

TRANSFER OF DEVELOPMENT RIGHTS FOR ALBEMARLE COUNTY DISCUSSION SUMMARY REPORT

Terance J. Rephann

Center for Economic and Policy Studies
Weldon Cooper Center for Public Service
University of Virginia

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**WELDON COOPER
CENTER FOR PUBLIC SERVICE**

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FOREWORD

The Citizens Committee for City-County Cooperation commissioned the University of Virginia's Weldon Cooper Center for Public Service to facilitate a discussion regarding the feasibility of developing a Transfer of Development Rights (TDR) program for Albemarle County and to identify features of a program that would attract community support. The discussion follows legislation passed by the Virginia General Assembly permitting localities to adopt TDR programs and later amended. This report describes and summarizes a series of meetings held over a five-month period during the second half of 2008 and early 2009 with community stakeholders who represented a broad cross section of community interests.

The author would like to thank various individuals for assistance in completing this study. Mr. Jonathan Cannon, University of Virginia Professor of Law and former Vice-Chair of the Albemarle County Planning Commission, graciously donated his time as a facilitator for each of the discussion sessions. David Slutzky, a member of the Albemarle County Board of Supervisors, helped to initiate the project and served as a resource and liaison for county staff. He also helped in one session by offering a straw-man proposal to stimulate further discussion and familiarize discussion participants with the various

features of TDR programs. Mr. John Thomas, Executive Director of the Weldon Cooper Center, was a catalyst for the involvement of the center in the discussions. Mr. Dan Rosensweig, a member of the Charlottesville Planning Commission, volunteered his perspective on how Charlottesville might become involved in a TDR program.

County staff members, Roderick Burton, Data Management Coordinator; Mark Graham, Director of Community Development; Bruce Woodzell, Tax Assessor; and Ches Goodall, ACE Program Coordinator, provided helpful information and assistance during the course of this project. Rex Linville of the Piedmont Environmental Council provided historical information about county land easements. Caitlin Bailey, research assistant at the Cooper Center, helped with preparing for each of the discussion meetings and with data collection, literature review, and report preparation. Jonathan Malacarne provided proofreading assistance. Lastly, the author would like to thank all sixteen participants and their alternates in the stakeholder discussions that gave freely of their time and provided insightful comments throughout the period. Without their full participation, this document would not have been possible.

Any errors or omissions are the responsibility of the author.

Terance J. Rephann
Regional Economist
Charlottesville, Virginia
April 2009

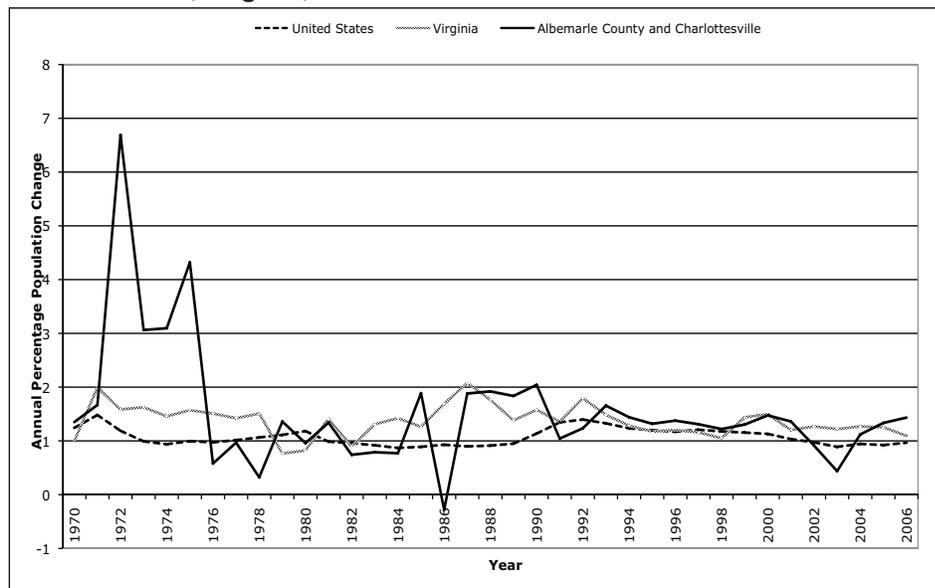
SECTION 1 INTRODUCTION

1.1 Origins of Discussion

The relatively rapid pace of local population growth over the last four decades (see **Figure 1.1**), much of it connected with University of Virginia expansion and associated residential development

permit use value assessment for all four categories of property eligible by statute. The county has also been an early adopter of other conservation policies. In 1980, it undertook comprehensive downzoning that designated a Growth Area constituting 5 percent of the county's area and a low density Rural Area in the remainder.² It is one of twenty-one Virginia localities to pass a Purchase of Development Rights (PDR) ordinance (which establishes the Acquisition of Conservation Easements or ACE program) and has been among the leaders in obtaining matching funds from the Virginia Department of Agriculture and Consumer Services' State Farmland Preservation grant fund to cover program costs.³

Figure 1.1 Population Increase, 1969 to 2006, Albemarle County & Charlottesville, Virginia, and United States



Source: Bureau of Economic Analysis, Regional Economic Information System.

pressures on rural areas, has spawned increasing interest in developing local policy strategies for land preservation. During the same time period, the state has developed its own land preservation policies to address problems connected to urban sprawl in Northern, Eastern, and Central Virginia as well as to attain aggressive environmental milestones for preserving bay water quality in keeping with the Chesapeake Bay Preservation Act. These strategies are described in the current *Albemarle County Comprehensive Plan*.

Albemarle County, like 119 other Virginia localities, has adopted land use value assessments for agricultural, horticultural, forestal, and open space real estate.¹ It is one of seventy-one localities that

1 Weldon Cooper Center for Public Service, University of

Albemarle County residents have made ample

use of the State Land Preservation tax credit program resulting in conservation easements being placed on thousands of acres. To date, over 75,000 acres have been placed under easement. The county has established an ambitious goal of preserving 90,000 acres by June 30, 2010.

In response to continued growth pressures, some residents have requested even more stringent land use regulations. The Albemarle County Board of Supervisors considered a phasing and

Virginia 2009. *Virginia Local Tax Rates 2008*.

2 Each parcel was assigned up to five development rights with minimum lot sizes of two acres and one additional development right was created for every twenty-one acres.

3 <http://www.vdacs.virginia.gov/preservation/>

clustering ordinance in 2007, but it was rejected. A mountaintop protection ordinance was passed in 2007, but it was more limited than the original proposal. In early 2008, the Board of Supervisors approved rural area ordinances that imposed additional restrictions on development within intermittent stream buffers, family subdivisions, and steep slopes. However, these proposals and ordinances generated concerns from landowners, developers, the business community and private property advocates, some of whom felt that those affected were being deprived of the full use and value of their property.

Interest in Transfer of Development Rights arose due to both increasing calls for land use regulation and increasing resistance from landowners and developers. TDR is a market-based approach to land use control and preservation that has been used in nearly 200 localities around the country, particularly areas experiencing significant growth pressures.

In a TDR program, residential development rights are severed from a land parcel and traded in a private market for use on another plot of land. In most cases, the program is instituted to foster community conservation objectives, but is sometimes motivated by other program objectives such as historical preservation, affordable housing, and economic development. When environmental conservation is the objective, it is common for communities to designate an area to be protected (a Sending Area) and an area where additional growth is desired (a Receiving Area). Transfers of development rights then occur between these two areas. The procedures and designs of individual programs vary widely across localities, but the ultimate goal is to establish parameters that stimulate transactions between the suppliers and demanders of development rights.

In order for any market to exist, there must be scarcity of a good or service. In the case with TDR, the mechanism that creates this scarcity is local land use regulations such as zoning, which in effect cap the amount of growth or density

possible in locales. In some instances, it would be profitable for developers to legally circumvent the restriction, so they are willing to pay a price for the allowance. Similarly, a potential supplier of development rights would accept a price to relinquish these rights, and either forego the opportunity to develop the property in the future or sell the property in the future with easement encumbrance.

TDR programs differ widely in how much they attempt to motivate or incentivize suppliers and demanders to exchange. Some TDR programs are completely voluntary and allow the market to work of its own accord. Others downzone sending or receiving areas in an attempt to motivate buyers or sellers by providing financial incentives, such as infrastructure funding in receiving areas and tax abatement in sending areas, or establishing and operating TDR banks.⁴

The Virginia General Assembly passed very basic legislation in 2006 allowing localities to establish TDR programs. The statute was then amended in 2007 (see Appendix A.1).⁵ This legislation has since been adjusted for Albemarle County to allow development rights to ‘float’ or be ‘banked’ with third parties rather than being immediately transferred to a receiving property. The statute lays out the requirements for establishing a local TDR ordinance, including public notice and hearing, a system for issuance, recordation, severance, ownership, assignment, and transfer of TDR, sending property easement encumbrance, maps or descriptions of sending and receiving areas, identification of where and how the TDRs may be used in the receiving area, identification of where and how development rights can be transferred from the sending area, and an “assessment of infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans

⁴ See Pruetz, Rick. 2003. *Beyond Takings and Givings*. Marina Del Rey, CA: Arje Press and Pruetz, Rick and Erica Pruetz. 2007. Transfer of Development Rights Turns 40. *Planning & Environmental Law* 59, 6: 3-11.

⁵ To date, TDR has not yet been enacted by a locality in Virginia.

to provide necessary utility services within any designated receiving area.” The legislation provides Albemarle County with broad latitude in developing its TDR ordinance. For instance, it does not require the county to specify allocation formulas for TDR transfer, conduct an analysis of receiving and sending areas to assure that the sending area development rights can be accommodated in the receiving area, prohibit downzoning, or restrict receiving areas to county “growth areas.” These kinds of restrictions are found in many other state statutes.⁶

Although a TDR ordinance has not yet been adopted in Albemarle County, Transfer of Development Rights is favorably mentioned several times in county planning documents. The *Albemarle County Comprehensive Plan* identifies TDR as a possible strategy for rural protection. The Rural Area section of the plan recommends that the county “Actively support enabling legislation for the Transfer of Development Rights. When TDR programs are enabled, the County should adopt measures for implementation.”⁷ The Natural Resources and Cultural Assets Section of the Plan also invokes TDR as a strategy for protecting agricultural and forestry resources, mountains, and open space.⁸

Since the time when the Board of Supervisors adopted the two sections of the plan mentioned above, the Mountain Overlay District (MOD) Committee has called on the county to consider what it termed “innovative and flexible

approaches to protecting Albemarle’s mountains” as part of its *Proposal for Protection of Albemarle County’s Mountain Resources*. It recommends in a May 10, 2006 report that the county consider “Develop[ing] a transfer of development rights (TDR) ordinance (using recent enabling legislation) whereby development rights within the MOD may be sold and transferred to parcels wholly outside the MOD.”⁹ The current *Albemarle County Strategic Plan (FY 2007-2010)*, completed in July 2006, directs the county to “research transfer development of rights (TDR) programs and support TDR legislation.”¹⁰

County Supervisor David Slutzky formally submitted a TDR program proposal that was introduced on December 6, 2006, at an Albemarle County Board of Supervisors meeting.¹¹ However, the proposal was tabled because of the amount of county resources required to implement the proposal, as well as due to questions raised by board members about the feasibility of the program.¹² In June 2007, the Weldon Cooper Center was approached about the possibility of providing facilitation services to educate members of the public about TDR, provide a forum for community stakeholders to discuss issues related to TDR, and potentially mediate parameters of a TDR program.

1.2. Participants and Format

The Cooper Center facilitated a series of six community/stakeholder meetings. The meetings

6 For example, Idaho’s TDR Statute (§ 67-6515A) states “Before designating sending areas and receiving areas, a city or county shall conduct an analysis of the market in an attempt to assure that areas designated as receiving areas will have the capacity to accommodate the number of development rights expected to be generated from the sending areas.” <http://www3.state.id.us/cgi-bin/newidst?sctid=670650015A.K>.

7 *County of Albemarle Comprehensive Plan: Rural Area Plan*, p. 38. <http://www.albemarle.org/department.asp?department=planning&relpage=3004>.

8 *County of Albemarle Comprehensive Plan: Natural Resources and Cultural Assets* pp. 100, 109, and 179. <http://www.albemarle.org/department.asp?department=planning&relpage=3004>.

9 *Proposal for Protection of Albemarle County’s Mountain Resources*. http://www.albemarle.org/upload/images/Forms_Center/Departments/Board_of_Supervisors/Forms/Agenda/2006Files/20060803/MODattachmenta.htm.

10 *Albemarle County Strategic Plan (FY 2007-2010)* <http://www.albemarle.org/department.asp?department=tyexec&relpage=8004>

11 *Albemarle County TDR Proposal* http://www.albemarle.org/upload/images/Forms_Center/Departments/Board_of_Supervisors/Forms/Agenda/2006Files/20061206/Agenda.htm#13.

12 *Transferable Development Rights (TDRs) – Staff Analysis of Mr. Slutzky’s Proposal*. http://www.coopercenter.org/econ/sitefiles/documents/transferdevelopmentrights/staff_analysis.pdf.

explored the need, feasibility, mechanics, and implementation procedures for a TDR program and considered whether specific parameters for a TDR program could be developed that would gain wide community support. The meetings also provided a forum for discussion of Albemarle growth and land use trends, other growth management tools used by the county and state, the mechanics of how TDRs work, the pros and cons of TDRs, legal and technical requirements for an Albemarle County TDR program, and administrative costs and institutional changes that would occur if a TDR program were adopted.

After consulting with the sponsors, the purpose of the discussion was phrased as follows: Determine the feasibility of developing a transfer of development rights program for Albemarle County and, if possible, identify the features of such a program that would attract wide community support. Although the Albemarle County Board of Supervisors did not dedicate financial or staff resources for the discussion, they did, at their June 11, 2008 meeting, approve a statement supporting the idea of a community TDR dialogue.¹³

A total of 21 invitations were sent to participate in the discussion. Members on the list included local developers, homebuilders, the legal community, environmental groups, rural landowners, the business/real estate community, and government officials. Five individuals on the invitation list did not attend any sessions. One organization sent two representatives. Several of those who did attend also participated in an earlier exploratory meeting in late 2006 that was arranged by Mr. Slutzky.

The stakeholders are listed in **Table 1.1**.

Due to scheduling conflicts, several stakeholders designated alternates to attend in their absence.

Six meetings were held over the period from

Table 1.1 Stakeholder List

Participant	Affiliation
Dennis Rooker	Board of Supervisors
David Slutzky	Board of Supervisors
Tony Vanderwarker (alt. Jeff Werner)	Piedmont Environmental Council
Steven Blaine (alt. Tara Boyd)	Charlottesville Regional Chamber of Commerce and LeClair Ryan
Joe Jones	Albemarle County Farm Bureau
David Phillips	Charlottesville Area Association of Realtors (CAAR)
Jay Willer	Blue Ridge Homebuilders Association
Neil Williamson	Free Enterprise Forum
Charles Rotgin, Jr.	Great Eastern Management Company
Leigh Middleditch (alt. J. Alden English)	5 C's and McGuire Woods, LLP
Morgan Butler	Southern Environmental Law Center
Kathy Rash, Sarah Henley	Forever Albemarle
Jack Marshall	Advocates for a Sustainable Population (ASAP)
Frank Quayle	Roy Wheeler Real Estate Company
Jane Fisher	Charlottesville Community Design Center
Debbie Stockton	VA Independent Consumers and Farmers Association

July 31, 2008 to January 29, 2008. A list of ground rules were drawn up and agreed to by the group. The meetings were open to the public and held in the University of Virginia's Zehmer Hall conference facility. Several local media outlets attended the meetings and coverage was provided in a number of television and radio broadcasts, as well as in blog and newspaper articles (see Appendix A.2).

Although the meetings were arranged primarily for the purpose of engaging the selected stakeholders in a wide-ranging discussion of TDR, limited time was allowed at the end of some meetings for citizen comments. These comments along with the other content of the meetings are described in the meeting minutes (see Appendix A.3).

Table 1.2 summarizes the dates and topics of each meeting.

¹³ *Statement Regarding TDR Stakeholder Dialogue*
http://www.albemarle.org/upload/images/Forms_Center/Departments/Board_of_Supervisors/Forms/Agenda/2008Files/20080611/TDRMemo.htm.

Table 1.2 Meeting Dates, Themes, and Topics Covered

Date	Theme	Topics
7/31/2008	Introduction	Introduction Ground rules Straw man proposal
8/14/2008	Develop work plan	Straw man proposal pros and cons Breakout groups for work plan on goals, receiving area, creating a market, administrative issues
8/28/2008	Identify features of TDR plan	Report out on breakout groups for work plan
9/11/2008	Identify features of TDR plan	Receiving area characteristics Creating a market
10/16/2008	Finalize details of consensus TDR proposal	Charlottesville receiving area presentation Sending area characteristics Administrative issues
1/29/2009	Wrap up and review	Consensus points

SECTION 2 RURAL DEVELOPMENT AND LAND PRESERVATION IN ALBEMARLE COUNTY

2.1 Rural Area Development

In the last 10 years, Albemarle County has experienced a building boom that was reflected in increases of both residential building permits and subdivision activity (see **Table 2.1**). In 2002, the peak year, 1,720 dwelling units were authorized. Approximately one-third of the total units, an average of 275 units per year, were permitted for the Rural Area during the period 1995-2007 (see **Figure 2.1**).

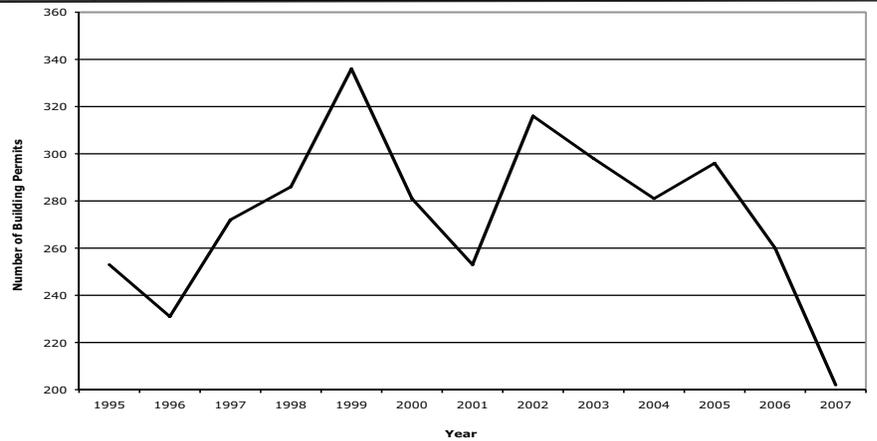
Residential construction has caused a significant amount of the rural land base to be consumed. **Table 2.2** indicates that parcels amounting to nearly 47,000 acres, 10 percent of

Table 2.1 Dwelling Units Authorized by Building Permit by Comprehensive Plan Growth Area and Rural Area, 1995 to 2007

Year	Total Area	Growth Area	Rural Area	% Growth Area	% Rural Area
1995	596	343	253	57.6	42.4
1996	835	604	231	72.3	27.7
1997	905	633	272	69.9	30.1
1998	874	588	286	67.3	32.7
1999	770	434	336	56.4	43.6
2000	650	369	281	56.8	43.2
2001	875	622	253	71.1	28.9
2002	1,720	1,404	316	81.6	18.4
2003	1,079	781	298	72.4	27.6
2004	599	318	281	53.1	46.9
2005	830	534	296	64.3	35.7
2006	575	315	260	54.8	45.2
2007	831	629	202	75.7	24.3
Total	11,139	7,574	3,565	68.0	32.0

Source: Albemarle County Year End Building Report.

Figure 2.1 Rural Area Dwelling Units Authorized by Building Permits, 1995 to 2007



Source: Albemarle County Year End Building Report.

the county's land area, received building permits during the period from 1999 to 2008,¹ with parcels 21 acres or larger making up 70 percent of this area. The building permit parcels were also widely disbursed around the county, rather than concentrated near the perimeter of the Growth Area (see **Figure 2.2**).

