

Transfer of Development Rights (TDR)

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What is TDR?

- TDR is based on the fact that land ownership consists of a “bundle of rights” that together make up “fee simple” ownership.
- TDR is a regulatory device to:
 - Preserve sensitive lands while compensating the landowner for such protection.
 - Concentrate development in suitable areas.
 - Use private rather than public funds to protect land from future development.

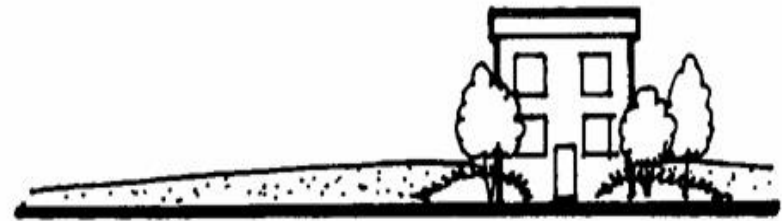
How Does It Work?

- Landowner sells unused development rights on his property.
 - Permanent easement restricts future development of seller's property.
- Buyer transfers development rights to other private property in specifically designated areas.
 - Areas that are developed or developing & have utilities & services to support higher density growth.
 - Buyer then enjoys benefit of increased density & more intensive development.



2.5 Units/Acre

Density Without TDR



8 Units/Acre

SENDING ZONE
Area Includes Many Wetlands



RECEIVING ZONE
Area Without Wetlands



0.1 Units/Acre

Density With TDR



10 Units/Acre

TDR Efforts Nationwide

- Approximately 140 local programs in existence.
- Total acres protected by all TDR programs: approximately 130,000.
- 51,500 acres (40% of total) protected in Montgomery County, MD.
 - Would have cost county \$68 million if used PDR.

Common Features of Successful TDR Programs

1. Market factors:

- TDRs makes economic sense to developers.
- Demand for higher density development is present.
- TDRs have sufficient value to sellers & buyers to sustain an active market.

2. Counties that maintain demand for TDR by:

- Downzoning farmland to preserve agricultural & forestal lands.
- Upzoning developed or developing areas to receive TDRs.
- Carefully balancing total TDR supply & demand.

3. County actions that support TDRs:

- Plans & policies require the use of TDRs for increasing density in receiving areas.
- Bonus density for using TDRs in receiving areas significantly exceeds base zoning density.
- TDRs are combined with other land preservation tools, such as:
 - Ag & Forestal Districts.
 - Land Use Taxation.
 - PDR/Lease of Development Rights.
 - Primary agricultural zoning district.
 - Cluster zoning

**4. TDR program has
broad public support.**

TDRs in Virginia

- In early 1980s, Loudoun County used “density transfer” program in its proffer policy.
- 2006 - TDR law enacted with broad stakeholder support.
- 2008 - Joint Subcommittee Studying Transfer of Development Rights.
- 2009 - Revised TDR law effective 7/1/09.



Some Features of the Revised Law

- Establishment of a county TDR program is permissive.
 - If established, however, county program must have certain mandatory provisions.
 - Law also gives counties a “menu” of optional provisions.

Some Mandatory Features

- County must designate one or more TDR sending & receiving areas in comprehensive plan.
- Number of development rights (DRs) severed from sending areas must equal the number of DRs allowed in receiving areas.

- TDR application must be approved if complies with county ordinance.
- County cannot require TDR for development of any property.

Some Optional Features

- Residential DRs may be converted to increased commercial or industrial square footage on receiving property.
- County may allow owner of DRs to get real estate tax abatement for up to 25 years for FMV of all or part of the rights.
 - At the end of abatement period, DRs are retired.
 - Virginia constitution may bar this provision?

- Receiving areas may also be Urban Development Areas (UDAs). – More about this later.
- After DRs severed, sending properties may generate renewable energy, or produce agricultural or forestal products.
- Adjacent city or town may be designated as county receiving area by agreement.
- Anyone may buy & then permanently retire purchased DRs.

What's the Tax Impact?

- Assessed value of sending property reduced after DRs severed.
- Assessed value of receiving property increased after DRs attached.
- Until attached, severed DRs assessed at FMV in the same manner as mineral rights.

What are the Obstacles?

- Insufficient demand for additional density in receiving areas because:
 - County tries to force additional density into existing high density areas.
 - County gives developers bonus density without TDRs through cluster zoning, PUDs, connection to water & sewer, etc.

What are the Obstacles?

- Supply side problems because:
 - Information about TDR prices difficult for landowner to find.
 - Price fluctuations over time discourage participation or leads landowners to hold their TDRs waiting for higher price.

What are the Obstacles?

- Receiving areas must allow for increased density by-right.
 - Since no rezoning is involved, county cannot accept cash and/or non-cash proffers on increased density to help provide additional capital facilities.
 - Successful TDR programs elsewhere are coupled with impact fees.
 - Increased by-right density in receiving area = NIMBY problem.

What's the Bottom Line?

Ultimate success or failure of local TDR program is mostly up to the marketplace.

What's Happening Now?

- VACo & VAR drafting model ordinance with broad stakeholder participation.
 - ETA: December 2009.
- Localities examining TDR options:
 - Counties of Albemarle, Fauquier, & Frederick.
 - City of Suffolk
 - Others?



UDAs & TDRs

- By July 1, 2011, 57 counties must include one or more Urban Development Areas (UDAs) in their comprehensive plan.
 - Includes Augusta, Culpeper, Fauquier, Frederick, Greene, Page, Rockingham, Rockbridge, Shenandoah & Warren Counties.
- Mandate also applies to 12 cities & 46 towns, but they have until July 1, 2012.
- Any other county, city or town may. . .




