landowners expectations if a possible upzoning is included in the landowners' calculation of their land value.

### 3. County's expectation for the use of rural lands after the sale of development rights.

Like Purchase of Development Rights programs, TDR programs allow private landowners to sell their development rights while retaining underlying ownership of the land. PDR and TDR programs are most effective when private landowners have options for revenue-producing activities not associated with development, such as agriculture. For the TDR program to be effective, James City County must work with agricultural landowners to identify profitable agricultural opportunities; and also determine how to deal with owners of forestal lands.

### 4. Amount of TDR assigned to sending areas

TDR programs use various methods to allocate TDR to sending sites. The two primary methods are 1) allocate TDR based on acreage, as in Montgomery County, or 2) allocate TDR based on the number of development rights that exist under zoning, as in New Jersey Pinelands. Once this is decided, then a decision needs to be made whether to allocate TDR based on holdings that include wetlands or other sensitive land and rights-of-way easement requirements. In other words, the County must determine whether to assign TDR based on the sending site zoning or acreage, and then decide how TDR should be allocated based on gross or net developable site area. Based on previous work sessions, it was agreed that allocation should be based on gross acreage.

### 5. Relationship between TDR program and proffer system.

Most developers in James City County provide infrastructure or funds for community amenities through Virginia's proffer system. Although proffers are technically voluntary, they are usually provided in conjunction with an upzoning and often follow the County's proffer guidelines or, in the case of roads, needs particular to the specific development situation. Although they would also be voluntary in James City County, TDR are designed to guarantee higher densities and the intent behind TDR is that developers use a portion of the additional revenue associated with the upzoning to pay for TDR. Thus, potential conflicts exist between the proffer system and the TDR program.

### 6. Expectations about the net amount of development in the receiving areas.

In order to give sending-area landowners motivation to participate, TDR programs sometimes provide rural landowners with more development rights than they can exercise on-site – a kind of a "bonus" for participating. Obviously, such an incentive would increase the overall amount of development that could be built in the receiving area. In order to meet with political acceptance, there must be political consensus regarding the possibility of increased development in the receiving area. This could lead the County to consider reshaping the PSA to optimize receiving areas while at the same time protecting environmentally sensitive areas.

**7. Possible changes in Virginia TDR law.**
Virginia TDR law strictly circumscribes how a TDR program can operate. Programs must be voluntary; there must be sufficient capacity in the receiving area to accommodate all TDR from the sending area; and the role of any potential TDR bank is also narrowly circumscribed. Some of these constraints may make it difficult for the TDR program to succeed, and some provisions of the state TDR law are not clear. Hence, it may be necessary for James City County to seek changes to the state TDR law.

## *B. Discussion Points for Board of Supervisors*

As the Board of Supervisors moves forward with the TDR program, the Board will be faced with several key decisions that will shape the program. These decisions will require a full discussion of several key issues and a consensus among the Board members about how to resolve these issues. These include the following:

**1. What is the purpose and goal of the TDR program?**
As stated throughout this memo, clear program goals are vital in crafting a successful program and in identifying sending and receiving areas, so the board will have to discuss the purpose and goal. Is the goal simply to protect agricultural land? Is protection of forestal lands a goal as well? Is the goal to move development from outside the PSA to inside the PSA? We recognize that part of the job of creating the TDR program may involve changing PSA boundaries, but the point is that a voluntary TDR program can be more difficult to craft if the County has a particular geographical configuration in mind.

- ♦ Pro: Clearly articulating goals ensure that the program can be carefully crafted to accomplish those goals, rather than being used to pursue a variety of objectives.
- ♦ Con: There is no con to clearly identifying goals, but a TDR program may become unduly complicated if there are a number of overlapping or competing goals.

**2. What is the role of the TDR program in pursuing land conservation goals?**
The County currently has many other programs to manage growth and protect open space, including the PDR program and the entire Comprehensive Plan and PSA. Given the fact that the TDR program will be one tool in this toolbox, what role will the TDR program play? The TDR program may not, by itself, be able to accomplish all the County's land conservation goals. For example, if the program is voluntary and some landowners choose not to participate, the County may not meet its planning objectives through the TDR program because some landowners may not participate. In that case, zoning regulations, the PDR program, or other options may be required. Thus, it is best to understand what can be realistically accomplished through the TDR program.