Residential growth in the Rural Area has occurred in tandem with shrinking agricultural acreage (see **Figure 2.3**). Between 1997 and 2007, agricultural land acreage decreased by 14 percent. Undoubtedly, a significant portion of this drop can be attributed to new residential development.

2.2 Rural Land Preservation

The county's comprehensive plan has a goal of protecting the county's rural areas. This is being accomplished through a number of different

¹ The period 1999-2008 (until August 2008) was used because of the availability of computerized records for that period.

Table 2.2 Number of Building Permits and Total Lot Acreage by Lot Size, 1999 to 2008

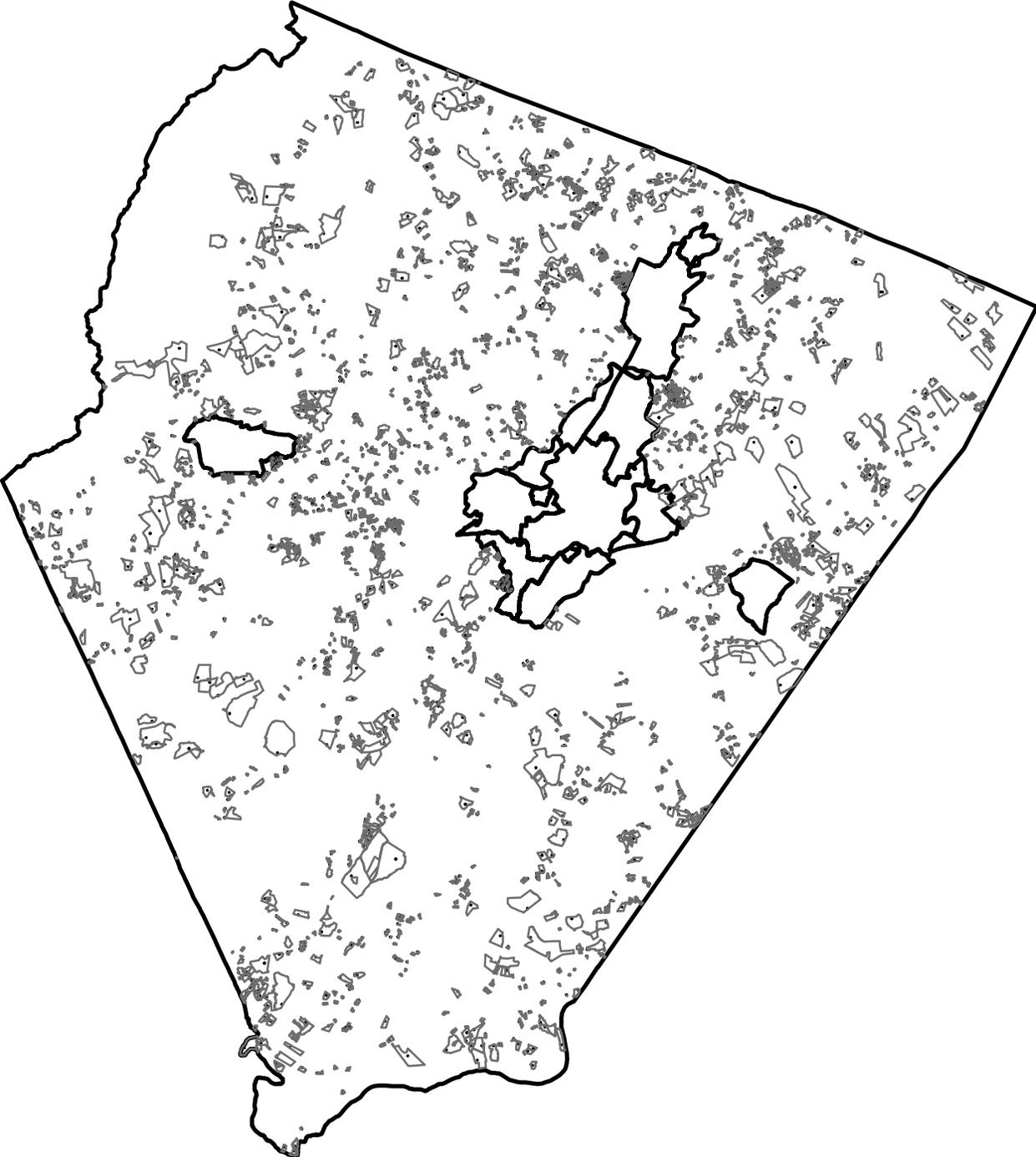
Development Area						
Lot Size (Acres)	Permits			Acreage		
	Number	Percent of Total	Cumulative Percentage	Total	Percent of Total	Cumulative Percentage
<.25	1,640	47.39	47.39	194.20	2.13	2.13
.25-.49	1,126	32.53	79.92	378.37	4.15	6.29
.5-.99	344	9.94	89.86	228.76	2.51	8.80
1-1.99	50	1.44	91.30	63.38	0.70	9.49
2-4.99	74	2.14	93.44	194.90	2.14	11.63
5-9.99	34	0.98	94.42	259.12	2.84	14.48
10-20.99	85	2.46	96.88	1,444.98	15.86	30.34
21+	108	3.12	100.00	6,346.26	69.66	100.00
Total	3,461	100.0		9,109.97	100.00	

Rural Area

Lot Size (Acres)	Permits			Acreage		
	Number	Percent of Total	Cumulative Percentage	Total	Percent of Total	Cumulative Percentage
<.25	14	0.52	0.52	1.25	0.00	0.00
.25-.49	65	2.39	2.91	29.48	0.06	0.07
.5-.99	104	3.83	6.74	72.76	0.16	0.22
1-1.99	197	7.25	13.99	284.90	0.61	0.83
2-4.99	1,149	42.30	56.30	3,348.69	7.18	8.01
5-9.99	481	17.71	74.01	3,046.316	6.53	14.54
10-20.99	175	6.44	80.45	2,368.03	5.07	19.61
21+	531	19.55	100.0	37,513.25	80.39	100.00
Total	2,716	100.00		46,664.67	100.00	

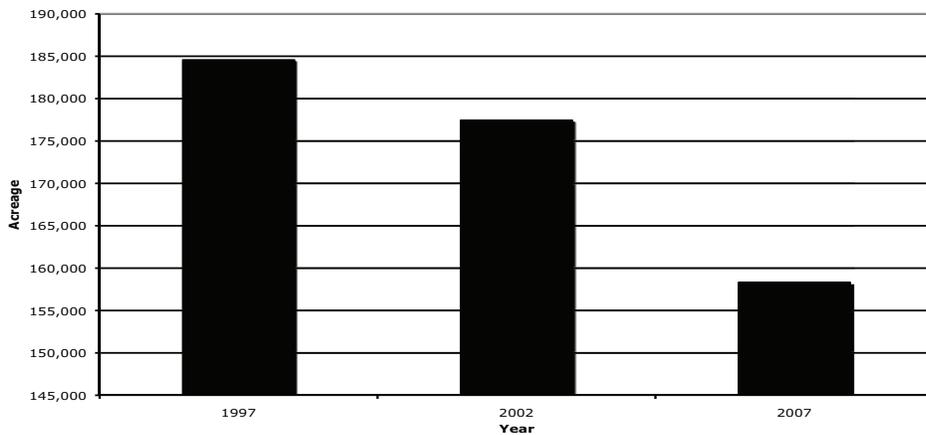
Source: Albemarle County Community Development Building Permit Data and Computer Assisted Mass Appraisal (CAMA) database. Two hundred and ninety-one building records, less than 5 percent of the total could not be associated with a recent tax parcel.

Figure 2.2 Rural Area Building Permit Parcels, 1999 to 2008



Source: Albemarle County Community Development Building Permit Data and Computer Assisted Mass Appraisal (CAMA) database.
Note: The boundaries of the Growth Areas (i.e., neighborhoods 1-7, Crozet, Hollymead, and Piney Mountain communities, and the village of Rivanna) are also depicted.

Figure 2.3 Albemarle County Land in Farms, 1997, 2002, and 2007



Source: U.S. Department of Agriculture, National Agricultural Statistics Service, Census of Agriculture, 1997, 2002, and 2007

programs described in **Table 2.3** on the next page.² The county has also established a milestone of preserving 90,000 acres by June 30, 2010.

The oldest land preservation tool used by the county is the use value assessment program, which was adopted in 1973 following enabling legislation passed in 1971, and subsequently amended to create a State Land Use Advisory Council (SLEAC) to estimate use values for localities for assessment purposes.³ The program offers substantial real property tax relief to eligible rural landowners whose land and farm/forestry related improvements are assessed at agriculture and forestry land use rather than residential/commercial values. The use value assessment is equivalent to roughly 9 cents per \$100 regular assessed value in FY 2006 compared to the current \$0.74 per \$100 of assessed value for non-land use property.

² A number of other growth management tools (see Bengtson, David N., Jennifer O. Fletcher, and Kristen C. Nelson. 2004. Public policies for managing urban growth and protecting open space: policy instruments and lessons learned in the United States. *Landscape and Urban Planning* 69: 271-286.) such as development impact fees, growth-phasing regulations, and exclusive agricultural or forestry zoning are not authorized by Virginia Code or have not been adopted by Albemarle County.

³ Recommended values by locality for agriculture, forestry, horticulture, and open space are described at <http://usevalue.agecon.vt.edu/estimates.htm>.

Some Albemarle County landowners participate in an alternative land-use assessment program, Agricultural and Forestral Districts, authorized by statute in 1977. The county currently has 24 Agriculture and Forestry districts, the first of which was created in 1983.⁴ This program has somewhat more stringent eligibility standards but offers the rural landowner

certain additional benefits, such as protection against state and local government encroachment to install public utilities, roads, or public facilities, and a longer period—ten years instead of five—of guaranteed tax relief.

The effectiveness of land use tax assessment as a policy for protecting open space has been questioned. However, research suggests that land use taxation at least slows the conversion of land to development purposes in areas where development pressures are moderate.⁵ The county has experienced a significant decrease in land use participation in the last decade, with enrolled acreage dropping from 310,319 in 2001 to 283,547 in 2008. However, some part of this decrease may now be permanently protected by easement.

The most productive program for Albemarle County is the Virginia Land Preservation Tax Credit program, which in recent years has resulted in an annual average of approximately 4,000 acres of land being placed under conservation easement. In 2007, Albemarle ranked second in the state for number of easement donations, second in value of easement donations, and third

⁴ Weldon Cooper Center for Public Service, University of Virginia. 2009. *Virginia Local Tax Rates: 2008*.

⁵ Malme, Jane. 1993. *Preferential Property tax Treatment of Land*. Lincoln Institute of Land Policy.

Table 2.3 Land Preservation Programs Available in Albemarle County

Program	Type	Characteristics/Eligibility	Limitations
Virginia Land Preservation Program	Tax credit	Qualifying easement donations are eligible for state tax credits that are transferable. Donations that meet state tax credit standards are also eligible for federal tax deduction.	<ul style="list-style-type: none"> • Generally limited to large parcels (100 acres+) with significant ecological/ natural resource value. • The credit was reduced from 50% to 40% of the donated fair market value in 2007. • The program budget appropriation was capped at \$100 million (indexed to the Consumer Price Index) in fiscal year 2008. • The amount of the tax credit that can be claimed for taxable years 2009 and 2010 was reduced from \$100,000 to \$50,000.
Acquisition of Conservation Easement (ACE) Program	Purchase of development rights	A point based ranking system is used for prioritizing and awarding funds based on size of parcel, proximity to other protected land, economic hardship, and natural, cultural, historical, or scenic value. Qualifying property appraisals are also funded with ACE funds.	<ul style="list-style-type: none"> • Awards have generally limited to large parcels (75 acres+) with significant open space value. • Less than half of program applicants have received funding. • The ACE program budget has been cut in FY 09.
Land Use Value Program	Use value assessment	Land is taxed at a reduced value reflecting value for agriculture, forest, horticultural, or open space use. Parcels eligible for open space must be placed under conservation easement.	<ul style="list-style-type: none"> • Parcel must be at least 20 acres in size. • Program grants temporary tax abatement. • Land is not put into permanent easement. • Applicant must revalidate every two years. • When land is converted to non-eligible use, roll-back taxes for five years at 10% simple interest are charged.
Agricultural-forestral Districts Program	Use value Assessment	Land is taxed at a reduced value for agriculture or forest products production. Agriculture and forestal districts provide some protections against state and local government encroachments on property for public utilities and facilities.	<ul style="list-style-type: none"> • Parcel must be at least 21 acres and used for farming or forestry. • Properties are assessed at use value. • Land is not put into permanent easement. • Applicant must reapply every 10 years.

in total acreage protected (see **Table 2.4**).⁶ The original statute allowed up to 50 percent of the fair market value of easement donation to be credited toward due state income tax balances. In 2002, the tax credits became transferable, allowing property owners to sell the credits rather than use them toward payment of state income taxes. In 2007, a cap was placed on appropriations at \$100 million, and the percentage of the donation of fair market value eligible for tax credit was reduced from 50 percent to 40 percent. The mar-

For a conservation easement donation to qualify for Virginia tax credits, the properties must meet several tests of the Virginia Land Conservation Incentives Act. Since the Act incorporates standards for favorable federal tax treatment, the donations are also eligible for federal tax benefits. In brief, the following tests must be met: (1) the easement must be perpetual; (2) it must be held by a qualified organization and held for conservation purposes; and (3) it must

Table 2.4 Land Preservation Tax Credits by Locality, Calendar Year 2007

Locality	Number of Donations	\$ Value	% of Total	Acres	% of Total
Accomack County	6	1,628,400	1.63%	915	1.54%
Albemarle County	22	11,750,540	11.75%	3,930	6.62%
Augusta County	11	3,027,200	3.03%	2,289	3.85%
Bath County	6	1,892,400	1.89%	1,873	3.16%
Botetourt County	7	1,490,033	1.49%	2,492	4.20%
Clarke County	11	2,369,457	2.37%	1,007	1.70%
Culpeper County	5	2,092,230	2.09%	1,314	2.21%
Essex County	5	1,521,280	1.52%	1,229	2.07%
Fauquier County	21	9,699,310	9.70%	3,927	6.62%
Franklin County	5	1,071,600	1.07%	1,501	2.53%
Grayson County	6	2,059,400	2.06%	1,334	2.25%
Halifax County	7	574,118.	0.57%	1,706	2.88%
Highland County	6	2,547,600	2.55%	4,965	8.37%
Loudoun County	10	15,531,000	15.53%	1,484	2.50%
Nelson County	5	466,658	0.47%	613	1.03%
Orange County	10	4,011,969	4.01%	2,574	4.34%
Rappahannock County	8	2,353,200	2.35%	1,114	1.88%
Rockbridge County	24	5,165,200	5.17%	5,118	8.63%
Wythe County	7	1,264,000	1.26%	1,553	2.62%
Other counties	72	29,484,405	29.49%	18,393	31.00%
Total	254	100,000,000	100%	59,331	100%

Source: Virginia Land Conservation Foundation Board of Trustees and the Department of Conservation and Recreation. 2009. 2007 and 2008 Biennial Report of the Virginia Land Conservation Foundation.

ket rate for state tax credits is reported at approximately \$0.76 for each dollar of tax credit.⁷

⁶ Virginia Land Conservation Foundation Board of Trustees and the Department of Conservation and Recreation. *2007 and 2008 Biennial Report of the Virginia Land Conservation Foundation*. January 2009.

⁷ See Conservation Partners, LLC <http://www.conservationpartnersllc.com/>.

(a) preserve historical structures or historically important land areas, (b) preserve a significant natural resource such as natural habitat areas or ecologically sensitive areas, (c) preserve open space such as farmland, forest land, or land for scenic enjoyment/outdoor recreation, or any other open space guarded by state or local

public policy, such as a comprehensive plan, for the public benefit.⁸

In 2000, Albemarle County created a purchase of development rights program called the Acquisition of Conservation Easements (ACE) program.⁹ During the first several years of the program, \$1 million per year was budgeted. This was increased in FY07 and FY08. In FY07, the budget was \$1.6 million with additional funds obtained from state grants and private donations. A program committee uses a point-based ranking system for prioritizing and awarding funds based on the size of parcel, proximity to other protected land, economic hardship, and natural, cultural, historical, or scenic value. By FY06, 5,332 acres had been protected and 26 properties were placed under easements. Because of eligibility constraints and program funding limitations, however, only about

half the applications received since the program started were funded. Moreover, as costs have escalated in recent years, the number of additional acres protected has concomitantly plummeted from over 1,000 to approximately 400 in FY08.¹⁰

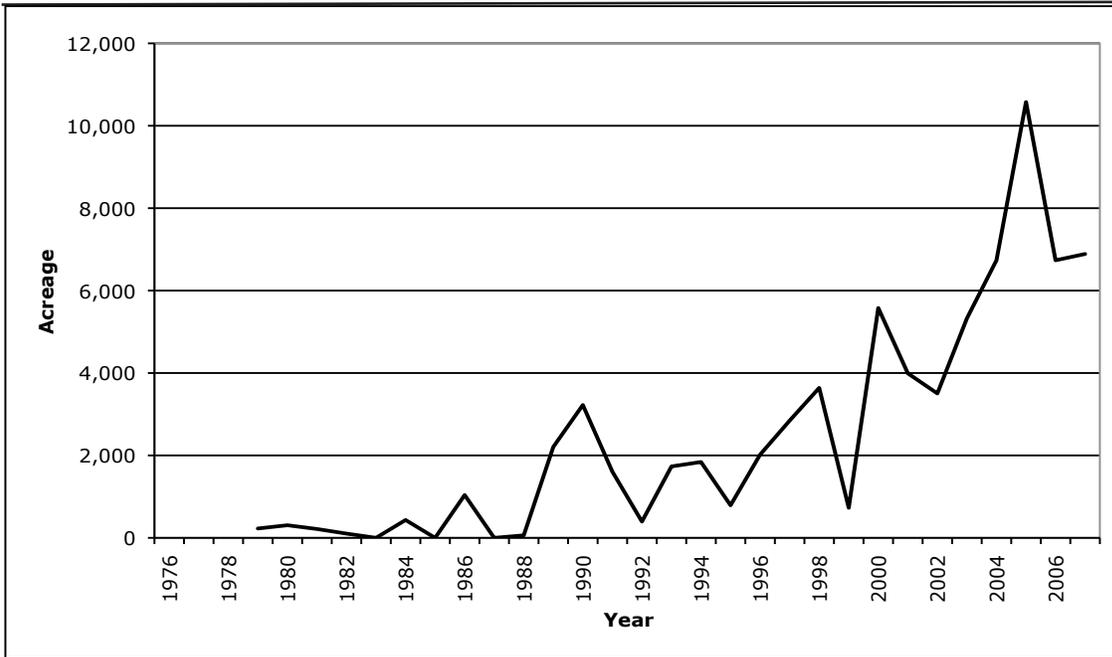
Although the annual additions are somewhat volatile, over the last three decades the number of acres protected with property easements has increased markedly (see **Figure 2.4**). Through easement donation and purchase, including simple fee purchase, by the end of 2007, approximately 73,000 acres (see **Figure 2.5**) were protected. This total does not include public property such as Shenandoah National Park, which adds about 15,000 additional acres of protected area. **Figure 2.6** depicts the location of these protected lands.