- UDAs = where a county sees compact, high density residential & commercial development occurring over the next 10 to 20 years due to:
 - Proximity to transportation facilities.
 - Availability of public or community water & sewer.
 - Proximity to a city, town, or other developed area.
- UDAs must provide for future densities of:
 - Residential = 4 dwelling units per gross acre, and
 - Commercial = 0.4 FAR per gross acre.

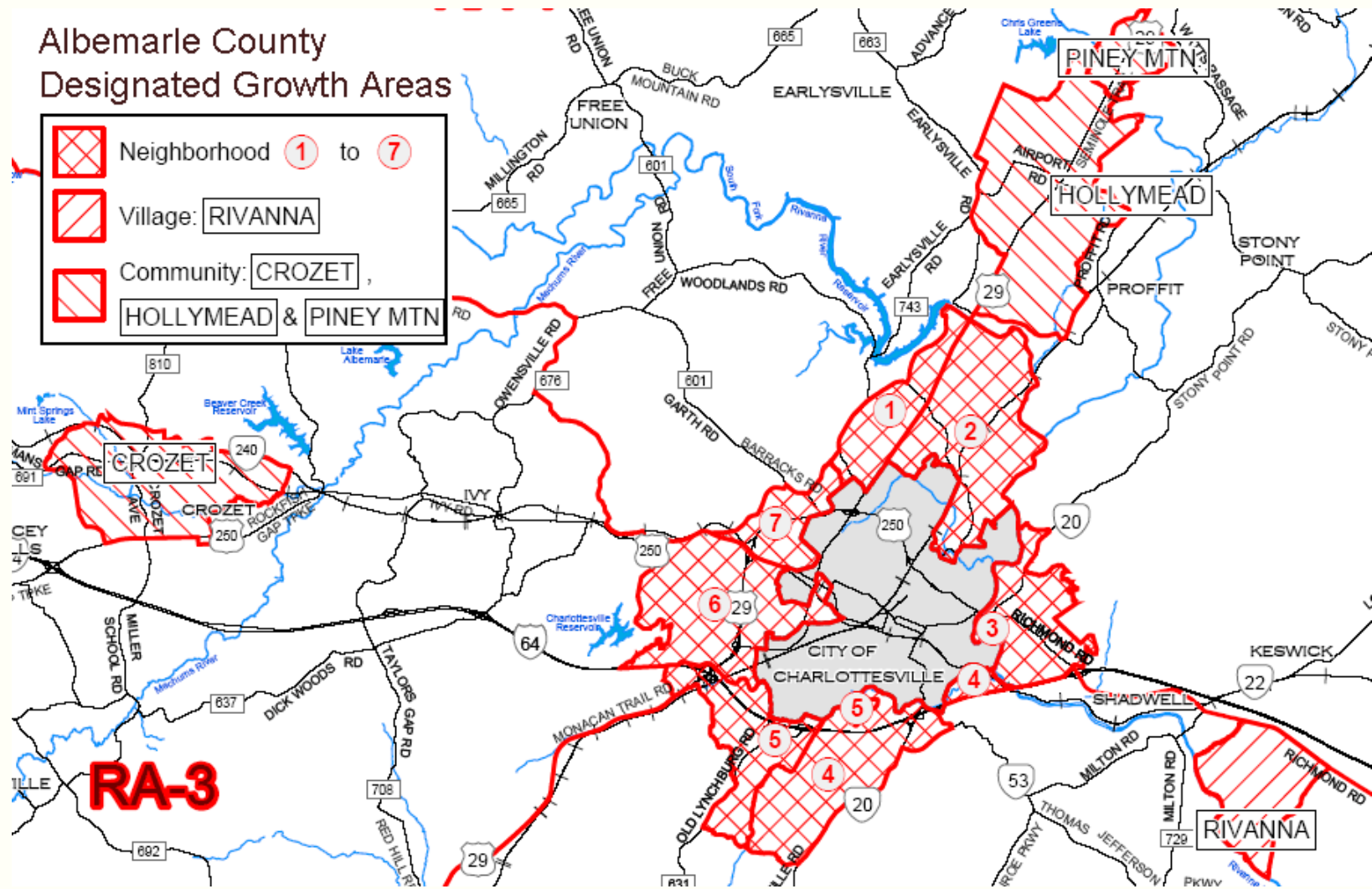
What Does This Have To Do With TDRs?

- UDAs are ideal receiving areas for TDRs.
- Revenue loss from TDR program should be more than offset by increased AVs from higher density development in UDAs.
- UDAs reduces development pressure on areas of importance to agriculture & forestry production.

New Wine in Old Bottles?

Albemarle County
Designated Growth Areas

-  Neighborhood ① to ⑦
-  Village: RIVANNA
-  Community: CROZET, HOLLYMEAD & PINEY MTN



For Further Information

THE FEASIBILITY OF SUCCESSFUL TDR PROGRAMS FOR MARYLAND'S EASTERN SHORE

[<http://law.wustl.edu/landuselaw//Articles/REPORT.pdf>]

TRANSFER OF DEVELOPMENT RIGHTS in U. S. COMMUNITIES

[http://www.rff.org/Publications/WPC/Documents/07_09_Transfer_of_Development.pdf]

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- QUESTIONS?
- COMMENTS?
- DISCUSSION?