- ♦ Pro: TDR can add another option to the County's toolbox of growth control programs and policies, thereby increasing the County's ability to effectively plan for growth.
- ♦ Con: If the existing growth control policies and programs are operating successfully, a TDR program may require additional resources and result in little return.

**3. Should rural lands be downzoned?**

TDR programs often succeed in helping to preserve rural land because they work hand-in-hand with a rural downzoning. For example, in Montgomery County, rural landowners were downzoned from 5-acre lots to 25-acre lots but given the opportunity to recoup their property value through TDR.

- Pro: A downzone is a tool that would make the TDR program more attractive to sending-area landowners if it is designed to compensate them or "make them whole" as a result of the downzone. It could also provide a better starting point to create strong TDR transfer ratios.
- Con: Downzonings are frequently vigorously opposed by landowners and may not be necessary if the other growth control tools are effective.

**4. Will the TDR program be the only way for developers to obtain higher density?**

In order for TDR programs to succeed, developers in receiving areas must have motivation to participate, which usually means that TDR must be the only way to obtain increased density. However, developers in receiving areas are accustomed to obtaining increased density in a variety of ways, including the proffer system and simple Board action. Will the TDR program be the only method to obtain higher density? If not, what will motivate developers to participate?

- Pro: A key to TDR program success is to limit other ways that additional density can be obtained in a receiving area.
- Con: TDR may decrease the amount of other items traditionally provided in exchange for additional density, such as affordable housing or proffers.

**5. Should TDR be "redeemable" for other benefits in receiving areas besides residential units?**

Some jurisdictions permit TDR purchasers to redeem the TDR for commercial square footage or other benefits of value to developers (reduced parking ratios, for example). Should the James City County program require TDR to be redeemed only for residential units or should more options be provided?

- Pro: By including additional items besides bonus units, a TDR program can be more attractive to a wider range of developers. Add to this consideration the large number of units that are already approved in James City County, and non-residential TDR options could become a critical component of program success.
- Con: This added facet makes the TDR program more complicated to adopt and enforce, especially if there are few existing regulations for the scale and form of non-residential development. Furthermore, current State legislation only allows redemption for residential units or commercial floor area. Any other items examined would require changes to State legislation before they could be implemented.

### 6. How should a TDR bank be used?

Most – though not all – successful TDR programs use a bank as a way to "smooth out the market," so that both buyers and sellers are able to participate in the market at the time they are prepared to engage in transactions. Should James City County's program use a bank? If it is an option under State legislation, what role should the bank play, who should run it and how will it be funded?

- Pro: A TDR bank is used keep the TDR program functioning. It buys TDR when the pace of new development is slow, and sells TDR when the pace of development is fast. TDR banks increase overall program stability.
- Con: TDR banks can require upfront investment to start and continual administrative costs to operate.

### 7. Where are the sending and receiving areas?

Any successful TDR program has both sending and receiving areas of adequate size that have political support. In addition, Virginia law requires receiving areas to be able to accommodate the sending area development. As a starting point, staff has identified the following as our priorities for looking at receiving areas: 1) inside the PSA, 2) Economic Opportunity, and 3) outside the PSA. Does the Board concur, or would the Board have different priorities? During this Feasibility Study, the Board will need to decide which areas will be sending and receiving areas. This will require the Board to decide which areas outside the PSA will be sending areas and, in addition, which areas inside the PSA will be receiving areas.

- Pro: Clearly identified sending and receiving areas will make a TDR program more stable and politically acceptable. Additionally, defining sending and receiving areas and ensuring the receiving areas have enough capacity for transferred development rights is required by State legislation.
- Con: Once identified, sending and receiving areas can be difficult to change. Once landowners determine they are in a sending or receiving area, they may get concerned and publicly oppose the TDR program.