8 Conservation Partners, LLC. Quality Standards. <http://www.conservationpartnersllc.com/>.

9 See ACE program webpage <http://www.albemarle.org/department.asp?department=planning&relpage=2465>.

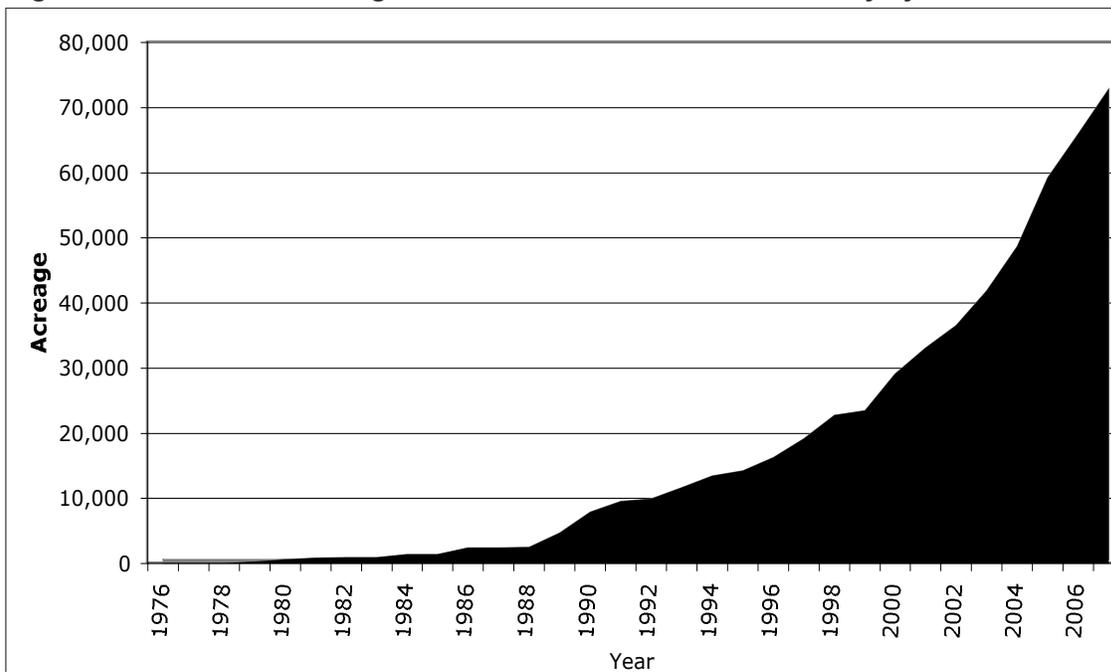
10 The county has examined other ways to leverage funds to increase the attractiveness of preservation for wealthy landowners including voter approved general obligation bonds, Virginia Resources Authority Installment Purchase Agreements (IPAs), and Department of Environment Quality loans. <http://www.cvilletomorrow.org/slides/ACEfunding/>.

Figure 2.4 Acres Placed Under Easement in Albemarle County by Year, 1976 to 2007



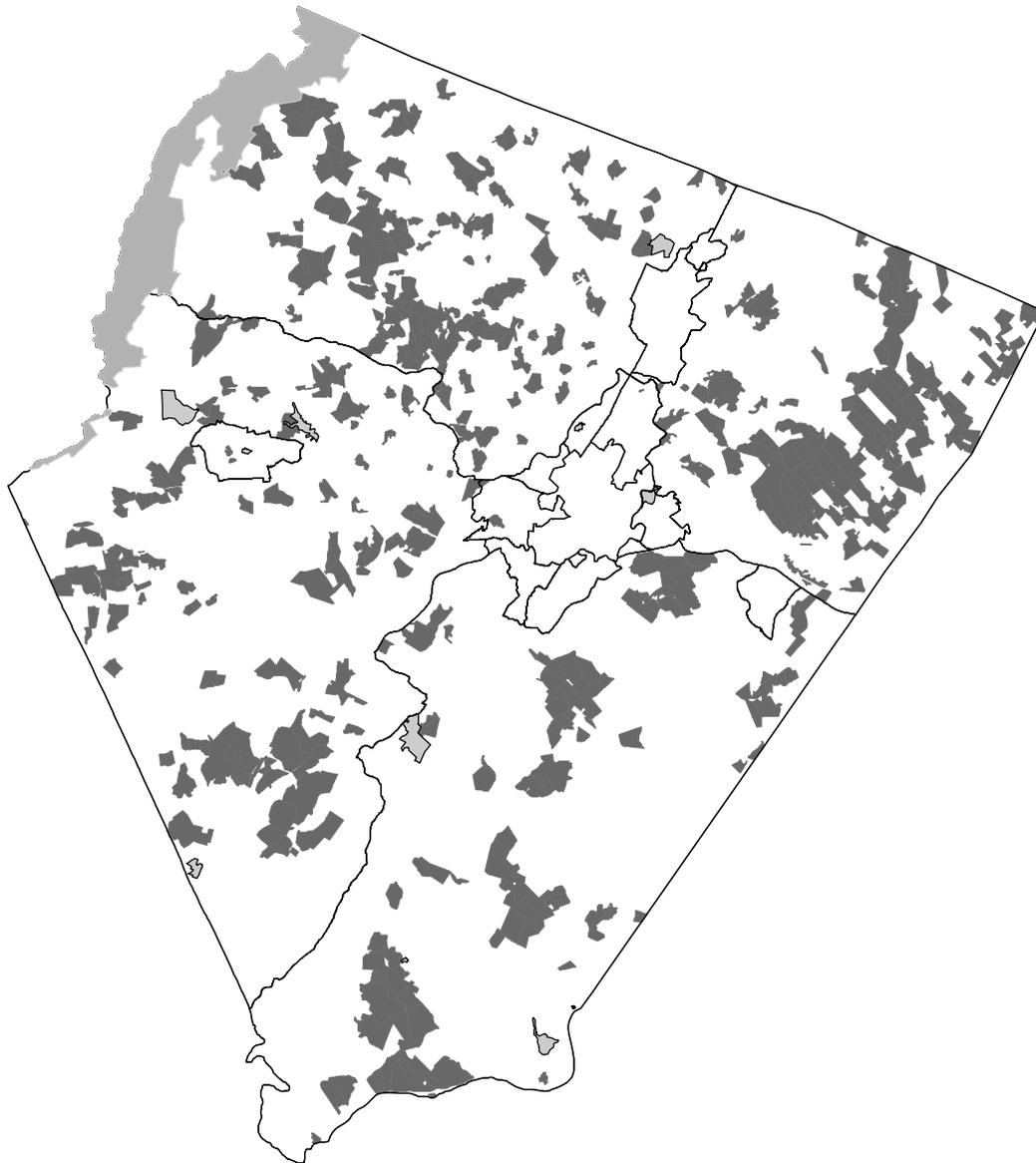
Source: Piedmont Environmental Council.

Figure 2.5 Cumulative Acreage under Easement in Albemarle County by Year



Source: Piedmont Environmental Council

Figure 2.6 Albemarle County Easements and Park Land, 2008



Legend

-  Conservation Easements
-  Park Land

Source: Albemarle County Department of Community Development, Office of Data Services.

SECTION 3

SUMMARY OF STAKEHOLDER DISCUSSION

Community stakeholders deliberated on issues that are important to developing a TDR program. Summaries of these discussions are organized under the headings of consensus goals, consensus positions, and next steps.

3.1 Consensus Goals

Discussants expressed an interest in studying transfer of development rights as a tool for rural protection, but the definition of this term varied across participants. For some, preserving rural landscapes for aesthetic purposes was important. Others cited preserving ecological services (e.g., water quality, flood control, biodiversity) as paramount. Some members of the group advocated preserving working landscapes to maintain the viability of agriculture and forestry for sustainable economic development. Consensus was achieved around a list of goals (see **Table 3.1**) that a TDR program should promote. If any of these elements were missing from a TDR program, however, then some participants would not be supportive.

3.2 Consensus Positions

Stakeholders reached an agreement on TDR program characteristics that would be consistent with the goals identified previously. These

positions are arranged into the following categories: (a) mandatory versus voluntary market participation, (b) receiving area characteristics, (c) receiving area credit use, (d) sending area characteristics, (e) incentives for participation, (f) administrative aspects, and (g) miscellaneous issues.

(a) Mandatory Versus Voluntary Market Participation

The group was split between those who believed that a TDR program should involve downzoning to preserve the Rural Area and those who were opposed. Opponents argued that it would create unfavorable compensation terms for property owners or otherwise erode ownership rights. Some felt that increasing the minimum size of allowed lots would hurt small farming. A concern was also expressed that an announcement of pending downzoning would result in a rush of rural property subdivision that would counter the goal of rural preservation and depress property values.

Proponents of downzoning made several arguments in support of their position. Some disputed that downzoning would decrease rural landowners' property values, arguing that property values would be enhanced by providing durable protection of open space amenities. It was also argued that, without downzoning, there would not be

sufficient incentive for property owners in the Sending Area to participate and the program would be unsuccessful in stimulating TDR transactions.

After much discussion, participants agreed that the program would not involve downzoning. Through private market negotiations, development right transactions would occur voluntarily between rural landowners and buyers.

(b) Receiving Area Characteristics

The group was similarly split on the issue of designating a Receiving Area.

Table 3.1 Transfer of Development Rights Program Goals

Goal	Description
Promote farming and land stewardship	<ul style="list-style-type: none"> • Promote and preserve farmers' rights to thrive/exist in the county, sell the production of their land to their neighbors, own their farmland and produce in a traditional setting. • Preserve private land ownership and stewardship. • Promote intergenerational family land ownership.
Preserve the land	<ul style="list-style-type: none"> • Preserve aesthetics and natural resources such as air, water, soil, and wildlife. • Reduce land fragmentation resulting from new residential development.
Create a simple, fair, and functional market	<ul style="list-style-type: none"> • Provide an appropriate scope to satisfy the need. • Define, clearly and precisely, important or value-laden terms. • Treat property owners fairly. • Have a simple, efficient, and predictable administration. • Create a viable market.

Several participants supported allowing development rights to be transferred to the Rural Area. Some participants supported a wide-open policy of allowing density transfers from anywhere in the Rural Area to anywhere else in the county on an “as needed” or “as requested” basis, something which is not currently permitted under the state’s enabling legislation. Others favored creating a designated Receiving Area within the Rural Area.

One scenario that several participants supported offered the creation of a “boundary area” around the perimeter of the current Growth Area to accommodate development rights from the Rural Area, which might be as small as 1 or 2 percent of the county’s land area. Proponents of creating the boundary area argued that it would help displace much of the residential development currently occurring in the Rural Area. In addition, by relocating development from remote locations in the Rural Area to areas close to urban infrastructure and public services, the county could experience some fiscal and environmental benefits.¹ Some proponents of this option argued that such a boundary area should not be constrained by the Neighborhood Model.² Eliminating those design constraints would provide a housing product that cannot be found in the current Growth and Rural Areas. It was also argued that if development rights were received in the Growth Area, this would result in loss of proffers without a method of capturing the impact costs associated with urban development. If these rights were received in a Boundary Area or in a portion of the Rural

Area, it would be more consistent with the current situation in the Rural Area.

Several stakeholders were skeptical of permitting expansion of the current Growth Area boundaries. Five reasons were given for this position. (1) It was argued that expanding the Growth Area would be inconsistent with the Rural Area Plan and would thwart rural preservation efforts. (2) It was also stated that the size of the Receiving Area in the Rural Area would have to be impractically large to accommodate the types of low-density development that could be expected to occur. (3) The language of the TDR enabling legislation was sufficiently ambiguous, that several participants were unclear whether or not an expanded Growth Area might obligate the county to expand public services and infrastructure in the areas affected. Developers currently contribute to proffers for off-site improvements for re-zonings, but if the county were restricted from charging proffers in the Receiving Area, other revenue sources would be needed to fund infrastructure requirements. It was pointed out by some participants, however, that developers currently pay for the expansion of road and utility infrastructure wherever it is needed as a result of development activities. (4) There was skepticism that the new Receiving Area would displace rural development because of a large supply of existing platted lots in the Rural Area and preferences of many homeowners for rural amenities. A possible offset that was discussed by the stakeholders, and that would potentially benefit the County and its residents, might be to designate the supply of those existing platted lots as Sending Areas. (5) Lastly, expansion of the Growth Area would require the county to allocate staff time and funding to make comprehensive plan and zoning ordinance changes and to develop the administrative procedures required by TDR.

None of the stakeholders expressed opposition to using the current Growth Area as a Receiving Area. Moreover, the group was supportive of including the city of Charlottesville as a Receiving

1 Because of public service quality and standard differences between the rural area and growth area and the large gap in housing values, it is difficult to ascertain the fiscal impact. Figures on the comparative fiscal impacts of urban and rural development in Albemarle County are not available at this time.

2 The Albemarle County Neighborhood Model consists of regulations supporting denser and interconnected mixed use development in the Growth Area. See *Albemarle County Community Development Neighborhood Model: Building Block for the Development Areas* <http://www.albemarle.org/departments.asp?department=planning&repage=2480>.

ing Area if they could be persuaded to participate. Therefore, the group agreed to designate the current growth area and the city of Charlottesville as potential Receiving Areas.

(c) Receiving Area Credit Use

Stakeholders considered several ways that TDR might be used in the designated Receiving Areas. First, TDRs could be used to increase density in the Growth Area in areas where increased density is consistent with the comprehensive plan. Second, TDRs could be used as credits that allow developers to depart from the urban design features required by the Neighborhood Model. Third, TDRs could be used to increase the square footage of commercial or industrial buildings. Lastly, the county could negotiate with the city of Charlottesville to transfer development rights to areas where the city desires greater density. A member of the Charlottesville Planning Commission outlined to the group some of the issues that would affect the city's ability to serve as a Receiving Area.

Although no stakeholders expressed outright opposition to these Receiving Area uses of TDR, several expressed some concern. The Neighborhood Model was adopted in 2001 to encourage the building of mixed use, pedestrian friendly neighborhoods with open space. A few participants expressed the opinion that deviating from the building guidelines of the model would have a deleterious effect on long-term planning, the environment, and resident welfare. Another participant raised questions about the appropriateness of using residential building rights to increase commercial and industrial capacities.

The group did not fully investigate the exact density bonus or design constraint allowances that would be assigned to a TDR. However, a developer in the group indicated that being freed fully from Neighborhood Model restrictions would be worth an amount equivalent to the current \$15,000 proffer rate per dwelling unit.

(d) Sending Area Characteristics

It was agreed that the Rural Area would be the Sending Area for the program. However, a few participants were adamant that the program should not be used to protect open space for owners of large residential estates. These stakeholders indicated a clear preference for working landscapes and protecting farmland and forestland that is actively managed and contributes to a sustainable economy for the region by fostering a greater reliance on markets for local natural resources. A survey of stakeholders showed that nobody objected to protecting forests, farmland or areas with prime farmland soils. However, one or more stakeholders did not feel that TDRs should be used for scenic, natural habitat, recreational, or historical land protection.

Most stakeholders agreed that all rural landowners should be eligible to participate in the TDR program. However, it was also argued that allowing everyone to participate could have negative repercussions for programs such as the State Land Preservation Tax Credit program. If TDR transactions result in low market values of development rights, they could affect future easement appraisals and decrease the incentives for landowners to participate in that tax credit program. Also, without some restrictions on eligibility a supply-demand imbalance might result. An estimated 20,000 or more development rights are available in the Rural Area, but the Growth Area would be able to accommodate only a small portion of them. For these reasons, it was suggested that small properties not ordinarily eligible for other program (e.g., 75 acres or less) should be targeted.

Two counter arguments to restricting eligibility to smaller parcels were given. First, several stakeholders argued that the program would be both fairer and simpler to explain if all landowners could participate. Landowners would be the ones best able to ascertain which land protection program they preferred to meet their needs.

Smaller parcel owners would naturally gravitate toward TDRs, while owners of larger parcels would select the state tax credit or ACE program. Second, protecting very small parcels, which generally have lower conservation value, might not provide the best public benefit, particularly if public funds were used as incentives for TDR administration.

(e) Incentives for Participation

Several participants emphasized the importance of incentives for a successful TDR program. The most important incentive is the value received by a TDR supplier and a demander in the exchange. One stakeholder argued that TDR market values were unlikely to be high enough to encourage landowners to participate in the market. This observation was based on the relatively low values observed in other successful TDR programs across the county. Most communities have had no or minimal TDR transactions after program adoption. However, another stakeholder suggested that if the incentives were sufficiently high (e.g., no Neighborhood Model restrictions, density or affordable housing bonuses—one TDR equals two or even three or more units in the Receiving Area, and fast tracking of the approval process), the value of TDRs might be significant.

The presence of high transactions costs for participants may also impede the formation of a market. Three suggestions were made to lower transactions costs and encourage landowners and developers to participate in the TDR market. For landowners, it was suggested that the criteria for determining actual development rights for rural property owners would be less stringent than those required by current zoning and subdivision regulations. For instance, landowners would not need to conduct a percolation test or drill a well to establish the existence of an actual development right. For developers, it was suggested that there might be a fast tracking of development applications or exemptions from selected county fees. Stakeholders also speculated that grant

funds might be obtained from the state or federal governments to provide financial incentives for market participants.

(f) Administrative/Legal Issues

Stakeholders considered two mechanisms for developers to utilize TDRs for zoning changes: (a) petitioning the county through the special use permit process or (b) prior rezoning of a Receiving Area for TDR enabled by right development. There was little discussion about the latter option, and several participants expressed a desire that citizens be given ample opportunity for public comment on any building project. For these reasons, option (a) was implicitly selected.

The group agreed that the county would not become an intermediary in the TDR market. It would not operate a TDR bank in which development rights were purchased and deposited for future sale. TDR transactions would be handled by the parties themselves or by real estate brokers. An independent bank would develop if demand warranted it.

Since many of the smaller parcels that would be expected from a TDR program might not be eligible or attractive to be held by conservation trusts, such as the Virginia Outdoors Foundation and Piedmont Environmental Council, the responsibility might fall to the county through the Public Recreation Facilities Authority or other county entity to hold and monitor the easements. As one stakeholder pointed out, these tasks have costs. In addition, the county would be expected to develop a method or routine for periodically evaluating the effectiveness of the TDR program.

(g) Miscellaneous Issues

Table 3.2 summarizes the consensus positions for each of the categories discussed above. In addition to those issues described above, stakeholders expressed opinions about other aspects of TDR or how the county might better promote rural protection.

Table 3.2. Transfer of Development Rights Discussion Summary

Discussion Category	Stakeholders' Decision
Mandatory versus voluntary market participation	<ul style="list-style-type: none"> • No downzoning. • Participation is voluntary, not mandatory. Landowners cannot be compelled to sell or bank their development rights or otherwise be restricted in exercising their development rights because of the existence of a TDR program. • Sending Area sellers and Receiving Area buyers would privately negotiate to establish TDR values.
Receiving Area characteristics	Current county Growth Area and city of Charlottesville.
Receiving Area credit use	<ul style="list-style-type: none"> • TDRs could be used for increasing density consistent with county comprehensive plan as part of, or in lieu of, proffer. • TDRs could be used to depart from some or all requirements of Neighborhood Design Model, perhaps as part of a point trade off system. • TDRs could be used to increase square footage or parking area for commercial, industrial or residential use on the receiving property. • County could negotiate with city of Charlottesville to receive TDRs in areas where higher density is being encouraged.
Sending Area characteristics	<ul style="list-style-type: none"> • Rural Area parcels that are activity managed for farming and/or forestry. • Targeted parcels would be ones that are not eligible for current PDR and state tax credit programs. • No minimum parcel size was specified.
Incentives for participation	<ul style="list-style-type: none"> • Criteria for determining actual development rights for rural property owners would be less stringent than required by zoning and subdivision regulations. • Fast tracking of development applications or fee exemptions for developers. • Grant funds could be solicited from state or federal governments to provide developer financial incentives for purchase of TDRs.
Administrative aspects	<ul style="list-style-type: none"> • TDR use would be initiated by a special permit request. • Real estate brokers would handle TDR transactions. • The county's Public Recreational Facilities Authority or a private land trust would become a holder of TDR easements. • Periodic evaluation of the TDR program should occur.
Other issues	<ul style="list-style-type: none"> • The county should package and market state and county land protection programs, including Land Preservation Tax Credit, ACE, and TDR. • The County should develop system to evaluate impact of land use regulations on landowner development rights and Rural Area protection. • The County should revisit the revenue sharing agreement with the city to see if funds might be jointly dedicated to land preservation.

Reasons to Support TDR

Stakeholders provided a number of reasons for the county to adopt a TDR program/ordinance. Several participants mentioned that it was important for the county to demonstrate leadership in an area where few other Virginia localities have ventured. Given this situation, the county's TDR program might serve as a statewide model.³ In

addition, a TDR program would provide another policy tool for the county to use for rural preservation efforts. Moreover, TDRs would provide a land preservation option for landowners who are not eligible to participate in other state and county programs because of property size or conservation value restrictions. These property owners would obtain value for their easements and also qualify for lower tax assessments due to the extinguishment of the development right. Lastly, a TDR program could generate fiscal benefits for the county by increasing the value of property through enhancement effects,⁴ creating a new

³ According to Pruetz (2003) Blacksburg created a form of TDR or density transfer in 1996, without designated sending and receiving areas, before statutory authorization of TDR. An applicant for rezoning from a rural residential category to another permitting greater density could if the developer transferred development rights as part of the proffer. Arlington City has recently drafted legislation for TDR. <http://www.arlingtonva.us/Departments/CPHD/Planning/studies/zoningstudies.aspx>.

⁴ Boykin, James H. and James A. McLaughlin. 2006. Addressing enhancement in conservation easement appraisals. *The Appraisal Journal* 74, 3: 239-249.

taxable asset, or helping to rectify an unintended feature of the 1980 city-county revenue sharing agreement⁵ which has in recent years resulted in use value assessed properties costing more in terms of transfers out to the city than they generate in use value assessment revenue to the county.⁶

Several stakeholders argued that a TDR ordinance would create more county flexibility for dealing with future land-use regulation disputes. TDR could be used as a mechanism for compensating property owners in the event that new land use regulations were introduced in the future. Alternately, a TDR program would create a framework for protecting the Rural Area if the county elected to expand the boundaries of the Growth Area some time in the future.

Concerns Expressed about the Consensus Positions

Although consensus was achieved for a list of TDR positions, it is important to note that several participants raised questions about the practicality of TDRs. Some discussants questioned whether incentives for buyers and sellers were adequate to generate a significant number of transactions. There were also concerns about who would fund infrastructure costs in the Receiving Area if a project were to petition for a special use permit with only TDRs in hand. One stakeholder questioned whether a patchwork of permanent easements might hamper the county's growth and development in the future.⁷ Lastly, administrative

costs would be incurred by the county in developing any TDR program.⁸

3.3 Next Steps

Stakeholders agreed that there were still lingering questions about the practicality of moving forward with a TDR proposal based on the consensus positions. These questions revolved around technical details regarding how TDRs would be credited in the Receiving Area, how TDRs would be credited in the Sending Area, how TDRs would be taxed (if at all – although taxing is an issue that is being addressed in the pending statewide legislation working its way through the General Assembly and could provide an additional source of revenue for the county), what specific incentives would be offered and how they would be funded, and what costs for implementing and administering TDRs would be incurred by county government. There were also questions about the ramifications of new enabling legislation for developing a TDR program. Lastly, the group needed to know the likelihood that a functional market and significant number of TDR transactions would result. The group agreed that a sub-committee would be formed that would examine these issues (see **Table 3.3**) and others that were pertinent to developing a concrete TDR proposal reflecting the consensus positions described earlier. The sub-committee would report out on the results at a later date.

⁵ See <http://www.albemarletruthintaxation.org/docs/Annexation%20and%20Revenue%20Sharing%20Agreement%20for%20a%20copy%20of%20the%20agreement>.

⁶ According to calculations made by the author, the county is projected to lose approximately \$2.7 million in FY09 because use value properties are assessed at fair market assessments rather than land-use assessments for the purposes of determining transfers for the revenue sharing agreement. This equates to about a \$9 payment per land-use value assessed acre.

⁷ One such critique of conservation easements can be found in Mahoney, Julia 2002. Perpetual Restrictions on Land and the Problem of the Future. *Virginia Law Review* 88: 739-787. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=291537

⁸ An internal staff memo dated March 7, 2007 describes significant administrative expenses for of implementing a TDR program along the lines of the Slutzky proposal which involved rural area downzoning and creation of an receiving area outside the boundaries of the current growth area. However the bulk of these costs would be avoided in the proposal described here. However, staff would still need to flesh out the details of how receiving area credits would be used and allocated, identify where they could be used, develop the TDR ordinance, amend other ordinances as needed, create administrative procedures for development rights and tracking, and educate the public about the program.

Table 3.3 Subcommittee Characteristics and Tasks

Characteristic	Task
Sub-committee composition	<ul style="list-style-type: none"> • Select five or six individuals from current group. • Add city of Charlottesville and University of Virginia representatives.
Receiving Area credit use	<ul style="list-style-type: none"> • Clarify exact technical specifications and locations for TDR allocations in Receiving Area. • Hash out elements of Charlottesville participation.
Incentives	<ul style="list-style-type: none"> • Identify exact form of incentives and source of funding if needed. • Clarify real property tax status of TDRs. • Identify exact method of development right determination.
Administrative aspects	<ul style="list-style-type: none"> • Determine county costs associated with implementing and administrating proposed TDR program.
Legal issues	<ul style="list-style-type: none"> • Examine new enabling legislation and determine implications for Albemarle County TDR program. • Identify any enhancements to legislation needed to facilitate consensus program.

SECTION 4

OUTSTANDING RESEARCH QUESTIONS

4.1 Effects of Downzoning on Property Values

The most contentious issue encountered during the discussion surrounded the likely impact of land use regulation such as zoning changes on property values. Some proponents of downzoning and other rural protection measures contended that they would enhance rural property values while opponents countered that property values would significantly decrease.

Unfortunately, economic theory does not provide a definitive answer to this question and there is very little scholarly literature to draw on to inform this debate. Two relatively recent comprehensive studies of downzoning, one a look at downzoning in Maryland and another in New Jersey, arrive at diametrically opposed conclusions.¹ For guidance, one must turn to research that addresses the effect of agricultural zoning, open space, and conservation easements on property values.

Three papers form the basis for generalization here. In a study of the impact of agricultural zoning, Henneberry and Barrows (1990) find that such zoning has a negative property value effect for smaller parcels in close proximity to urbanization, but positive effects for larger parcels that are more remote from urban areas.² A comprehensive review of the open space literature by McConnell and Walls (2005) finds that open space often has a positive effect on nearby resi-

dential property values.³ However, these effects “vary widely with the size of the area, the proximity of the open space to residences, and the type of open space.” Irwin and Bockstael (2002) find that private open space under conservation easement has a more salutary effect on nearby land values than private open space without such protection.⁴

These findings suggest that the effects of downzoning on property prices can be expected to vary depending on local development pressures or alternative uses, resident tastes for the types of open space being protected, and the degree of protection permanency. Several disparate forces are at work here. Downzoning eliminates the best alternative use value of properties that have realistic prospects for development. For areas that are under severe development pressures, however, downzoning may provide only temporary protection since those areas may easily be selectively up-zoned in the future to meet community development needs. At the same time, downzoning will provide an additional regulatory layer of open space protection. Lastly, it decreases the supply of developable lots, which increases property prices.

Thus, it would be hazardous to generalize about the overall effects of downzoning on a locality’s property values. However, the existence of these external pecuniary open space benefits means downzonings are likely to have a less negative aggregate effect than can be ascertained from simply evaluating sales of subdivided properties, the values of purchased development rights, or appraisals of the fair market value of easements.

1 Etgen, Rob, John Bernstein, Sarah J. Rogers, Robert J. Gray, Peter Caldwell, Elgin Perry, Jonathan Chapman, and H. Grant Dehart. 2003. *Downzoning: Does it Protect Working Landscapes and Maintain Equity for the Landowner?* Samuels, Michael. 2004. *The Impact of Downzoning on Agricultural Land Value in New Jersey*. Study by Clarion/Samuels Associates for the New Jersey Farm Bureau

2 Henneberry, David M. and Richard L. Barrows. 1990. Capitalization of Exclusive Agricultural Zoning into Farmland Prices. *Land Economics* 66, 3: 249-258.

3 McConnell, Virginia and Margaret Walls. 2005. *The Value of Open Space: Evidence from Studies of Nonmarket Benefits*. Washington, DC: Resources for the Future.

4 Irwin, Elena G. and Nancy E. Bockstael. 2001. “The Problem of Identifying Land Use Spillovers: Measuring the Effects of Open Space on Residential Property Values” *American Journal of Agricultural Economics* 83(3): 698-704.

4.2 Market Values of Development Rights

A related question raised during the discussion was how to value development rights as part of any TDR scheme. Since the program proposal does not involve the county in attempting to estimate or calibrate these values, this is largely a moot point. However, data available from county records provide at least two crude and imperfect ways to bracket these expected values in the absence of comprehensive downzoning.

The county tax assessor estimated that, based on his tracking of re-sales of encumbered property, property values decrease by an estimated 15 to 30 percent when put in conservation easements.⁵ The average 100-acre or larger property without conservation easement in Albemarle County is assessed at approximately \$8,830 per acre. Admittedly, many of these properties would not meet legal, zoning, and subdivision requirements for actual development. However, if one assumes that these properties resemble properties where conservation easements have been placed, then the loss of 15 to 30 percent of market value works out to \$1,325-\$2,649 per protected acre.

The purchase prices of conservation easements in the ACE program provides another estimation of development right value. These easement values are estimated by professional appraisal. The values have escalated since the initiation of the program from approximately \$15,000 per development right in FY01 to over \$50,000 in FY08 or approximately \$1,400 per protected acre in FY01 to \$3,800 in FY08.⁶

4.3 Number of Development Rights in the Rural Area

Another contentious issue during the discussion concerned the number of development rights that exist in the Rural Area. Resolving this issue was pertinent to determining the size of Receiving Area needed to bring TDR supply and demand into balance in the situation where a downzoning

5 Interview with Bruce Woodzell on June 20, 2008.

6 <http://www.cvilletomorrow.org/slides/ACEfunding>.

accompanied the adoption of a TDR program. However, some stakeholders felt that answering the question should be part of a larger county initiative to assess how its land use regulations were affecting landowner development rights.

In part because of the complicated way in which development rights were assigned with the 1980 downzoning, it is difficult to estimate the number of theoretical development rights in the Rural Area. Several stakeholders offered different methods for arriving at a workable estimate and provided alternative estimates that varied from 10,000 to 50,000, with 20,000 being the most common figure cited, inclusive of the 7,800 already platted lots.

One possible starting point for estimating theoretical development rights based on the 1980 zoning regulations is the 1979 tax map. Unfortunately, this map has two major limitations as explained in a county staff memo.⁷ First, tax parcels do not reflect all parcels of record necessary to establish the potential for subdivision. Second, many properties were subdivided between the creation of the 1979 tax map and the adoption of the new zoning regulations on December 10, 1980.

Even if the map were a reasonable approximation of development rights at the time of the zoning ordinance, there would be several additional obstacles to obtaining precise estimates of the number of theoretical development rights. First, properties could be combined in various ways to increase the number of development rights above what is obtained from simply adding up division rights in each property. Second, family subdivision rights exist which would create additional development rights. Third, the tax maps themselves would need to be digitized for geographical information system analysis (GIS).⁸ The digitized

7 <http://www.coopercenter.org/econ/sitefiles/documents/transferdevelopmentrights/devrights2.pdf>.

8 A preliminary cost estimate obtained from Richmond based GIS consulting firm WorldView Solutions, Inc. for digitizing these maps was \$45,000-\$75,000.

maps would need to be overlaid with administrative data layers relevant to determine whether the property meets zoning and subdivision requirements necessary to establish development rights.

4.4 Elements of Successful TDR Programs

According to Pruetz and Standridge (2009), there are 191 TDR programs nationwide that have resulted in at least 350,000 acres of protected land.⁹ That works out to only five times the total amount of acreage preserved in Albemarle County alone by a variety of rural protection programs. The TDR land protection acreage is heavily skewed toward a handful of localities in Maryland such as Montgomery and Calvert Counties, the Pinelands region of New Jersey, and King County, Washington. Most TDR programs around the country have seen little or no utilization.

Enough experience has been gained with such programs to identify the characteristics that distinguish more successful programs. **Table 4.1** summarizes some of these features based on synthesizing information from several recent studies and applying them to the Albemarle County context.¹⁰

TDR feasibility will be constrained by many of the program features suggested by the stakeholder consensus positions. One category of impediments is “incentives.” In many communities, TDR transactions have been stimulated by downzoning or other more restrictive land use regulations in the sending area. Impact fees are often another important predictor of success.¹¹

9 Pruetz, Rick and Noah Standridge 2009. What makes transfer of development rights work? Success factors from research and practice. *Journal of the American Planning Association* 75: 1, 78-87.

10 Pruetz and Standridge 2009; Pruetz and Pruetz 2007; Pruetz 2003; Dehart, Grant H., Rob Etgen, Denis Canavan, Virginia McConnell, Elgin Perry, Margaret Walls, and John Zawitoski 2007. *The Feasibility of Successful TDR Programs for Maryland's Eastern Shore*. Eastern Shore Land Conservancy, Inc.

11 The studies cited mention adequate provision of infrastructure in the receiving area as an important success

Impact fees are charges incurred for constructing an additional dwelling unit to help pay for community capital costs associated with the unit. At present, in Albemarle County de facto impact fees in the form of proffers are being charged for developments that require zoning exemptions. This practice has the effect of creating an incentive for low-density development and artificially inflating the cost of acquiring a rural development right under a TDR program. The proffer system would also presumably continue to be available to developers as an alternative to TDR. Developers would have the option of petitioning the county for increased density through proffering rather than deal with the less familiar alternative of TDR. Moreover, the county would need to determine what kind of TDR/proffer tradeoff is acceptable and perhaps cap the use of TDRs in order to achieve its twin goals of acquiring the needed infrastructure for new development and attaining its land preservation goals in the most cost effective manner. In the most desirable scenario, the county would be able to charge an impact fee for all residential development that covers the community capital costs associated with all new development and reserve TDRs for re-zonings. However, this arrangement is not permitted under Virginia Code.

Determining the Sending Area TDR allocation and Receiving Area density/design allowances needed to create an effective market remains an unsolved problem. The rate charged per dwelling unit through the competitive proffering system establishes an effective lid on the amount that developers would want to pay for a TDR (approximately \$15,000 per dwelling unit). The TDR assignment rates for relaxing individual standards required by Neighborhood Model would require some additional calibration with at most one TDR required to relax all standards. On the other hand, anything less than \$50,000 per

factor. However, lists of high yielding programs assembled by Pruetz suggest that impact fees are predictive of success. The top 11 programs cited by Pruetz and Standridge (2009) and 15 of the top 20 charge impact fees.

Table 4.1 TDR Program Success Factors and Stakeholder Position Document

Characteristic	Effect	Position document
Public support for land preservation	Increased probability of public acceptance and sustainability of program.	Yes
Simplicity of rules	Increased public understanding and likelihood of participation.	Yes
New sending area regulations such as downzoning	Encourages sending area landowners to offer TDRs for sale.	No
Impact fees or dedicated infrastructure fund for new development	Provides reliable source of funds for needed community infrastructure costs and removes disincentives for density created by proffer system.	No
Receiving area incentives	Increases likelihood of developer purchase of TDRs.	Undetermined
No other options available for achieving density	Other more familiar options such as proffers for developer to achieve higher density will not be used instead.	No
Balance between supply and demand for TDRs	TDRs have sufficient value to encourage market exchanges.	Undetermined
TDRs are competitive with other conservation program options	Increases likelihood of sending area landowner participation.	Yes
Administrative versus special permit approval	Decreases the amount of time and cost of TDR and increases certainty of development.	No
TDR Bank	Decreases transactions costs for buyers and sellers and fosters greater TDR price certainty.	No
Local government administrative mechanism for inventorying TDRs and prospective sellers and buyers of TDRs, and marketing program to the public	Helps to decrease transactions costs and generates popular support for program.	Undetermined
Program evaluation and adjustment	Identifies and repairs defects in TDR program.	Undetermined

development right improves upon the cost effectiveness of the current county ACE program. Moreover, at current land use taxation assessments the county incurs a loss to the city of Charlottesville through its revenue sharing agreement of several hundred dollars in net present value per development right for land use assessment. Based on the available data that suggests a fair market value per easement of between \$18,000 and \$50,000, it is not impossible to imagine a combination of TDR and additional county incentive that could generate transactions and allow the county to better leverage its existing land conservation funds.

Some of the likely impediments to TDR are administrative. The use of a special permit process favored in the stakeholder discussions increases the costs to developers over the

alternative of zoning in advance for by right development enabled by TDRs. The stakeholders group's opposition to county involvement in creating and administering a TDR bank means that developers and rural landowners will either need to seek each other out or realtors will need to find this new and unfamiliar TDR market lucrative enough to offer the service of brokering such transactions. Since the County already purchases development rights through the ACE program and holds them through its Public Recreational Facilities Authority, it might have served as natural conduit for facilitating such transactions.

Some aspects of the consensus outline were favorable for success. Stakeholders insisted on simple rules for TDR and resisted adding additional layers of complexity that would constrain eligibility. They also articulated the need

for a program that would be competitive for the attention of landowners by serving another market niche. Indeed, the program outlined provides a potentially new preservation option for sending rural area landowners who are not able to participate in the ACE or State Land Preservation Tax Credit programs. Those programs target properties that are 100 acres and larger. Finally, members of the stakeholder group were supportive of the goal of land preservation and rural protection in general. This attitude is also evident in the

Albemarle County public at large. For instance, a recent survey conducted by the Weldon Cooper Center for Public Service indicates that three-quarters of the public favor somewhat or strongly the county policy to “direct growth into areas of growth and increased services.” Over three in five residents think it is very important for the county to devote resources to “maintain Quality of Life dealing with growth and development,” “protect natural resources and the environment” and “protect and preserve the county’s rural character.”¹²

¹² Bebel, Robin, Thomas M. Guterbock, Abdoulaye Diop, and Young-l Kim 2009. *Albemarle County 2008 Citizen Satisfaction Survey*. Center for Survey Research, Weldon Cooper Center for Public Service, University of Virginia. http://www.albemarle.org/upload/images/Forms_Center/Departments/Board_of_Supervisors/Forms/Agenda/2009Files/20090204/CitizenSurvey.pdf

SECTION 5 SUMMARY AND CONCLUSION

This report describes the context in which Transfer of Development Rights has evolved as a program option for assisting the county in attaining its rural protection goals and describes a discussion among community stakeholders that identified certain features of a TDR program that would meet their approval. The county has established a short-term goal of placing 90,000 acres in conservation easements by FY 2010. At the present rate of easement accretion, this goal is not likely to be met. If the outcomes of this discussion are any indication, a TDR program might be developed that would gain public support and possibly augment current land preservation efforts.

The TDR discussion remains a work in progress. Although participants agreed on goals and other desirable TDR program features, many

details remain to be determined. Enabling legislation under consideration by the Virginia General Assembly could play a key role in determining the viability of a TDR program in Albemarle County. Stakeholders expressed a desire to continue exploring the options available within the framework described in this report. They supported the creation of a subcommittee with new members from the University of Virginia and the City of Charlottesville to draw up a more formal and detailed TDR proposal. It seems likely that the technical expertise of the Albemarle County Planning Department also would be needed to proceed. An opportunity for additional public input and affirmation by the Board of Supervisors of the framework described here would give added impetus to these efforts.

APPENDIX A.1 ENABLING LEGISLATION

§ 15.2-2316.1. Definitions.

As used in this article, the term:

“Development rights” means the permitted uses and density of development that are allowed on the sending property under any zoning ordinance of a locality on a date prescribed by the ordinance.

“Receiving area” means an area identified by an ordinance and designated by the comprehensive plan as an area authorized to receive development rights transferred from a sending area.

“Receiving property” means a lot or parcel within which development rights are increased pursuant to a transfer of development rights. Receiving property shall be appropriate and suitable for development and shall be sufficient to accommodate the transferable development rights of the sending property.