### 8. Should receiving areas receive other amenities along with increased density?

One way to obtain greater political support in receiving areas for higher density is to offer additional community amenities and services as part of the package. In James City County, developers have traditionally offered infrastructure and community amenities through the proffer system. Can amenities and services continue to be provided if the TDR program permits additional density by-right?

- Pro: Additional density can be more acceptable to residents of receiving areas if other public improvements are provided along with the additional density.
- Con: If TDR permits additional density by right, what happens to the proffers that are critical for improvements and services?

## *C. TDR Program Profiles*

This section describes a handful of successful TDR programs that share commonalities with the growth challenges facing James City County. We consider a successful TDR program to be a program that was adopted through a local ordinance and resulted in more than one successful transfer.

### 1. Criteria Used in Choosing Other Programs to Profile

Through background analysis and work completed by the Planning Division, we have identified some preliminary criteria for a TDR program in James City County that can be informed by looking at other successful programs.

**Goals:** A TDR program is not a policy goal, but, rather, an implementation tool designed to help achieve policy goals associated with land conservation and urban development. Clear program goals are important. However, different TDR programs may have different goals and different tools may be required to meet different goals. Programs designed to limit the scale of rural residential units, preserve historic buildings, and promote economic development in receiving areas may not share as many tools in common with programs designed to preserve open space.

**Growth Management Tools:** TDR is typically part of a suite of growth management tools or open space preservation programs, as will be the case in James City County. In some cases a TDR program is the only method used to preserve open space. But jurisdictions that use a variety of other methods – growth management, tax incentives, and purchase of development rights – can protect more land with limited resources.

**Decreased Zoning Potential:** TDR is a tool often used to compensate sending-area landowners for a downzone. Considering that the agricultural land in James City County is zoned for one residential dwelling unit per three acres (1du/3ac), a downzone could reduce the overall development capacity of agricultural land and a TDR program could be used to financially support landowners who had their development potential constrained.

**Growth Boundaries and Infrastructure Service Areas:** In some states, policies governing growth boundaries and infrastructure service areas are set at the state level. In the case of James City County, the Primary Service Area (PSA) is established in the Comprehensive Plan and provides geographical guidance for sending and receiving areas. Growth management tools within local control are discussed in some of the profiles. However to optimize potential receiving areas, consideration should be given to reshape the existing PSA to include land that would be suitable for receiving areas and protection of environmentally sensitive areas.

**Receiving Areas Development Configuration:** There are major differences between TDR programs that target receiving areas within urban centers and downtowns, compared to suburban and rural receiving areas. It is likely the receiving areas in James City County will primarily consist of the latter and that these areas will have less capacity to absorb bonus development permitted through TDR than an urban center with dense development patterns. However with the recent new land use designation, Economic Opportunity (EO), there is great potential for this established EO designation to absorb bonus development/receiving areas for both residential and commercial. For this to be successful, consideration of having the EO inside the PSA is critical.

## 2. TDR Programs in Virginia

Compared to the neighboring state of Maryland, municipalities in Virginia have had limited success with TDR programs. According to research conducted by the Planning Division, "Research: Transfer of Development Rights" October 2010, at least six localities have considered and researched TDR since the initial legislation passed in 2006 and there have not been any successful transfers to date.

The Virginia State TDR enabling legislation was enacted by the legislature in 2006 and amended in 2007 to permit interjurisdictional transfers, with further amendments in 2009. This section briefly describes the status of TDR programs in Virginia.

### a. Frederick County

This program was recently adopted and is the best example of a TDR program enacted under Virginia's TDR enabling legislation. The program's key objective is preservation of agricultural land, followed by preservation of areas of special geological significance. There was no downzone enacted. The agricultural land is zoned for 1 dwelling unit per 5 acres (1du/5ac), but a parcel must be a minimum of 20 acres to participate in the TDR program.

Receiving areas are located within the Urban Development Area (UDA) and the highest density with TDR is in residential areas planned to accommodate up to 15 du/ac. In this case a project in a Residential Performance district can go from 10 du/ac to 15 du/ac with TDR. Each TDR is transferred at a ratio of between one and two additional units, depending on which of three receiving areas it is in. The receiving-area development patterns will fit a suburban configuration, even when additional development is permitted with TDR

### b. Town of Blacksburg

In 1996, the Town of Blacksburg implemented a TDR program to protect a rural scenic area called Tom's Creek Basin. Minimum lot size was increased from 10 to 40 acres. An added incentive for a sending-area landowner to participate is a Rural Residential Parcel can be upzoned from 1 to 2du/ac in order to double the number of TDR allocated, if the applicant proposes to transfer all the density to a receiving site.

### c. Arlington County

Arlington County adopted a Zoning Ordinance Amendment that set up the regulations for a TDR program in 2006, and the County Board adopted a TDR program in 2008. This program includes some provisions that allow TDR to be traded for additional density, affordable housing, green building, and mixed use in receiving areas, such as the Clarendon Revitalization District near the Clarendon Metro Station. This program includes a process to convert TDR into various receiving-area commodities.

While this program identified receiving areas such the Metro Station vicinity, the discretionary review process and uncertain amount of bonus density available with TDR has contributed to a slow start – there have not been any successful transfers to date. The real estate market slowdown of recent years is also responsible for the lack of developer interest in the program.

### d. New Kent County

New Kent County is currently drafting a TDR program that allocates TDR per acre, resulting in a TDR allocation bonus compared to assigning TDR based on residential development potential. TDR are allocated to agricultural land identified in the Comprehensive Plan.

Receiving areas can get a TDR bonus up to 6 du/ac that could be used to increase project density to 12 du/ac. The County is still strategizing how proffers fit into the TDR program. Sewer and water infrastructure, as well as parking structures, are needed to develop high density in the receiving area.

### e. Other Jurisdictions

Spotsylvania County, the County of Chesterfield, the City of Suffolk and Albemarle County are also considering drafting TDR ordinances that will coordinate development with Urban Development Area boundaries and work with the proffer system. These programs are either still being designed or are very early in the implementation process.

## 3. Successful TDR Programs from around the Country

TDR programs are used in both urban and rural settings to achieve a wide variety of community goals. But most TDR programs in the United States are used either for environmental protection or farmland preservation, or a combination of the two. Farmland preservation programs are especially prevalent in the Mid-Atlantic states. Some of the most successful TDR programs were adopted decades ago and continue to operate today. Some of the best-known TDR programs are described below:

### a. King County, Washington

King County has had a TDR program since 1993 that has preserved more acreage than any other TDR program. A TDR bank was started in 2000, along with funding for amenities in receiving sites such as roads and community facilities. The County operates the TDR bank and is the primary market player, using revenue from a Conservation Futures Tax, which has provided over $24 million in funds for TDR purchases. The bank, which is operated by the King County Department of Natural Resources, originally used the tax money to buy TDRs from rural areas. Since then, the bank has essentially functioned as a revolving fund, selling TDRs to receiving areas in both King County and cities within the county and then using the proceeds from those sales to purchase more TDRs from receiving areas. This program has preserved 140,000 acres of forest and farmland since 2000.

The County facilitates infrastructure improvements in receiving areas within the growth boundaries, but the Growth Management Act limits the provision of infrastructure to areas outside of the growth boundaries.

Many of the TDR programs in the Pacific Northwest area have amenity menus with tiered structures to ensure receiving-area amenities, such as parks, enhanced architectural features, and transit amenities, are included when additional density is permitted on a receiving site. These programs could help inform the relationship between the proffer system and a TDR program in James City County. Examples of cities with bonus amenity menus that include TDR transfers are Seattle and Bellevue, Washington and Portland, Oregon.

### b. Montgomery County, Maryland

*Farm in Montgomery County*

Montgomery County arguably operates the most successful TDR program in the United States. Initiated in 1980, the program now protects more than 50,000 acres of farmland. In most cases, development rights have been transferred from agricultural areas in the northern part of the county to the older suburbs and developing areas in the southern part of the county, closer to the District of Columbia.