“Sending area” means an area identified by an ordinance and designated by the comprehensive plan as an area from which development rights are authorized to be transferred to a receiving area.

“Sending property” means a lot or parcel that a locality deems necessary to limit future development in accordance with the ordinance adopted in subsection C of § 15.2-2316.2 or a receiving property that has received development rights from a sending property.

“Transfer of development rights” means the process by which development rights from a sending property are affixed to one or more receiving properties.

(2006, c. 573; 2007, cc. 363, 410.)

§ 15.2-2316.2. Localities may provide for transfer of development rights.

A. Pursuant to the provisions of this article, the governing body of any locality by ordinance may, in order to conserve and promote the public health, safety, and general welfare, establish procedures, methods, and standards for the transfer of development rights within its jurisdiction. Any locality adopting or amending any such transfer of development rights ordinance shall give notice and hold a public hearing in accordance with § 15.2-2204 prior to approval by the governing body.

B. Any proposed transfer of development rights shall only be initiated upon application by the property owners of both the sending and receiving properties. A locality may not require property owners to transfer development rights as a condition of the development of any property.

C. Prior to any transfer of development rights, a locality shall adopt an ordinance based on findings of public benefit. Such ordinance shall provide for:

1. The issuance and recordation of the instruments necessary to sever development rights from the sending property and to affix development rights to the receiving property. These instruments shall be executed by the affected property owners and lienholders. The instruments shall identify the development rights being transferred, identification of the sending property and the receiving property;

2. The preservation of the character of the sending property and assurance that the prohibitions against the use and development of the sending property shall bind the landowner and every successor in interest to the landowner;

3. The severance of transferable development rights from the sending property and the transfer of development rights to a receiving property;

4. The purchase, sale, exchange, or other conveyance of transferable development rights prior to the rights being affixed to a receiving property;

5. A system for monitoring the severance, ownership, assignment, and transfer of transferable development rights;

6. A map or other description of areas designated as sending and receiving areas for the transfer of development rights between properties;

7. The identification of parcels, if any, within a receiving area that are inappropriate as receiving properties;

8. The ordinance shall include permitted uses and the maximum increases in density in the receiving area;

9. The minimum acreage of a sending property and the minimum reduction in density of the sending property that may be conveyed in a transfer of development rights;

10. An assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area;

11. The review of an application by the planning commission or its agent to determine whether the application complies with the provisions of the ordinance. The application shall be deemed approved upon the determination of compliance with the ordinance and upon recordation of the instrument transferring the development rights in the land records of the office of the circuit court clerk for the locality; and

12. Such other provisions as the locality deems necessary to aid in the implementation of the provisions of this article.

D. The ordinance may provide for the allowance for residential density to be converted to an increase in the square feet of a commercial, industrial or other use on the receiving property.

E. Development rights made transferable pursuant to this article shall be interests in real property and shall be considered as such for purposes of conveyance and taxation. Once an application has been approved and a deed of transferable development rights created pursuant to this article has been sold, conveyed, or otherwise transferred by the owner of the sending property, the transfer of development rights shall vest in the grantee and may be transferred to a successor in interest. Any transfer of the development rights to a different property in a receiving area shall be subject to review pursuant to the provisions of the ordinance adopted pursuant to provision 11 of subsection C.

F. For the purposes of ad valorem real property taxation, the value of a transferable development right shall be deemed appurtenant to the sending property until the transferable development right is recorded as a distinct interest in real property with the appropriate tax assessor or the transferable development right is used at a receiving property and becomes appurtenant thereto.

G. Approved transfers of development rights shall become effective upon the recording of the conveyance and the filing of a certified copy of such recording with the local governing body of the locality.

H. Localities shall incorporate the map identified in provision 6 of subsection C into the comprehensive plan.

I. No amendment to the zoning map, nor any amendments to the text of the zoning ordinance with respect to the zoning district applicable thereto initiated by the governing body, which eliminate, or materially restrict, reduce, or modify the uses, or the density of use permitted in the zoning district applicable to any property to which development rights have

been transferred, shall be effective with respect to such property unless there has been mistake, fraud, or a change in circumstances substantially affecting the public health, safety, or welfare.

J. A county adopting an ordinance pursuant to this article may designate eligible receiving areas in any incorporated town within such county, if the governing body of the town has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county.

K. Any county and an adjacent city may enter voluntarily into an agreement to permit the county to designate eligible receiving areas in the city if the governing body of the city has also amended its zoning ordinance to designate the same areas as eligible to receive density being transferred from sending areas in the county. The city council shall designate areas it deems suitable as receiving areas and shall designate the maximum increases in density in each such receiving area. However, if any such agreement contains any provision addressing any issue provided for in Chapter 32 (§ 15.2-3200 et seq.), 33 (§ 15.2-3300 et seq.), 36 (§ 15.2-3600 et seq.), 38 (§ 15.2-3800 et seq.), 39 (§ 15.2-3900 et seq.), or 41 (§ 15.2-4100 et seq.), the agreement shall be subject to the review and implementation process established by Chapter 34 (§ 15.2-3400 et seq.).

1. The terms and conditions of the density transfer agreement as provided in this subsection shall be determined by the affected localities and shall be approved by the governing body of each locality participating in the agreement, provided the governing body of each such locality first holds a public hearing, which shall be advertised once a week for two successive weeks in a newspaper of general circulation in the locality.

2. The governing bodies shall petition a circuit court having jurisdiction in one or more of the localities for an order affirming the proposed agreement. The circuit court shall be limited in its decision to either affirming or denying the agreement and shall have no authority, without the express approval of each local governing body, to amend or change the terms or conditions of the agreement, but shall have the authority to validate the agreement and give it full force and effect. The circuit court shall affirm the agreement unless the court finds either that the agreement is contrary to the best interests of the Commonwealth or that it is not in the best interests of each of the parties thereto.

3. The agreement shall not become binding on the localities until affirmed by the court under this subsection. Once approved by the circuit court, the agreement shall also bind future local governing bodies of the localities.

(2006, c. 573; 2007, cc. 363, 410.)

APPENDIX A.2 SELECTED MEDIA REPORTS

June 15, 2008. Weldon Cooper Center to host dialogue on development rights. *Daily Progress*.

August 4, 2008. Slutzky renews effort to create a Transfer of Development Rights program in Albemarle.
Charlottesville Tomorrow.

August 14, 2008. Weldon Cooper Center for Public Service holds development meetings. NBC 29: WVIR-TV

August 17, 2008 TDR discussions continue; Group identifies concerns with Slutzky proposal. *Charlottesville Tomorrow*.

September 16, 2008. TDR discussions continue; Slutzky's straw proposal abandoned. *Charlottesville Tomorrow*.

October 17, 2008. Land-transfer plan continues evolution. *Daily Progress*.

October 21, 2008. No consensus emerges from TDR meetings. *C-Ville*.

February 6, 2009. Charlottesville considered as a receiving area for Albemarle development rights.
Charlottesville Tomorrow.

February 20, 2009. Experts on transfer of development rights programs identify success factors.
Charlottesville Tomorrow.

APPENDIX A.3
MINUTES OF MEETINGS
TRANSFER OF DEVELOPMENT RIGHTS DISCUSSION, JULY 31, 2008
Minutes
July 31, 2008
Zehmer Hall Lounge
University of Virginia

The first meeting of the Transfer of Development Rights stakeholder group was held at the Lounge in Zehmer Hall at the University of Virginia. The following stakeholders were in attendance: David Slutzky (Albemarle County Board of Supervisors), Joe Jones (Albemarle County Farm Bureau), David Phillips (Charlottesville Area Association of Realtors), Neil Williamson (Free Enterprise Forum), Charles Rotgin, Jr. (Great Eastern Management Company), Leigh Middleditch (McGuire Woods, LLP), Jack Marshall (Advocates for a Sustainable Albemarle Population), Morgan Butler (Southern Environmental Law Center), Steven Blaine (Charlottesville Regional Chamber of Commerce), Kathy Rash (Forever Albemarle), Sarah Henley (Forever Albemarle), Frank Quayle (Roy Wheeler Real Estate Company), Jane Fisher (Charlottesville Community Design Center), and Debbie Stockton (Virginia Independent Consumers and Farmers Association). The following stakeholders did not attend: Dennis Rooker (Albemarle County Board of Supervisors), Tony Vanderwarker (Piedmont Environmental Council), Jay Willer (Blue Ridge Homebuilders Association), Mike Harvey (Thomas Jefferson Partnership for Economic Development), Jim Murray (Court Square Ventures), Jim and Bunny Murray (Panorama Farms), David Blount (Thomas Jefferson Planning District Commission), and Mike Matthews (Matthews Development).

The meeting was opened at 4pm by Leigh Middleditch of McGuire Woods, LLP. He described briefly the history of the 5 C's (Citizens Committee for City County Cooperation) and its role in helping to organize this series of meetings. Mr. Middleditch introduced David Slutzky, Professor Jonathan Cannon, and the Weldon Cooper Center. He indicated that the potential for using TDR in Albemarle County is unknown but it is an innovative approach to land conservation that has the potential to balance various interests.

Terry Rephann of the Weldon Cooper Center provided some background and history on the TDR discussions in Albemarle County. He described the schedule for future meetings. The purpose of the discussions: Determine the feasibility of developing a TDR program for Albemarle County and, if possible, identify the features of a program/s that would attract wide community support.

John Thomas, Director of the Weldon Cooper Center, indicated that the Center was asked to bring together a group to discuss TDR. The Center doesn't have a lot of experience with TDRs, but it is good at bringing together people and groups to deal with controversial issues. Everyone values rural Albemarle and would like to figure out good ways to protect rural Albemarle while accommodating a variety of interests.

Each of the participants introduced him/herself and provided a brief statement of interest in the topic matter. A number of participants expressed an interest in conserving rural land, promoting private property rights, preserving farming, developing market-based mechanisms to resolve problems, and promoting greater public understanding of TDRs.

Jonathan Cannon explained his interest in TDR and role as a facilitator. He indicated that he was committed to the purpose of the discussion. Decision-making will occur by consensus but the consensus achieved may or may not have any similarity to the Slutzky TDR proposal.

Mr. Rephann introduced the ground rules. They included the following: Come prepared, participate fully and provide your insights, seek to hear and understand each person's perspective, look for common ground, stay on task, meetings should start and end on time. There was no disagreement about these rules.

Mr. Thomas indicated that a common practice in facilitation is to work in small groups. The exercises will not always be round table but may involve splitting into groups and other formats. Verbatim minutes will not be kept because the main purpose of the meetings is to promote dialogue. That means from time to time participants will be encouraged to meet with one another outside of these meetings.

Debbie Stockton of the Virginia Independent Consumers and Farmers Association and Sarah Henley of Forever Albemarle asked for clarification about the enabling legislation for TDRs in Virginia. David Slutzky of Albemarle County indicated that the initial legislation occurred 3 years ago, but it has gone through a couple of iterations. The legislation was promoted by a diverse group of interests, including landowners.

Mr. Slutzky presented his “Straw Man” proposal for an Albemarle County TDR program. His motivation for creating the proposal was to protect rural areas on a permanent basis because they provide important ecological services. He felt that not enough was being done to channel the enormous growth that was occurring away from threatened rural areas. Although zoning more than 20 years ago set aside 95% of Albemarle as rural and 5% as growth area, growth was occurring rapidly outside the growth boundaries

When he was elected to the board, three rural area protection ideas were explored (phasing, clustering, protecting mountain tops with mountain overlay district). Each of the protection strategies failed in the first year because they constrained growth in the rural area at the expense of property rights. These proposals didn’t address the needs and perspectives of rural property owners.

Mr. Slutzky met with a variety of community stakeholders in order to better understand the issues. He met with the environmental community, legal community, real estate community, homebuilders, etc. From these discussions he brought away the idea that a balancing of competing interests could be achieved with TDRs. He fashioned a proposal with specific characteristics that would accomplish the goal of protecting the rural area. This proposal was presented to the Board of Supervisors. However, it was not well received. Mr. Slutzky felt that it was misunderstood.

Mr. Slutzky’s proposal has changed since it was initially presented in 2006. But, the objective of protecting rural areas and rural property rights is the same. He indicated that he is open to any proposal that accomplishes these objectives. He sees his proposal as a catalyst and is prepared to take back to the Board any proposal that the stakeholder group supports.

Mr. Slutzky described his proposal with the assistance of a PowerPoint presentation. The current zoning regulations set aside 95% of the county as rural area and the remaining 5% for development. He proposes reducing the rural area to 94% and creating a new zone of 1% that would be the receiving area for TDRs. Simultaneously, the 94% rural area would be downzoned to 50 acres from the current 21. That means that you can’t subdivide to create a new parcel that is less than 50 acres in size. That would render many of the existing development rights unusable. However, those unusable former rights would be eligible to be transferred to a receiving area.

In previous conversations, he had heard the sentiment expressed several times that his proposal did not go far enough. If the goal of the program were to protect farms, a downzoning to 100 acres would be justified.

Mr. Slutzky addressed the issue of whether he was advocating a voluntary or compulsory program. He indicated that he didn’t see how the proposal would work without a downzoning which would make the program mandatory.

He indicated that one of the major research questions surrounding the proposal is the number of development rights in the rural area that haven’t been developed yet (so called “theoretical development rights”). One estimate is that there are 50,000 such development rights in the rural area. That doesn’t mean that they could actually be used. A property owner would need to have a polygon of land that percolates, accommodate a septic field, etc. Also, there are existing zoning constraints that would affect the calculation. Nobody knows how many actual development rights exist and that would be rendered unusable by downzoning, but it should be far fewer than 50,000. He estimates that 20,000 actual development rights exist which would create a supply of 20,000 TDRs in the rural area. In the program that he envisions, the property

owner would not be required to conduct a successful perc test or drill a well to prove the development right, but, otherwise, would have to comply with the existing ordinance.

For a downzoning to leave property owners at least as well off under a TDR program as they are today, there has to be a demand to purchase the TDR. Property owners are no longer allowed to sell off individual lots below the permitted size. The idea behind TDR is that you retain the development value – you can sell the TDR to a developer in the receiving area to increase the density of development allowed there. In some ways, this could create a better choice because it should be easier to sell a TDR than it is for a landowner to sell part of his/her actual property.

Mr. Slutzky indicated that he felt the effect of such a program would be to raise land prices for two reasons. First, with fewer purchase opportunities (less lot supply), land value would go up. Second, people are willing to pay a premium for land that is protected in a rural area. The price reflects the presence and security of amenities from rural land uses in close proximity. Although the loss of development rights might lead one to expect a loss in property values, the influence of these two factors would result in overall land price appreciation.

Ms. Henley expressed concern that the 50-acre parcels would be purchased by residents who reside there for aesthetic reasons and would not farm or properly manage their forests. Mr. Slutzky conceded that that outcome was possible. However, he indicated that a greater risk of subdivision exists now, and the opportunity also exists for creating 50-acre “McMansion” type development.

Mr. Slutzky indicated that approximately 7,800 parcels in the rural area that are less than 50 acres would not be affected by the downzoning.

Ms. Henley questioned why downzoning would be desirable. Mr. Slutzky indicated that he didn’t think it would work as a voluntary program. The rural areas are currently seeing 250-300 development units each year and that pace likely would continue. He would like to markedly decrease that in a way that benefits rural property owners. Moreover, by taking away the ability to sell smaller lots, property prices would increase and rural landowners would become wealthier.

Ms. Henley indicated that the ACE (Acquisition of Conservation Easements) program provides a good estimate of what a development right is worth. Mr. Slutzky responded that he did not think it was accurate because it represents an appraiser’s attempt to come up with a value for which a market value does not exist and therefore comparables are not truly available. Ms. Henley disagreed.

Ms. Henley questioned whether the development rights would remain transferable. Mr. Slutzky replied that the development rights could be sold because of enabling legislation either to a property owner in the receiving area or to a third party (e.g., bank).

Mr. Slutzky returned to the PowerPoint presentation and outlined his proposed receiving area which was an area surrounding the current designated growth areas. He explained that the area is sufficient to receive development rights as they become available. The area would be available for single-family homes or multi-unit family dwellings. No commercial buildings would be allowed. The area was selected because it was close to existing infrastructure such as water and sewer. The maximum density allowed in the receiving area would be 2.16 lots per acre.

The transfer ratio for a sending area TDR to receiving area for an additional unit of density would be 2-1 (meaning two TDRs would create another unit of density in the receiving area). The ratio would be 1-1 for affordable housing. These ratios would create a sending area supply (20,000 development rights) that is in balance with the potential to create 10,000 additional units in the receiving area (NOTE: Albemarle County land area 723 square miles X 1 percent receiving area percentage X 2.16 development units =10,000).

Mr. Slutzky addressed why he did not believe the current growth area could be designated as a receiving area. New development has an impact on public infrastructure needs. In Virginia, impact fees cannot be charged for such development.

Instead, communities negotiate proffers. However, Mr. Slutzky believes that the value of proffers currently charged per development unit (approximately \$17,000) is not enough to offset the costs of the development. If the growth area were designated as a receiving area, the county would not receive proffers.

Mr. Slutzky indicated that he has never written down his full proposal. However, he is in the process of doing so now and it is 60% complete. When it is finished, he will send it out to the TDR stakeholder group. He further elaborated that if the program were to be adopted, he would support recognizing lots existing before Jan. 1, 2008. The theoretical development rights affected by the downzoning at that time would be eligible for TDRs. The approximately 7,800 lots not affected by downzoning could also be made eligible for the program.

Mr. Slutzky indicated that there are plenty of details that need to be worked out. He is proposing a starting point for discussion. Many questions remain to be answered by the group. Do we agree that the boundary area should be outside the growth area? Should the receiving area be 1% or something else? Where should the receiving area be located? What should be the selection criteria in determining the location and density bonuses? What should be the maximum density allowable in the receiving area? How many development rights exist in the rural area? What is the ratio of TDRs to new units that would be needed? What is a TDR worth and what is its taxable value when it is created?

Ms. Henley questioned a slide that showed an estimated cost of \$1.4 billion (40,000 development rights times \$35,000 per development right) to purchase all of the easements in the rural area. She asked how Mr. Slutzky arrived at the figure when he earlier stated that there were probably only about 20,000 development rights. Slutzky stated that this slide was created when he thought there were 40,000 development rights. Therefore, the slide should indicate half that amount (\$700 million).

Linda McRaven, an Albemarle County landowner, asked who would make the determination of the exact number of development rights. Mr. Slutzky replied that we would never have a precise number. He hopes that the Cooper Center in conjunction with County staff can come up with an intelligent estimate. Also, one could build flexibility into the program in case this estimate was inaccurate. Under Mr. Slutzky's proposal, there are 20,000 TDRs and a receiving area for 10,000 development units. Not all of those can be sold/bought immediately. You are putting in place something that will continue for several decades.

Ms. Stockton questioned whether Mr. Slutzky's proposal was predicated on downzoning. Mr. Slutzky replied that he doesn't feel that he could support a voluntary program because it doesn't protect the rural areas. Ms. Stockton questioned further whether the proposal would result in more McMansion-style development on large lots and less farming. Mr. Slutzky answered that this can happen today. Under his proposal, the number of such possible entrants would decrease because of downzoning.

Steven Blaine recommended that the County consider a voluntary program that would complement the current county conservation easement program. He does not believe that downzoning would be fair. The program would be a voluntary for landowners in the sending area, and would result in permanent easements that help protect the rural area.

Joe Jones stated that most of the discussion has focused on sending areas. However, receiving areas are also important. A demand for TDRs in the receiving areas must exist for a TDR to have value. He felt that many homebuyers want to purchase larger (3-acre) size lots, but that Mr. Slutzky's proposal assumes they would choose ½ acre lots.

Mr. Slutzky responded that the reason people buy 2-3 acre lots is because they can't get a lot smaller because of restrictions (e.g., septic field size). He feels that market demand for current 2-3 acre lots would be satisfied on ½ acre lots. In addition, the receiving area does not have to be uniform in density. Developers could build larger lot sizes.