This program is designed to compensate landowners for a downzoning that reduced development potential from 1du/5c to 1du/25ac. Landowners are allocated TDR based on the previous zone density, meaning they can only build 1 unit per 25 acres, but they can sell rights to build 1 unit per 5 acre. The County also uses open space programs to purchase easements, provides tax benefits to farmers, and administers programs that support agriculture and agri-tourism.

TDR are traded on a one-to-one basis for single-family residential units and one-to-two for multi-family residential units. These transfer ratios are low compared to most other TDR programs because the receiving areas are suburban subdivisions in a market with high demand for single-family units. This program minimizes administrative costs because third-party intermediaries such as brokers and developers include TDR in their portfolios and openly buy and sell TDR. Adequate-sized receiving areas with demand for additional density that is openly traded, and a regulatory environment that makes TDR easy to include in a project, makes this TDR program the most successful in terms of land conserved per tax dollar spent.

### c. New Jersey Pinelands

*Wetlands in New Jersey Pinelands*

The New Jersey Pinelands TDR program protects specialty agriculture and environmentally sensitive areas. The State's "Pineland" region occupies roughly 1.1 million acres in the southeastern portion of the state spanning seven counties and 56 municipalities. The TDR program has preserved more than 55,000 acres of land.

The market is active, with more than 40 transfers per year. Landowners are motivated to sell because development is not allowed by-right in the sending areas and each project requires discretionary approval for a conditional use permit,

Transferable Development Credits (TDC) are allocated based on zoning and environmentally sensitive areas. The program includes a formula to account for wetlands and other environmentally sensitive areas in calculating the TDCs, which could be valuable in informing the James City County program. Each sending-area TDC can be traded for four receiving-area bonus units. The amount of additional density that can be achieved with TDR varies among the 23 jurisdictions that have receiving areas called Regional Growth Areas.

This regional TDR program is successful because startup and support costs were provided by the State. In 1985 the Pinelands Infrastructure Trust Bond Act funded $50 million in infrastructure improvements in Regional Growth Areas that support increased development density in the receiving areas. A TDR Bank was funded with $5 million from the State General Fund in 1987. This stabilized the market and setup an entity to administer and record all TDR transactions.

Another key factor is strong local political support to limit non-TDR upzonings in receiving areas. When the participating municipalities adopted the Pinelands Plan, all agreed to require TDC for zoning amendments that increase permitted density, and for variances that allow residential uses on commercial land.

### *D. Successful Program Criteria*

DC&E has identified four proven components of TDR success. Many of these incorporate components previously identified to the Board of Supervisors by James City County staff:

1. Clear TDR Program Goals
2. Suitable Sending and Receiving Sites
3. Adequate Incentives for Sending- and Receiving-Area Landowners
4. The Use of Banks and Other "Market-Making" Mechanisms

1. Clear Program Goals

A TDR program is not a policy in and of itself. Rather, it is a tool used to implement a planning policy goal. A TDR program needs to be clear up front about its objectives and if the objectives are in-line with public opinion to preserve areas of interest, it has the best chance of success from the start.

Most TDR programs seek to preserve open space and limit development in a sending area. It is important to note, however, that, as in James City County, this goal is rarely accomplished without other programs that preserve open space through other means, such as a Purchase of Development Right programs, greenspace acquisition, and mitigation banking systems. Thus, in addition to having clear program goals, it is important to understand the role the TDR program can realistically play in achieving the goal, as well as the role other programs may play.

Whichever combination of tools is used by a locality to meet preservation goals, the goals of the TDR program are not separate from the community's overall planning goals. Like other planning implementation tools, the TDR program will implement the Comprehensive

Plan, which in turn is a reflection of the preferences of the community at large. There are many obstacles to adoption, typically developer and landowner concerns, modifications to the zoning code, and finding suitable receiving areas; so it is important to remember that the purpose of a TDR program is to implement the already-adopted Comprehensive Plan. After the program is operational, decision-makers will need to support TDR as the only method for developers in receiving-areas to obtain additional density.