The meeting was adjourned at 6pm. The next meeting will occur on August 14th at 4pm in the lounge of UVA's Zehmer Hall.

TRANSFER OF DEVELOPMENT RIGHTS DISCUSSION, AUGUST 14, 2008
Minutes
August 14, 2008
Zehmer Hall Lounge
University of Virginia

The second meeting of the Transfer of Development Rights stakeholder group was held in the Lounge at University of Virginia's Zehmer Hall. The following stakeholders were in attendance: Dennis Rooker (Albemarle County Board of Supervisors), David Slutzky (Albemarle County Board of Supervisors), Joe Jones (Albemarle County Farm Bureau), David Phillips (Charlottesville Area Association of Realtors), Neil Williamson (Free Enterprise Forum), Charles Rotgin, Jr. (Great Eastern Management Company), Leigh Middleditch (McGuire Woods, LLP), Jack Marshall (Advocates for a Sustainable Albemarle Population), Morgan Butler (Southern Environmental Law Center), Tara Boyd (Charlottesville Regional Chamber of Commerce), Sarah Henley (Forever Albemarle), Frank Quayle (Roy Wheeler Real Estate Company), Jane Fisher (Charlottesville Community Design Center), Jay Willer (Blue Ridge Homebuilders Association), Tony Vanderwarker (Piedmont Environmental Council), and Debbie Stockton (Virginia Independent Consumers and Farmers Association). The following stakeholders did not attend: Mike Harvey (Thomas Jefferson Partnership for Economic Development), Jim Murray (Court Square Ventures), Jim and Bunny Murray (Panorama Farms), David Blount (Thomas Jefferson Planning District Commission), and Mike Matthews (Matthews Development).

Mr. Rephann opened the meeting at 4pm by sharing several themes that emerged from comments he received about the last meeting. They included: (1) the ground rules should be observed, (2) everyone should have an opportunity to speak, and (3) the stakeholder group should not grow any larger. In order to address citizen concerns about being heard, a public session could be scheduled in late September or early October. A short period at the end of this meeting has been reserved for Q&A from stakeholders and members of the public.

Mr. Rephann reintroduced the purpose of the meeting and the ground rules. Since three stakeholders were attending their first meeting, stakeholders reintroduced themselves.

Dennis Rooker of the Albemarle County Board of Supervisors (BOS) described his interest in the TDR discussion. He participated in a panel discussion hosted by Advocates for a Sustainable Albemarle Population (ASAP) last year to discuss Mr. Slutzky's proposal. In preparation for that forum, he conducted a significant amount of research on TDRs. He is interested in seeing the issues identified in that research brought to the current discussion.

Mr. Rooker indicated that Slutzky's proposal did not receive favorable consideration when it was introduced to the BOS for a variety of reasons. That's not to say that issues can't be worked out. But, he does feel that they cannot be ignored.

Mr. Rooker shared a handout (Growth Area Size Needed to Accommodate TDRs) that showed residential unit densities of existing neighborhoods and subdivisions and computations for receiving area sizes that would be needed to accommodate various levels of development. The average density in growth area subdivisions is .77 units per acre. At that density level, an area constituting 1% of the county area (7.2 miles) would accommodate just 12,000 development rights (or 6,000 developmental units at a transfer rate of 2:1).

Mr. Rooker mentioned another possible complication. Virginia statute requires counties to fund the infrastructure for areas designated for development. As an example, water/sewer infrastructure costs of \$30-40 million will be needed for an area serving the North Pointe subdivision. The group should not advance a proposal inconsistent with the statute or one that would create burdensome financial commitments.

Mr. Rooker stated that Albemarle County has a complicated developmental rights situation. In areas where TDR has been applied, the determination has been more straightforward. For example, Montgomery County (MD) has 1 right for every

5 acres. There is no reliable estimate of the number of developmental rights in Albemarle's rural area. It could be as many as 40,000, which would require a receiving area of 24 square miles.

Jay Willer of the Blue Ridge Homebuilders represents builders and associated businesses in Albemarle, Nelson, and Fluvanna counties. Tony Vanderwarker is the Chairman of the Piedmont Environmental Council.

Members of the group raised some procedural questions. How would general TDR and clarification questions about the Slutzky proposal be handled? Would questions center on the general TDR issue or Slutzky proposal in particular? The facilitators indicated that they would be wrapped into the session's planned activities. Would podcasts of the session be made? They would not, but recordings would be used to create a written record of the meeting.

As part of the first group exercise, stakeholders were invited to offer one comment in support of a feature of the Slutzky proposal and one comment regarding problems or challenges. The following comments were made:

Pros

Mr. Rooker: The program could create marketable development rights for people who do not want to divide their property.

Mr. Middleditch: The proposal offers an opportunity to preserve the rural character of the county.

Mr. Jones: The proposal has potential for preserving land base for environmental reasons.

Ms. Boyd: It is innovative.

Mr. Phillips: It provides a good starting point for discussion.

Mr. Quayle: Twenty years in the future property owners will have far less latitude over their property than today. TDR provides the best idea for a win-win solution for no growth advocates and rural property owners.

Ms. Fisher: TDR may be a good planning tool to preserve rural land.

Mr. Butler: It is a creative proposal to discourage growth in rural areas.

Mr. Rotgin: It creates building lots (in a receiving area) that aren't currently available but are in demand. As a result of these kinds of lots not being available, development is occurring in the rural area.

Mr. Willer: If a workable plan were to be achieved, it could potentially offer more predictability in land use and land value.

Mr. Marshall: It offers a creative and a potentially useful tool for promoting sustainability.

Mr. Vanderwarker: It could be useful for transportation planning and for promoting more dense development. More people will want to live where they work in the future. The TDR plan could facilitate this.

Mr. Slutzky: It provides a balance between legitimate concerns of property owners and desire to constrain growth in the rural area.

Mr. Rotgin: People are being pushed into the rural area because appropriately sized lots are not available. They are also being pushed into adjoining counties. They are using Albemarle County infrastructure but not paying taxes.

Mr. Rotgin: Richmond is looking toward Albemarle County to see if there is a template that can be replicated. Albemarle is one place where it can happen. We are performing a service for the entire state.

Cons

Mr. Rooker: If a TDR program were adopted, there will be a rush to subdivide before it is enacted which would increase development. There are 8,000 existing developmental rights, which represents a 20-30 year supply. This supply will increase if the start of the program is not backdated. Moreover, with a 20-30 year existing supply in the rural area, there is little likelihood that we will see a slowing in rural area development.

Mr. Middleditch: The TDR market may not work.

Mr. Jones: A 50-acre downzoning would not create fair market value for development rights. It would create a fire sale of development rights. This would flood the market and prices would go down.

Mr. Williamson: Stream buffers and other restrictions need to be considered when computing the capacity of receiving areas. They cannot accommodate as many development rights at the density that Slutzky assumes.

Ms. Boyd: The enabling legislation does not permit Albemarle County to purchase and retire developmental rights.

Mr. Phillips: The TDR program as proposed is too complex for people to understand. It would not work in a natural marketplace.

Ms. Henley: Downzoning is a violation of property rights. There will be much landowner opposition. They are the main stakeholders in this discussion but they are not adequately represented in the discussion.

Mr. Quayle: It is unlikely that the transfer ratio of two development rights in the sending area for one development right in the receiving area would work.

Ms. Stockton: The plan is fundamentally flawed because it rests on coercion and force that is not sustainable. A mandatory TDR program (i.e., downzoning) would deprive people of property rights.

Ms. Fisher: The location of the receiving area is questionable. Also, there are restrictions in the receiving area.

Mr. Butler: Expansion of the growth area such as that in the Slutzky proposal is not consistent with the county's growth goals.

Mr. Rotgin: The average densities anticipated under Slutzky's proposal are too high. People who are currently building in the rural area want a large yard and house. They are not likely to view a quarter acre or half acre lot as a substitute.

Mr. Willer: A TDR program would not necessarily be permanent. Government officials might change it at any time in the future. Permanent changes introduced by this proposal would not prevent future additional controls in the future.

Mr. Marshall: Instead of expanding growth areas, the existing growth area should be used as a receiving area.

Mr. Vanderwarker: Planning/design issues in the growth area are very important. You may not want to designate the growth areas in the way proposed.

Mr. Slutzky: The program is too complex.

Mr. Rooker: The TDR program provides a false sense of fair compensation to a rural landowner. For instance, a 16-acre parcel currently may have 5 development rights. With the Slutzky plan, the property owner has no developmental rights

but has 5 TDRs that may be sold. A 2-3 acre lot in rural area may be worth \$100,000. The highest TDR value for a TDR program is Montgomery County (MD), which is worth \$20,000. More common is a value of \$2-3k.

Mr. Middleditch: It is questionable whether the public would accept such a program. The group may want to investigate a pilot or voluntary program alternative.

Mr. Jones: Development rights are the biggest component of property value. Most of the value of property would be removed with a TDR program. Yet, the values discussed in the proposal are not even close to the actual values. Therefore, owners are not likely to be adequately compensated. The receiving area must be large enough to ensure adequate demand. The one county most often mentioned as successful model, Montgomery County (MD), has run out of receiving area for its TDRs. The receiving area was not set big enough—they did not look out for future demand.

Mr. Williamson: How will the infrastructure for by-right development be paid for in the growth area?

Mr. Phillips: There are not enough positive market incentives to create a legitimate marketplace. You cannot legislate a market.

Ms. Henley: If farm preservation is the goal of the TDR program, the proposal does not accomplish it. Albemarle County is losing its agriculture. There are numerous Albemarle County farms smaller than 50 acres. Downzoning will take away land that could be farmed. Small farming opportunities would disappear over time. Moreover, agriculture viability depends on the relationship between consumers and producers. You cannot legislate a preservation of farmland. An incentive for farming is not created.

Mr. Quayle: Development rights vary in value. An Ivy development right is appraised at \$200k. It is unlikely that these development rights would be the same or higher value with downzoning.

Ms. Stockton: John Thomas (Weldon Cooper Center Director) stated that we are here for the same reason, protection of the rural area. However, consensus on goals does not exist. Moreover, the terms used in the discussion must be defined and clear.

Ms. Fisher: More data is needed about Albemarle County to inform the discussion and make decisions. For example, we need to know more about the categories of small family farmers, number of easements, etc.

Mr. Butler: There are approximately 5,000-8,000 platted lots in the rural area. At the current rate of development of 200-300 lots a year, there is an adequate supply of lots for 20-30 years. How do rural landowners react to a downzoning when the market for development rights may not kick in for decades?

Mr. Willer: The market may take care of the rural area development problem. The building community sees a trend toward smaller lots because of lifestyle and demographic changes. There are landowners who would voluntarily sell developmental rights because of these trends.

Mr. Marshall: The one percent growth area without the neighborhood model could prove to be very chaotic.

Mr. Vanderwarker: Downzoning is a very emotional issue. Other communities such as Loudon County have downzoned recently. It is possible to look at the effect of this downzoning on property values. The group would be on more solid ground with this information.

A few additional discussions occurred outside the exercise.

Mr. Rotgin stated that with respect to water and sewer, the County doesn't pay for it. The developer pays for it. Mr. Rooker replied that the statute is not clear with respect to who would pay in the receiving area with TDR.

Mr. Vanderwarker asked about the 7,800 rural area lots and how many of them were likely to be developed. Mr. Rooker indicated that they would satisfy demand for 30 years. Mr. Slutzky replied that according to his proposal, downzoning would not apply to these lots but they could participate voluntarily in the TDR program. He feels significant numbers of landowners would participate. Mr. Slutzky disputed a previous stakeholder observation that a development right would be worth \$200k. Studies suggest that land value without development rights stays the same or goes up. Development right value is an important issue but we don't know what that value is now.

Mr. Rephann segued into the next exercise. He asked stakeholders to put the Slutzky proposal behind them and begin with a clean slate. He identified three areas of concern among the comments: (1) Goals. (2) Receiving area characteristics, (3) Creating a market. Mr. Cannon identified a fourth theme: (4) Administrative/legal/infrastructure.

A central point of contention is whether TDR could be accomplished without a downzoning. Ms. Henley asked about the enabling legislation and whether TDR was envisioned as a mandatory or voluntary program. Mr. Slutzky replied that this issue was not addressed in the legislation. Mr. Rooker indicated that no TDR transactions of any consequence occur in programs where downzoning had not occurred. Ms. Henley replied that local landowners are sensitive to the 1980 downzoning and don't want it to happen again.

Mr. Cannon indicated that the downzoning question was important. The group should consider whether a downzoning is required or whether other means exist to make TDR work.

Kathryn Russell asked if citizens could participate or if the group would deliberate without their input. It was agreed that they could listen in to the group conversations. Questions and answers from the audience would be reserved to the end.

Mr. Rephann asked the stakeholders to separate into four groups. Participants selected a number 1—4 in order of their seating arrangement. The groups would discuss further various questions related to the four themes that emerged from the first exercise. Sample questions were distributed to the groups (“Possible Topic Areas for Breakout Groups”).

Mr. Cannon described the purpose of the group discussions. Participants now have information on pros and cons of the Slutzky proposal and the range of views that are being expressed. Participants have identified four key issues. You have been assigned to work on one of those issues—it may not necessarily be your favorite issue. Work on the issue with your group. Identify the basic questions that affect each of these issues that we need to address to resolve these issues. Discuss data that is needed to help resolve any questions. Also offer options that would resolve problems/challenges posed by this issue.

Each group was to elect a spokesperson. Groups can continue meeting in the next two weeks. Report outs by the groups during the next meeting will form the basis for general discussion.

Group 1. Goals

Dennis Rooker
Debbie Stockton
Jay Willer
Tara Boyd

Group 2. Receiving Area

Jane Fisher
Jack Marshall
Leigh Middleditch
David Phillips

Group 3. TDR Market

Morgan Butler
Joe Jones
Tony Vanderwarker
Sarah Henley

Group 4. Administrative/Legal/Infrastructure
David Slutzky
Neil Williamson
Chuck Rotgin
Frank Quayle

The groups concluded their discussions.

Questions and comments were received from stakeholders and the audience.

Grant Griffin, Appraisal Group, Inc.: The economics of TDR markets depends on both buyers and sellers. What could I do in a receiving area without development rights? The receiving area mapped by Mr. Slutzky includes areas that cannot be developed (e.g., flood plains, critical slopes).

Mr. Rooker interjected that the receiving area also cannot include areas with existing conservation easements. He distributed a map (“Albemarle County Growth Areas”) of the growth area that showed such areas present in Slutzky’s designated receiving area.

Phil Hightower, realtor: There are anywhere from 20k-50k development rights in the rural area. The group needs to paint a picture of what would happen if every one of these development rights were developed? What would happen with full build-out of the rural area?

Kathryn Russell, Majesty Farm: She opposes downzoning and mandatory TDRs. Also, she believes that a TDR certificate will not be without cost. It would also increase taxes by creating a new taxable item.

Linda McGraven, Landowner and Preservationist: She spoke with Delegate Rob Bell before the meeting. Delegate Bell submitted the TDR legislation. He told her that the legislation was submitted to permit a voluntary program. It would allow landowners to sell development rights if they so desired while helping communities with growth issues. The Slutzky downzoning proposal is not consistent with the legislative intent. She feels that the report that will come out of the discussion will advance a proposal that will be harmful and that participants are being used.

Mr. Phillips: We are evaluating the Slutzky plan. This is only a straw proposal. This plan will not be what comes out of the group. Everyone has great comments. We are working through a process, a long process. Don’t get frustrated with the Slutzky plan. The TDR discussion is not only about that.

Mr. Rooker stated that the discussion group was not created by the BOS. The Board did not request that it be created. There was not sufficient interest by the Board to study the issue. Mr. Slutzky contacted various individuals in the community and the Weldon Cooper Center to see if there are some ideas worth looking at in the future.

Brian Walden, farmer: The program offers the dual opportunity to get development value and keep farming. The county needs to preserve farm and rural area and direct development. People are moving to this county—we aren’t going to be able to stop that.

The meeting concluded at 6:10 PM.

The next meeting will be held at the Lounge in Zehmer Hall at 4pm on Thursday, August 28th. Each group will report out the results of their group discussions.

TRANSFER OF DEVELOPMENT RIGHTS DISCUSSION, AUGUST 28, 2008

Minutes

August 28, 2008

**Zehmer Hall Lounge
University of Virginia**

The third meeting of the Transfer of Development Rights stakeholder group was held in the Lounge at University of Virginia's Zehmer Hall. The following stakeholders were in attendance: Dennis Rooker (Albemarle County Board of Supervisors), David Slutzky (Albemarle County Board of Supervisors), Joe Jones (Albemarle County Farm Bureau), David Phillips (Charlottesville Area Association of Realtors), Neil Williamson (Free Enterprise Forum), Charles Rotgin, Jr. (Great Eastern Management Company), Alden English and Leigh Middleditch (McGuire Woods, LLP), Jack Marshall (Advocates for a Sustainable Albemarle Population), Morgan Butler (Southern Environmental Law Center), Steven Blaine (Charlottesville Regional Chamber of Commerce), Kathy Rash and Sarah Henley (Forever Albemarle), Frank Quayle (Roy Wheeler Real Estate Company), Jane Fisher (Charlottesville Community Design Center), Jay Willer (Blue Ridge Homebuilders Association), Jeff Werner (Piedmont Environmental Council), and Debbie Stockton (Virginia Independent Consumers and Farmers Association). The following stakeholders did not attend: Mike Harvey (Thomas Jefferson Partnership for Economic Development), Jim Murray (Court Square Ventures), Jim and Bunny Murray (Panorama Farms), David Blount (Thomas Jefferson Planning District Commission), and Mike Matthews (Matthews Development).

Mr. Rephann reviewed the last meeting in which the discussion group split into four sub-groups to discuss further four themes that emerged from comments on Mr. Slutzky's straw-man proposal. These themes were: (1) goals, (2) receiving area, (3) TDR market (voluntary versus downzoning), and (4) administrative/legal issues. During the session, each group reported out on the results of their deliberations.

Mr. Willer spoke for Group 1 "goals." Other members of the group included: Dennis Rooker, Debbie Stockton, and Tara Boyd ("Group 1 Issues Paper").

Mr. Willer stated that whatever TDR package is developed, a basic principle is preserving the rural areas. Equally important is promoting and preserving the rights of farmers and the character of the land, farmers' rights to thrive and exist in the county, farmers' rights to sell production of their land to their neighbors, and farmers' rights to own their land and produce in a traditional setting. Also, a program should preserve land ownership and stewardship. It should preserve aesthetics, natural resources, and reduce fragmentation (which is breaking large parcels into smaller parcels in a way that affects their management or character).

The group thought that administrative characteristics are important. The TDR program should have an appropriate scope: it might be temporary or permanent, something applicable to whole county or specific areas chosen as a "test run," mandatory or voluntary. Since words can be value-laden, there must be consensus on what those words mean. Current property owners must be treated fairly in this process. The program must be simple and efficient. It must have a predictable administration. The program must create a viable market. Prices have to make sense, and equilibrium must be achieved in the market.

Mr. Slutzky asked about competing objectives. On the one hand, the group agreed that rural area protection should be an objective. On the other hand, another objective states that protecting property rights of people most affected by rural protection is important. To the extent that there is a conflict between those objectives, is the default to do nothing?

Mr. Rooker stated that the group wanted to list all the goals that are important to consider. They recognized that some of them might be in conflict. But, they did not feel it was their job to resolve the conflicts.

Mr. Cannon asked whether the group addressed the issue of TDR and its effect on fragmentation. In a previous meeting, a concern was expressed that a TDR program might make fragmentation worse. Did the group provide any thinking or analysis about this issue?

Mr. Rooker responded that members of the group had different ideas about fragmentation. He views fragmentation as

the splintering of lots into smaller lots. The whole mechanism of TDR is aimed at slowing the process and compensating people who lose the right to sell small lots.