2. Suitable Sending and Receiving Sites
It is not usually difficult to identify sending areas; indeed, a TDR program often emerges from a strong political consensus to preserve a certain set of properties by removing development potential from them. On the other hand, it can be extremely difficult to identify politically acceptable receiving areas because local resistance to increased density is common.

Virginia law requires sufficient capacity in the receiving area to accommodate development transferred from the sending area. Thus, it will be important to identify large and/or multiple receiving sites. At the same time, the County must consider whether the infrastructure in the receiving area is adequate for the additional density, and how any necessary infrastructure improvements will be funded.

3. Adequate Incentives for Sending- and Receiving-Area Landowners
Because the James City County program will be voluntary, it is especially important for both sending- and receiving-area landowners to have strong incentives to participate.

For sending-area landowners, selling development rights must be equally profitable (or more so) and more feasible than pursuing by-right development of their property. For receiving-area landowners, building at higher densities (or building with a TDR-linked commodity bonus) must be more profitable and feasible than building under baseline regulations. This is why DC&E will be conducting an economic analysis.

Typically, the tools used to create adequate incentives are a combination of carrots and sticks. These include:

a. Downzoning sending-area property.
b. Providing sending-area landowners with bonus development rights (through the "transfer ratio" or allocation process) that "make them whole" if those rights are sold rather than exercised onsite.
c. Designating receiving areas where market demand for higher-density housing or commercial floor area exists.
d. Designating receiving areas where infrastructure exists, reducing the need to provide additional infrastructure to support higher density.
e. Stipulating that purchase of TDR is the only method through which receiving-area landowners can obtain increased density.

The current 3 ac minimum lot size in the sending-area is likely to be too small to be considered the best use for agriculture. In the Montgomery County TDR program discussed above, a 25-acre farm site was determined to be the minimum economically viable size. Without adequate incentives to continue agriculture, farmers will be hesitant to sell TDR if the land is not economically viable for its intended use. Therefore a, downzoning is a tangible option to preserve agricultural land in James City County and should be used in combination with the other ideas the County is actively considering to encourage ongoing agricultural operations and to help farmers find new markets.

4. Using Banks and Other "Market-Making" Mechanisms

In many cases, banks or other mediating institutions are necessary to even out the market. If market players are misinformed or unaware, they will not participate in the market in an effective manner. In addition, land markets frequently do not function in the same way as other markets. Often there are only a few market players, especially in undeveloped areas, and frequently those market players do not respond to typical economic signals.

The examination of funding mechanisms including ways to capitalize a TDR bank as well as direct buyer-seller markets is especially important given the State TDR enabling legislation.

This concludes the memorandum. We at DC&E hope that the Board can provide direction for these key decision points that will be used to tailor the TDR feasibility study to the needs of James City County.

## E. *Appendix of Additional Case Studies*

This section describes some other TDR programs from around the Country that provide useful information pertaining to TDR in James City County.

### a. Berthoud, Colorado

In 1999, the Town of Berthoud, Colorado adopted a TDR option called a Density Transfer Charge (DTC). This option is essentially a cash in-lieu fee on upzones. If a project is approved for additional density over the maximum allowed under the previous zoning, a developer can select a cash compliance option of $3,000 per additional single-family residential unit, $1,500 per multi-family unit, or an easement compliance option of 1 acre of Significant Resource Land.

In this case the cash in-lieu fee is a viable option to achieve additional density in subdivisions. To date, developers have chosen to pay the fee on 313 bonus dwelling units in subdivisions.

While the system bypasses many items included in a traditional TDR program; including identification of sending and receiving areas, the need to craft transfer ratios for TDRs, no issues and transfers of certificates, and no third-party intermediaries, it generates revenue for strategic open-space acquisitions. This TDR program operates on a small scale; the Town only has about 5,000 residents. At the larger scale of a county it is more likely that sending and receiving areas will need to be identified. The fee amounts are also relatively low compared to other programs. This cash-in-lieu practice is not currently permitted under State legislation, but may be an alternative for considering legislative changes if the Board thinks this may be a better structure.