Ms. Henley interjected that in defining fragmentation we must keep in mind what constitutes the rural character of our land. With downzoning, it will be more and more difficult to find farmable land. Five, seven, or ten-acre parcels could make a profitable farm area. The Virginia Independent Consumers and Farmers Association (VICFA) has enhanced the relationship between local producers and consumers, and smaller farms may become more important in the future. Vegetable farms may be viable with smaller acreage. If only 50 acres lots are available, this will create a barrier for entry-level farmers. Smaller lots need to be available for farmers because they promote rural character.

Mr. Rephann shared a table that showed farm distribution by acreage size from the Agricultural Census (Ms. Stockton indicated that there are many more farms than what is reflected in the Census. Some farms produce for their own consumption. Moreover, there are many viable small farms that sell to the market. For example, one local small farm 10 acres in size supplies the local farmers market. Mr. Jones indicated that trees and timber are not counted as farm commodities. This results in an undercount of Albemarle County farms.

Mr. Cannon asked the group if there was consensus about the goals that were articulated.

Ms. Stockton replied that she was not in agreement with the statement regarding reduced fragmentation because the term is undefined. However, she would support the handout sheet and list of goals taken as a whole. However, she would not indicate agreement with individual goals.

Ms. Henley stated that she too has different idea of what constitutes fragmentation. However, she agrees that a voluntary TDR program might provide another possible avenue for local landowners.

Mr. Rooker replied that reducing fragmentation could be accomplished without downzoning. Development rights could be sold. So, you can reconcile the goal of reducing fragmentation with a voluntary TDR program.

After polling the group, Mr. Cannon found that generally stakeholders were comfortable with the goals.

Mr. Willer stated that the group recommended end goals for a TDR program. However, they did not work out the details of a program that would accomplish the goals.

Mr. Jones agreed that TDR provides a possible way for a landowner to get value out of land without actually selling off that piece of land. The result would be reduced fragmentation. How we get to the point of a workable program is the question.

Mr. Slutzky supported the goals as a way forward. However, he did not agree that preserving aesthetics was the most relevant objective. He believes that protecting ecological services is most important. Also, protecting agricultural uses is important. He asked whether other stakeholders felt that aesthetics was an important objective.

Mr. Williamson expressed a concern with the last statement regarding “setting an exchange rate for development rights . . .” He does not believe that an exchange rate can be established. This role should be left to the market. Mr. Rooker responded that the statement should have been worded differently. It should read “setting an exchange mechanism,” not a specific rate

Ms. Rash stated that a voluntary program would offer a family the opportunity to sell a development right rather than sell the property for housing development. She believes that everyone would agree that this would be positive. Also, she feels aesthetics is an important component of what they are trying to preserve in rural areas.

Ms. McRaven believes that defining terms is important. Her idea of “preserving the rural character of the land” is likely to be very different from others. She also has concerns that development rights have been taken away by recent ordinances. Ms. Fisher spoke for Group 2 “receiving area” (“Group 2 Issues Paper”). Other members of the group included: David Phillips, Leigh Middleditch and Alden English, and Jack Marshall. Mr. Marshall’s comments are not included.

Ms. Fisher indicated that the group was not able to arrive at a consensus on how to define that receiving area. Some members of the group agreed that there should be an expansion of the growth area of anywhere from 1% to 5%. Others wanted no expansion whatsoever. They were interested in obtaining additional information about the amount of undeveloped land available in the growth area. Participants may be under the impression that the growth area is built out, but the reality may be that much land is still available there.

Mr. Rooker indicated that much unbuilt land remains in the growth area. There are at least 16k approved lots that have not been built on. Mr. Rotgin’s North Pointe development was cited as an example of a subdivision that has not been developed.

Mr. Phillips questioned whether lots currently available in the growth area are the types of lots that would encourage people to stop moving into the rural area. These types of lots may not be available, forcing people to look in the rural area.

Mr. Werner argued that the neighborhood model should not be blamed for causing high-density development because it does not enforce a single density. Mr. Phillips replied that it increases development costs for low-density development.

Ms. Henley stated that if you are looking for 5 acres of land in the country and privacy, you couldn’t find that with growth area densities.

Mr. Werner stated that there are 16,000 undeveloped lots in the growth area. A large number of those lots aren’t being built. No one is forcing developers to build at the high densities reflected in many of the existing subdivisions. Also, there are several thousand vacant lots in the rural area that are undeveloped. He questioned whether the development community was simply interested in seeing an expanded growth area. He circulated a list of approved re-zonings on several thousand acres (“New Residential Units Pipeline”). He questioned why the group would consider a large growth area expansion when there are a large number of lots of various sizes currently available in both the growth area and the rural area.

Mr. Williamson questioned whether both TDR and the neighborhood model would be required in the growth area.

Mr. Werner replied that he thought it was an interesting issue for the county to consider. However, he believes that a growth area expansion is unacceptable.

Mr. Rotgin stated that the types of lots that would be accommodated in an expanded growth area/boundary area would satisfy an entirely different market than provided in the current growth area. Current growth area lots are small with high amenities. Lots in the new boundary area would accommodate residents who are currently choosing to locate in the rural areas.

Mr. Werner questioned why North Pointe wasn’t built to lower density. Mr. Rotgin replied that the area in question could not have been marketed as a low-density development.

Mr. Rooker provided Old Trail as an example of low-density development. They chose not to rezone, instead electing to maintain property at rural zoning and develop by right.

Ms. Henley requested documentation that 300 houses per year continue to be built in the rural area. Mr. Rooker and Mr. Slutzky confirmed that this is the case.

Mr. Rooker stated that the only time that rural building was significantly reduced was when Forest Lakes first came on line. With about 7,800 lots expressed in the rural area, however, there exists a 25-year supply. If you consider the possibility of family subdivisions, that could create another 4,000 lots. It seems unlikely that an expanded growth area would significantly affect the rate of rural building.

Mr. Slutzky replied that in order to be effective, those 7,800 lots have to be a focus. He believes that a TDR program could be devised that addresses platted lots in the rural area. For example, his proposal might allow these expressed lots to be transferred to the receiving area. Also, another transfer ratio could be created for expressed development rights to encourage their participation in the program.

Ms. Fisher remarked that the give-and-take evident in the discussion is very similar to that which occurred in the breakout group. She believes that the current growth area was designated for a reason. She appreciates the importance of market forces and creating incentives, but half of the group doesn't agree with an expanded growth area.

Ms. Rash commented that an expanded growth area seems like a developers' dream.

Mr. Phillips stated that in order to create a viable TDR market, it has to be attractive for participants. If there are no incentives, the program will not work. Various interests in the community may have to be willing to give things up in order to create those incentives.

Mr. Slutzky discussed two problems with making the growth area into a receiving area. These problems are why he did not consider further this option in his proposal. First, form and design constraints in the growth area are onerous – that might have a chilling effect on transfer of development rights. Second, the county cannot charge impact fees in the rural area. At least in the growth area, proffers can be obtained at the rate of \$17k per unit. If you put the TDRs in the growth area, the question arises of how you pay for the infrastructure.

Mr. Rooker asked how that situation would be different for an expanded growth area/receiving area. How would the county pay for the infrastructure in the expanded area?

Mr. Werner criticized several aspects of Mr. Slutzky's original proposal: (1) He did not agree with the process by which development rights were to be determined which he characterized as determining only theoretical rights. Mr. Slutzky responded that this is a misunderstanding—you would still have to prove the actual development right. Mr. Werner questioned why then Slutzky's proposal did not require a perc test. (2) He believes that the Slutzky's TDR plan would encourage additional 2-6 acre lot development. (3) He questioned whether an adequate market for TDRs could be created where landowners receive adequate compensation in the long run. He described a sequence of TDR transactions in which developers first transferred their downzoned lots to a new receiving area. Next, property owners who were unlikely to develop their lots would sell their TDRs. The remaining landowners would find that there was not a market for their TDRs because of the huge supply of competing growth area and rural area lots. (5) He argued that mandatory downzoning would encourage more subdivision activity.

Mr. Rooker described statutory requirements for TDR. The county is required by the law to create an area that can accommodate the number of rights that might be sold into it—if there are 40,000 in the sending area, the receiving area must be large enough to accommodate them. Altering the transfer ratios can reduce the receiving area size. There is also the issue of infrastructure, for which the language is unclear in the statute. The County attorney indicated that the statute seems to require that the County must provide infrastructure to be in place or otherwise provided by for the County in order to qualify as a receiving area.

Mr. Slutzky disagreed that the second point is an obstacle. He read from the enabling legislation put together by the Virginia General Assembly: “. . . an assessment of the infrastructure in the receiving area that identifies the ability of the area to accept increases in density and its plans to provide necessary utility services within any designated receiving area.” The ordinance must assess the absorption capacity of the receiving area in terms of infrastructure. The County attorney indicated to him that this is not necessarily any different than what is required in the growth area. The Comprehensive Plan also

triggers infrastructure in response to growth. The statute implies that you must provide utility services. Therefore, there would have to be a provision that the developer pays for the added utility services.

Mr. Rooker questioned what value a receiving area would have to a developer if water or sewer utilities were not provided.

Mr. Slutzky responded that it is a problem similar to what exists in the growth area already. The developer would need to enter into an agreement with the service authority to obtain the needed infrastructure. Although a definitive legal answer is not available, it should not be an impediment to a TDR proposal.

Mr. Cannon summarized the two viewpoints expressed with respect to the receiving area issue. There are those who think a new receiving area is necessary. There are others who think that the growth area is already big enough. He asked the group if it is worth considering the idea of putting the receiving area into the growth area.

Mr. Rotgin responded that the concept is feasible if the neighborhood model is not applicable. The neighborhood model results in smaller lots, and it's not an option for someone to build.

Mr. Phillips indicated that he was not opposed to making the growth area the receiving area. However, in order for development rights to be traded, they need to be attractive to purchase. You need enough incentive for purchase and selling. Otherwise, you have a program that is ineffective.

Mr. Slutzky described a new program approach in which the sending area is restricted to the 7,800 already platted smaller lots. These lots would require a much smaller absorption area than what he originally proposed. Also, they represent a greater risk for development. He indicated that downzoning is a separate issue. The only possible downside is that someone who has, say, a five-acre tract property but no intention of selling might be encouraged to subdivide. However, even that might not necessarily be a problem.

Richard Lloyd indicated that Virginia Code seems to be written for voluntary TDRs, and he did not understand how you could create a development contingent on TDR.

Mr. Slutzky indicated that Mr. Lloyd was referencing earlier legislation. The enabling legislation was modified to allow TDR in conjunction with downzoning.

Mr. Middleditch wondered if there might be an opportunity to create a voluntary program that that would allow a property owner to create TDRs and agree to a conservation easement without necessarily selling the TDRs. The TDRs would run with the land if sold. This program might need a new statute.

Mr. Rooker described the values of TDRs found in other areas of the country as being in the range of \$10k. He believes the values of TDRs are not competitive with the values of tax benefits from donated easements. This could explain why you see so few transactions in voluntary TDR programs across the nation.

Mr. Slutzky responded that this may represent another reason for targeting the 7,800 existing platted lots in the rural area. Many of these smaller lots would not be eligible for the conventional easement donation/tax credit program.

Mr. Butler spoke for Group 3 "TDR Market" ("Group 3 Issues Paper"). Other members of the group included: Sarah Henley, Joe Jones, and Tony Vanderwarker.

Mr. Butler addressed the issue of making the program voluntary or mandatory. Some members are very concerned about downzoning and fairness. For others, without mandatory downzoning, it would be difficult to accept an expanded growth area. He outlined how TDR would provide a third option for development. Currently, there are two options: (1) By-right development and (2) Request rezoning to a higher density. TDR would offer a third option whereby you would not need to go through the rezoning process.

Mr. Butler identified two immediate concerns with TDR. First, it is unclear how you would pay for the required infrastructure in the receiving area. Second, the county would sacrifice compact development, which the county is encouraging to promote transit and other county goals. As an alternative, perhaps a form-based zoning in the growth area would be an option. The program would address what form development may take. However, it would not address the issue of funding infrastructure, which is already inadequate with proffers.

Mr. Jones stated that you could alter the transfer ratios to encourage TDR use in the growth area (e.g., 1 development right to 3 in the growth area). Mr. Rooker replied that increasing this ratio would require a much larger receiving area.

Mr. Slutzky asked whether it was possible to reach a consensus with respect to a TDR program that would work if impact fees were allowed. Would a consensus exist to go to the General Assembly and ask for enabling legislation to allow impact fees? Maybe one problem with TDRs going into the growth area is how we fund infrastructure in competition with proffers?

Mr. Butler questioned whether a voluntary program would help accomplish the goal of lessening fragmentation. For instance, if a landowner with ten development rights surrenders five development rights on a property and develops the remaining five, what has been accomplished?

Mr. Slutzky indicated that under his plan, the entire property would be placed under easement in order to take advantage of the program.

Mr. Rooker stated that a voluntary program would not offer TDR prices that are competitive with tax benefits from easement donation. Another problem is that people who might find TDRs attractive are those who probably wouldn't develop it anyway. There was some additional discussion about the comparative benefits of the tax credit program and how tax credits can be sold.

Mr. Werner commented that there are lots of myths about what tax credit programs do and cannot do. He recommends that Rex Linville at the Piedmont Environmental Council be contacted to gain a better understanding of the advantages and disadvantages of tax credits.

Mr. Werner stated further that he does not view downzoning as rural protection. Zoning is not protection. Zoning is ephemeral. Zoning can occur up and down over time. Permanent protection is conservation easement.

Mr. Jones stated that the Farm Bureau is opposed to mandatory downzoning but not conservation easements that allow farming.

Mr. Werner stated that a Farm Bureau mailing indicated that they support TDR, but not if it involves permanent easements. Mr. Jones replied that the mailing was concerned about conservation easements that limit farmer's ability to manage their properties for farming.

Mr. Cannon asked about form-based zoning. Does this relate to residential density or some other issue?

Mr. Butler indicated that his concept is still based on residential density. For instance, there are zoning regulations about building setbacks from the street. A TDR could be used to alter certain characteristics of the neighborhood model. The TDR allocation rule would need to be worked out. It might also present a way to get around the usual zoning process. One benefit to the developer would be avoiding the long, drawn-out zoning process.

Mr. Werner stated that vacant lots are currently available at various densities and with various characteristics. He is concerned that increasing the growth area would not accommodate the TDRs that result with a downzoning. That would increase pressure for a further expansion of the growth area. The current Neighborhood Model allows a range of housing sizes.

Mr. Williamson responded that the Neighborhood Model increases the cost of building. A TDR program might offer certain design regulation adjustments such as releasing street tree requirements.

Mr. Werner stated that he doesn't understand why altering this aspect of the Neighborhood Model would be considered. The National Realtor Association has found that people prefer tree-lined streets. Street trees are an amenity.

Mr. Rephann asked the group about sending areas. Is there agreement that it should be the entire rural area? Should it target environmentally sensitive areas?

Mr. Rooker commented that any proposal must be politically feasible. If a 1-1 transfer ratio were needed in order to make it more valuable for developers, that ratio would entail (at 0.77 per acre) a receiving area of 24 square miles. But, even that density is lower than what developers want. Will the community support a receiving area this large? He doesn't think that that the Board of Supervisors will go down that road. Moreover, he doesn't believe that the program is viable when you consider that rural landowners can realize greater gains by selling tax benefits in lieu of selling TDRs.

Mr. Rotgin described events that motivated the current TDR discussion. There was a concern that the county might downzone in the future. Downzoning is not fair. Therefore, TDR was suggested to compensate landowners who are downzoned.

Mr. Rooker stated that the Board of Supervisors is not interested in downzoning the rural area. He also stated that Mr. Slutzky had previously indicated that he would not support TDR without a downzoning. However, there is a big split within the discussion group as to whether downzoning is desirable. A related split exists with respect to the issue of expansion of the growth area, with some in favor and some opposed.

Mr. Slutzky indicated that he has revised his views on the issue of downzoning. He would be open-minded to a TDR proposal that didn't have downzoning. This change in view is not related to the difficulty of getting his proposal accepted. There are good reasons why it would not make sense now. That doesn't mean that a future board wouldn't consider downzoning.

Mr. Slutzky took up the issue of the size of the receiving area. He does not think that projecting future development of an expanded growth area at current growth area density is reasonable.

Mr. Rooker indicated that his assumption is based on what he was hearing from developer community rather than a reaction to Mr. Slutzky's proposal. Indeed, the developers are indicating that even lower densities are desired.

Mr. Rephann indicated that stakeholders would be polled on various aspects of TDR in two weeks.

Mr. Williamson spoke for Group 4 "administrative/legal/infrastructure" ("Group 4 Issues Paper"). Other members of the group included: David Slutzky, Chuck Rotgin, and Frank Quayle.

Mr. Williamson indicated that several data points are needed for furthering the discussion. First, there must be a reasonably accurate estimate of the number of development rights actionable in the rural area. Second, an estimate of the number of development rights extinguished by the Board of Supervisors in spring 2008 is requested. Third, questions have been raised about both the marketability of growth area lots and reasons that people are moving to the rural area. Therefore, it might be helpful to survey residents about these issues. Fourth, the group needs to know the administrative costs to Albemarle County of TDR, including research and implementation costs, and how these costs differ from the costs of creating a subdivided plat in the rural area.

In addition, they would like to get in writing in the opinion of the county attorney regarding infrastructure finance in receiving areas.

He stated that the group did not believe that Albemarle should be significantly involved in TDR transactions beyond recordation in the clerk's office.

Lastly, he expressed a concern that the discussion group has not yet identified a shared vision. There is not a buy in to a TDR program. If rural protection is the goal, one possible metric for measuring progress toward rural protection is the number of rural area construction permits issued. The program would be evaluated on whether it significantly reduces the number of permits. The program should also not harm the rural landowner.

Mr. Rotgin commented that a useful data point would be how much land in the rural area has been used for development in last 10-20 years. This figure could then be used to generate a figure for boundary area requirements.

Mr. Rooker commented that a plan without downzoning is unlikely to have any impact on rural area development. If you create a border area and you don't have a mandatory program, have you accomplished anything? In the rural area, the average price of a home is \$750k and in the growth area the price is \$350k. You still have people who want a \$750,000-\$1 million house located on 5, 10, and 21 acre lots. A TDR program after this exercise might result in a TDR worth \$5-10k but you still would have 200-300 units constructed in the rural area because people are looking for an entirely different living experience than what would be available in a receiving area that would have characteristics of the growth area.

Mr. Rooker referred to a staff report ("Albemarle County Staff TDR Memo") that describes the TDR program creation process as very long and involved. Changes to the Comprehensive Plan and re-zonings would be needed. Staff would need to stop work on everything else and work on this program. TDR has many different parts, and it would entail many public meetings. The group needs to be careful about recommending a program that is costly but has little impact on rural development.

Mr. Rotgin commented that the process could be short circuited if there is a guarantee that the Board of Supervisors won't downzone.

Mr. Werner stated that he was surprised that a majority of the Board of Supervisors would vote for downzoning. Mr. Rooker replied that there are not four votes for downzoning. Mr. Slutzky argued that there could be a vote to downzoning in the future. Mr. Rooker responded that a future board might also up zone in the future.

Mr. Jones commented that a TDR program need not extinguish every development right to be considered a success. But if we get half of the rights in the program, then we have accomplished something. He asked whether a TDR advertised at the rate of \$10-15k would entice people with low valued land to participate in a voluntary program.

Ms. Henley commented that she believes many development rights were extinguished by recent Board actions. Mr. Rooker disagreed. Mr. Williamson indicated that there was no point in arguing about the matter. This data is needed for the discussion to progress.

Ms. Rash concurred. The lack of data is stopping progress. There are so many things being thrown at the rural area landowners, and they need to have a better understanding of how they are being impacted by these ordinances and proposals.