### b. Redmond, Washington

The City of Redmond adopted a TDR program in 1995 and updated it in 2007. This program sent development rights from the Sammamish Valley into flexible receiving areas that include areas targeted for commercial, industrial and mixed-use development. An amendment in 1998 added critical areas in Redmond and a method for landowners to calculate TDR on eligible sending areas. This program is traditional in the sense that the City issues TDR certificates that are sold by landowners directly to developers. It has been successful, transferring 573 TDR, completing $16.8 million in TDR transactions and preserving about 420 acres.

This program is interesting because a TDR can be traded for a variety of commodities, including:

- Additional 8,712 square feet of floor area,
- Substitute requirements for 8,712 square feet of parkland,
- Increase impervious surface area by 8,712 square feet,
- Add up to five additional parking spaces.

### c. Calvert County, Maryland

Calvert County adopted a TDR program in 1978 that called for preservation of agricultural and forest lands. As of 2007, the program had preserved over 12,020 acres. In late 1999, the density allowed in Farm and Forest and Rural Community zones was reduced from 1du/5ac to 1du/10ac; then in 2003, it was again reduced to 1du/20ac. This program is similar to Montgomery County in that it is designed to compensate landowners for revisions to the zoning standards that reduced development potential.

Landowners must request a rezone to the Agricultural Preservation District to get the incentivized transfer rate. Sending sites in the Agricultural Preservation District are zoned at 1du/20ac and are allocated one TDR per acre. The methodology used to allocate TDR by acreage rather than zoning capacity is a method different from many TDR programs. The easement on a sending site is initiated upon transfer of one TDR and the landowner retains the right to build one unit at 25 du/ac density. The transfer ratio is 5 TDR to 1 receiving area unit, meaning that it takes 5 TDRs (representing 5 acres of rural land) to build one additional unit in receiving areas. Receiving area density bonuses with TDR can range as high as 14 du/ac; although most receiving-area densities remain low even with TDR.

A handful of other open space preservation programs compliment the TDR program, and are responsible for more than doubling the total area preserved through TDR, to 27,000 acres. There is no TDR bank, but two programs annually set prices that the County will pay for TDR; under these programs, the County annually announces the price it will pay. The Purchase and Retire program sets a price for agricultural land TDR, and the Leverage and Retire program finances payments to landowners for TDR over time. Technically, direct buyer-seller exchanges are not bound by the County's price, but they trend towards the County's prices. Unlike in Montgomery County, third-party intermediaries have not speculated on the TDR market in Calvert County.

### d. Palm Beach County, Florida

Implemented in 1980 and revised multiple times, this TDR program has preserved over 35,000 acres of sensitive environmental areas, rural and agricultural land. While Montgomery County and Calvert County reduced the permitted density in the sending areas, this program provided incentives for developers to participate in the program when the receiving areas were downzoned to densities as low as 2 du/ac, thus requiring TDRs for most urban development projects. Depending on the amount of growth planned in three different receiving-area typologies, density up to 4 additional du/ac can be achieved through TDR.

This program is also one of the most expensive. It utilized a voter-approved open space bond measure to start a TDR bank and fund $100-million worth of TDR purchases. This was part of a $300-million bond measure used to fund open space programs to preserve a variety of rural, agricultural and environmentally sensitive areas. The Natural Areas Program uses a complicated TDR allocation methodology involving multiple layers of data to measure the value of the land. Between 1 to 10 TDR are allocated per sending-site acre, which is a similar acreage-based concept to the Calvert County, Maryland TDR program.

Developers are allowed to purchase TDR directly from landowners but the convenience and certainty provided by the bank makes it the primary source for buying TDR. The County operates the bank and annually sets the prices it will pay, ranging between $10,000 per TDR in 2002, to $50,000 per TDR today.

The TDR program in Palm Beach County is on hold due to a moratorium issued by the Board of Supervisors in order to review TDR bank pricing methodologies. The program's administrative framework is setup so that the County is the regulator and oversees the key market player – the bank. We typically recommend separating the market players from market regulators as a way to keep the TDR bank from gaining too much control over the TDR marketplace.