Mr. Werner stated that it is virtually impossible to estimate the exact number of development rights. He described the process by which he arrived at an estimate of 20,000-25,000 development rights. Using tax parcel records, development activity reports, and information about conservation easements, public land, cemeteries, bodies of water, etc., he estimated 6,000 potential parcels that could allow additional development. However, parcels of record are not the same as tax map parcels. Additional lots may exist. An official determination of the number of lots is very time consuming. For instance, you might have a 100-acre lot and think that you have nine development rights. But, on further inspection that property might have a 50-acre lake, 30-acre steep slope, and only one development right.

He feels that his 20-25k estimate is reasonable. He knows of factors that both would lower and increase that number. For instance, zoning restrictions would lower the number. Taking into consideration parcels of record would increase that number. He views these as roughly offsetting each other. With a 50-acre downzoning, there would still be 3-5k development rights in addition to the already expressed 7,800 development rights.

Mr. Williamson questioned why the development rights estimate provided by Mr. Werner had not decreased with recent zoning restrictions. Mr. Werner indicated that the number is meant to be a conservative estimate and errs on the side of assuming all lots are possible. Moreover, he believes that the number might not have decreased that much. For instance, there are people who think they were negatively impacted by recent zoning changes but they may have already been in a watershed that restricted development anyway.

When the County conducts a development rights determination, they gauge only theoretical rights with the assistance of deed searches. They do not determine actual development rights by taking the second step out of going out on the ground to see what can actually be developed.

Mr. Rephann said that he would work on obtaining some additional data. Also, a County attorney memo about the infrastructure requirements required by receiving areas is needed.

Mr. Werner asked if the Board of Supervisors would entertain a program whereby developers would purchase developmental rights in lieu of or in addition to offering proffers.

Mr. Rooker stated that the affordable housing component in growth area allows developers to decrease proffer costs. This raises the related question is how affordable housing would be addressed in the boundary area. Another problem with any kind of TDR program is that tax benefits are more lucrative than TDR. Thirdly, administrative costs for implementing TDR would be high.

Mr. Phillips asked whether the administrative memo circulated by Mr. Rooker addresses the Slutzky proposal in particular or any potential TDR program, including a simplified program. Mr. Slutzky indicated that many of the same costs would be involved.

Ms. Henley questioned whether it would be possible to transfer development rights to other counties/cities (e.g., Richmond). Mr. Slutzky indicated that legislation does not allow it. However, it would allow a transfer from Albemarle County to Charlottesville. The City Council has not yet expressed interest.

Mr. Werner described the benefits of protecting watershed areas. He believes that there are various promising approaches to protecting rural watersheds. For instance, a charge could be placed on water bills to purchase watershed easements. An enhanced ACE program could also accomplish this.

Mr. Slutzky does not feel that the ACE program provides the best value for the money or that it is very effective in reducing rural development.

Ms. Henley replied that there are various rural interests (farmers, landowners, working class people, people who want to move into the area) and you need to work with them in a cooperative way.

Mr. Cannon summarized areas for further exploration. (1) Can the growth area be structured as a receiving area? (2) Can a voluntary program be developed that would work? (3) What is the size of the sending area and the size and character of receiving area? (4) For a receiving area, there are three sub questions: (a) Can we create a product that people want? (b) Do we have the ability to create infrastructure adequate to the needs of the receiving area? (c) What happens to the neighborhood model? (5) Can an independent bank be developed to handle TDR transactions?

Mr. Rooker stated that some of Neighborhood Model is in the subdivision ordinance. This needs to be investigated.

Questions and comments were received from the audience.

Richard Lloyd stated that he is interested in keeping track of how many development rights are available, and how many have been extinguished by various acts of the Board of Supervisors over the years and under consideration. If this data were available, it would be useful information for the public.

Bill McCaskill stated that the freedom given to the landowners was what created the rural character of Albemarle County. The more the government intervenes, the more the rural character goes away.

Dirk Nies stated that he owns a 65-acre property—two parcels with 10 theoretical rights. He suggested that instead of trying to determine the actual number of development rights in a TDR program, only theoretical development rights should be considered. A property owner should not be required to conduct a perc test or employ a surveyor to determine his actual development rights. Doing so would force the landowner to incur unnecessary costs, particularly if he had no intention of developing the land. In addition, county regulations change every year, which affects the number of actual development rights. It would be simpler and more predictable for landowners to use theoretical rather than actual development rights. Simple is better.

Linda McRaven commented that a fundamental right of citizens is the pursuit of happiness. She disagrees with the use of derogatory language like “creeping crud” to describe housing in the rural areas. She believes that a person’s right to live in housing of his/her choosing needs to be protected.

The meeting concluded at 6:10 PM. The next meeting will be held at the Lounge in Zehmer Hall at 4pm on Thursday, September 11th.

TRANSFER OF DEVELOPMENT RIGHTS DISCUSSION SEPTEMBER 11, 2008

Minutes

September 11, 2008

Zehmer Hall Lounge

University of Virginia

The fourth meeting of the Transfer of Development Rights stakeholder group was held in the Lounge at University of Virginia's Zehmer Hall. The following stakeholders were in attendance: Dennis Rooker (Albemarle County Board of Supervisors), David Slutzky (Albemarle County Board of Supervisors), Joe Jones (Albemarle County Farm Bureau), Neil Williamson (Free Enterprise Forum), Charles Rotgin, Jr. (Great Eastern Management Company), Alden English (McGuire Woods, LLP), Jack Marshall (Advocates for a Sustainable Albemarle Population), Morgan Butler (Southern Environmental Law Center), Tara Boyd (Charlottesville Regional Chamber of Commerce), Kathy Rash and Sarah Henley (Forever Albemarle), Frank Quayle (Roy Wheeler Real Estate Company), Jane Fisher (Charlottesville Community Design Center), Jay Willer (Blue Ridge Homebuilders Association), Tony Vanderwarker (Piedmont Environmental Council), and Debbie Stockton (Virginia Independent Consumers and Farmers Association). The following stakeholders did not attend: David Phillips (Charlottesville Area Association of Realtors), Mike Harvey (Thomas Jefferson Partnership for Economic Development), Jim Murray (Court Square Ventures), Jim and Bunny Murray (Panorama Farms), David Blount (Thomas Jefferson Planning District Commission), and Mike Matthews (Matthews Development).

Mr. Rephann reviewed the agenda ("TDR Session PowerPoint") including the purpose of the meeting and the ground rules. He reminded participants to stay on task and that Mr. Slutzky's straw man proposal was not currently part of the discussion. He reviewed the progress of the TDR discussion. In the most recent meeting, consensus was achieved for the following issues: (1) goals, (2) the program should be voluntary, (3) the receiving area should be located within the existing growth area, and (4) the TDR transactions should not be handled by county government.

Mr. Williamson clarified that the transactions should be handled like any other private real estate transaction. The County would be involved in recordation, but private brokers would handle the remaining issues.

Mr. Rephann indicated that a number of research questions have been raised during the previous meetings. He referenced table 1 ("Lot Sizes for Building Permits"), which contains information about the lots sizes of new housing in the rural area and growth area. He also described a handout about the number of acres placed under easement in Albemarle County ("Acres Placed under Easement in Albemarle County by year, 1976-2007"). Other information included in the agenda packet was a memo from Leigh Middleditch and Alden English concerning a TDR proposal ("TDR Proposal"), and memos from Albemarle County staff about the issue of development right determination ("Staff Analysis of Development Rights Determination 1 and 2").

Mr. Slutzky addressed the group about the status of the discussion. He brought the straw man proposal to the discussion to stimulate dialogue. He understands that the community will not accept two elements of the straw man proposal: downzoning and expansion of the growth area. He is comfortable with that outcome and hopes the group can move forward on the consensus positions.

He offered two suggestions for enhancing existing conservation easement efforts. First, a voluntary program without downzoning could target a particular category of parcels in the rural area. He described two categories of properties: large tracts of land with some development rights (eligible for existing state and county conservation easement programs) and the approximately 7,800 existing platted lots in the rural area that are less than 50 acres and are mostly 2-5 acres (which would not be affected by a downzoning). For the former category, the value of tax benefits from donating easements would be greater than the value gained using TDRs, based on values observed in other markets. Therefore, a TDR may not make sense if it targeted the market of large parcels. A voluntary TDR program would be worth considering if it targeted the estimated 7,800 existing rural lots not eligible for the tax programs. The receiving area for such a program would be

comprised of the existing growth area and possibly Charlottesville. Second, Mr. Slutzky suggested that a major county outreach program to promote the tax benefits of conservation easement donation might also be useful.

Mr. Rooker commented that he hopes the group will focus on a workable proposal. He expressed his surprise that some participants were unaware that conservation easement tax credits can be sold. He shared a handout (“PEC Worksheet”) that contained an example of the tax benefits that would accrue for a \$1.5 million property that experiences a 30% loss in value as a result of a conservation easement. The tax benefits could be \$360,000. This is a viable option for property owners who want to receive value from placing a conservation easement on their property.

Mr. Vanderwarker indicated that Virginia has one of the most progressive state policies for easement donation in the nation. He indicated that he placed a conservation easement on his property and didn’t pay income taxes for six years. There was some discussion about the how the state land preservation tax credit program works.

Ms. Rash asked if the Piedmont Environmental Council would consider presenting the tax benefits of conservation easements to a group of landowners. Mr. Vanderwarker indicated that they could. Mr. Slutzky suggested that the group might recommend an increased outreach effort to work with individual landowners or organized groups.

Ms. Henley also placed her property under conservation easement. She described working with a broker and the complicated nature of the program. She favored the outreach approach.

Mr. English explained a handout that examines the possibility of combining a TDR program with the benefits of a conservation easement. With this proposal there would not be a downzoning. The division rights would be sold on a TDR market and a conservation easement would be recorded on the property. If the landowner decided to impose more conservation restrictions than what is required in the county ACE program, it is possible there would be a charitable donation value that makes it eligible for tax benefits. The easement would have to be held by a qualified holder and would need a qualified appraisal in order to apply for state and federal tax benefits. This program might be beneficial to landowners who do not meet all of the requirements of the ACE program. Another possible benefit of the program is that the property would be eligible for land use taxation. In addition, the landowner would not need to reapply for that designation every 10 years. Several questions need to be answered before this proposal is considered.

Ms. Henley questioned how the program would work without a designated receiving area.

Mr. Rooker responded that the group has agreed that the receiving area would be located in the growth area. For example, there are 1,000 acres of land that are zoned rural in the growth area. This area might be designated as a TDR receiving area. Also, there are areas in the county that will be redeveloped in the future. Furthermore, perhaps there could be a TDR plan that allows conversion of rural development rights into commercial square footage.

Mr. Rooker indicated that the county actually loses money on land use taxation because the county pays 10 cents per \$100 valuation to the City under its revenue sharing agreement. That is more than the revenue that the county receives from tax based on use value assessments. However, once the property is placed in easement, the assessed value of the property drops to its use value, which eliminates the loss from the revenue sharing agreement.

When questioned about this agreement, Mr. Rooker replied that the revenue sharing agreement was adopted by referendum and can only be amended by agreement of both the city and county.

Ms. Henley stated that land use taxation is not a reduced tax rate. The assessment is based on a valuation appropriate for agriculture and forestry uses rather than what is appropriate for residential uses. The public needs to be educated about this issue.

Ms. Stockton offered an invitation to participants to attend the Virginia Independent Consumers and Farmers Association Annual Legislators on the Farm day.

Mr. Rephann asked the group to focus on the characteristics of the receiving area. He asked if there were any additional ideas along the lines of what had been discussed previously like exemptions from restrictive design requirements or rezoning of rural zoned land in the growth area.

Mr. Slutzky asked if it might be possible for property owners in the growth area to get a development right by buying a TDR in order to increase the development potential of a lot in the growth area rather than paying proffers. On the downside, the county depends on proffers to offset some of the impact of that increased growth. That is a challenge of using TDRs in lieu of proffers. Is there some way of managing that trade-off?

Ms. Boyd asked about the savings that result from moving a development right from the rural area to the growth area. Mr. Slutzky stated some savings may be realized from efficiencies in police and fire service delivery, but sewer and water costs are higher in the growth area. Mr. Butler replied that the Comprehensive Plan does not require rural area services to be available at the same level or standard as the growth area. Therefore, if you relocate the TDR into the growth area, the service demand is greater. Mr. Slutzky responded that the service standards in the growth area are indeed greater than in the rural area. For instance, the fire service response time standard is 5 minutes in the growth area and 20 minutes in the rural area. Therefore, if you relocate the development right into the growth area, you have an increased demand for services that the county must fund.

Mr. Rephann asked if TDRs could be used in conjunction with proffers to increase the development potential of a rurally zoned area in the growth area. Mr. Rooker did not know if the enabling legislation allowed the county to require TDRs in order to develop the rurally zoned area in the growth area. Mr. Slutzky responded that TDRs might be used as part of the proffer package offered by developers.

Mr. Williamson stated that he was concerned that TDRs would be required in addition to proffers. He indicated that this would increase the cost of home construction. The County should share in the cost of increased rural preservation.

Mr. Cannon commented that rural preservation is analogous to affordable housing. Right now, the county imposes a cost on developers to subsidize affordable housing. The rationale of the program is that the community benefits from improved affordable housing opportunities. In a similar way, the community benefits from the values of rural preservation. These benefits are aesthetics, water quality, recreational uses, ecological uses, etc. Therefore, it is appropriate for them to share the costs.

Mr. Williamson stated that additional housing development costs would burden new homeowners, rather than all homeowners, with rural preservation costs. Mr. Cannon responded that other areas of the county budget absorb part of the rural preservation cost burden. In addition, new homeowners represent additional pressure on rural areas that may be appropriate to offset with an additional charge. Mr. Slutzky indicated that ecological systems have a tipping point at which an additional resident disproportionately burdens the rural area.

Mr. Rephann asked if there were some additional incentives that the county could offer to make TDRs more attractive to developers (e.g., deviating from the Neighborhood Model, fast-tracking, fee waivers).

Ms. Henley asked if a rural area homeowner places a greater burden on water systems and environmental systems than an urban homeowner. Mr. Slutzky responded that a wildlife habitat that is disturbed by a new rural development would have a negative impact while a growth area development would not. Ms. Henley answered that many of the development rights would originate from farms rather than wildlife habitats. She indicated also that some negative environmental impacts would occur regardless of where you live— for instance, an urban resident would still drive a car in the rural area and would demand water.

Mr. Rooker commented that the ecological burden of someone who lives on a 5-acre lot is greater than someone who lives in a townhouse. The natural resources come out of rural areas. For example, water quality would be impacted more by development in the rural area watershed than it would be by development outside the watershed.

Mr. Slutzky indicated that rural area residents also travel more miles on county roads, which imposes additional environmental costs. Moreover, some types of growth area development impose higher environmental costs than other types of growth area development. That is why the environmental community is not enthusiastic about the possibility of tampering with the Neighborhood Model in the growth area.

Mr. Rephann asked the group to consider the characteristics of the receiving area. Where within the growth area would the receiving area be located? What would be allowed in the receiving area? How would it be made enticing to developers?

Mr. Willer asked if it is necessary to designate a specific receiving area. Mr. Slutzky responded that the enabling legislation requires it. Mr. Rooker indicated that he did not favor allowing the transfer of development rights from one part of the rural area to another. Mr. Willer replied that the group might consider a fully flexible program in which even the receiving area is designated on a case-by-case basis. Mr. Slutzky asked if he was proposing that the receiving area could be located in the rural area. Mr. Willer replied that he did not know. Mr. Rooker responded that if a prescribed receiving area were not designated, the developer could not be certain that he could use the TDR. Therefore, it would have no value.

Mr. Vanderwarker asked if the receiving area could be focused around the University of Virginia and on workforce housing. He indicated that the allowance of greater density in this area would permit university employees to live where they work. The county would benefit from less vehicle travel.

Mr. Rooker responded that the statute allows Charlottesville to participate in the program. They have changed their Master Plans to allow more density. It is uncertain whether the City would be interested in a TDR arrangement with the County. The City benefits from having rural area remain rural. Mr. Slutzky indicated that the city is not getting proffers. Therefore, it may be less of a problem for them to accept the program.

Ms. Henley argued in favor of a flexible program. She indicated that a TDR bonus might be given for affordable housing development. Perhaps, also, a rural area transfer could be allowed, but it would require a greater number of TDRs. A growth area development would require fewer TDRs.

Mr. Slutzky responded that growth area expansion was not currently on the table for discussion.

Ms. Henley answered that she wasn't arguing in favor of an expansion of the growth area up front but that on a case-by-case option it might be allowed. The cost of expanding into the rural area would be made more costly to the developer.

Mr. Rooker replied that the program should be simple. This is one of the features of TDR plans that have worked elsewhere.

Mr. Willer stated that predicting where jobs will grow in the area and where the housing will be located is important in identifying a receiving area. Is there some way to create incentives that would minimize transportation costs and travel distances for residents?

Mr. Slutzky indicated that you could make an economic argument for reduced proffers when it involves dense development in the growth area.

Ms. Henley responded that the Crozet growth area is relatively far from Charlottesville.

Mr. Williamson indicated that he was not clear whether TDRs would be voluntary or mandatory in rezoning. Is it this group's opinion that use of TDRs will be added to the rezoning process?

Mr. Slutzky responded that it makes a stronger market for the rural area property owner but burdens the developer.

Mr. Cannon asked if, in the process of rezoning, the county could require that the proffers require a TDR element. Or, could the county have a zoning category that has a density bonus built in for TDRs. The developer wouldn't need to apply for

a re-zoning—it would be built into the zoning category. The developer would have an option to build to a lower density without TDRs or a higher density with TDRs.

Mr. Rooker indicated that it sounds good in theory but in reality fewer areas have been built out to their maximum permitted density. Therefore, density bonuses have almost never been used. If there is no value to the developer, it's not going to create a market for TDRs.

Mr. Slutzky responded that the growth area could allow increased density and not be constrained by the Neighborhood Model. Maybe then developers would want to use TDRs.

Mr. Rooker stated that it must work on the ground. You need to look to the development community and understand what creates value from their perspective.

Mr. Jones remarked that it is unfortunate that UVA is not represented in the discussion. They benefit from rural protection, as does Charlottesville. In order to create incentives for the TDR program, he asked if the state could be provide matching funds for a TDR program as it does for other rural preservation projects.

Ms. Rash asked if there is any way to get the state to match proffers or help with infrastructure in receiving areas.

Mr. Slutzky indicated that if the county had state enabling legislation for impact fees they wouldn't have to ask developers for proffers.

Ms. Boyd asked if the enabling legislation prevents predicating the use of TDR on a rezoning.

Mr. Slutzky replied that he does not know if it is precluded under the current legislation.

Ms. Boyd stated if you want to create developer incentives for TDRs, the county should offer developers a choice. The county either needs to allow rezoning to a higher density through a proffer or through purchase of TDRs. The county may need to make an economic decision regarding which of the two options makes sense from their perspective.

Mr. Slutzky suggested that maybe a portion of the value of proffer could come from TDRs. This amount need not be added to the current proffer but would be a contribution toward the total proffer value.

Mr. Rephann asked what would be needed to encourage developers to buy TDRs for the growth area.

Mr. Rotgin commented that, in order to maximize the value of the TDRs to the development community, the receiving area should involve no re-zoning and no neighborhood model. It must be what the market will accept. He stated that he is concerned that the only receiving area might be a 1,000 acre rurally zoned area in the growth area. He speculated that the area in question might be unattractive for development because of critical slope or poor infrastructure. He indicated that a TDR market requires more of the growth area to be designated as receiving area than this rurally zoned area.

Mr. Rotgin indicated that he finds it interesting that the County loses money on land use taxation with the revenue sharing agreement. A TDR program could be beneficial for both county revenues and conservation efforts.

Mr. Slutzky commented that this provides an additional rationale for the county to accept TDR in lieu of a proffer. The county receives an economic benefit in the form of an additional revenue stream because of the easement purchase.

Linda McRaven stated that an easement is permanent while land use is temporary. She characterized conservation easements as non-voluntary. Mr. Slutzky and Mr. Rooker disputed this.

Mr. Rephann asked what design characteristics can be given up in the growth area to provide an incentive to developers.

Mr. Butler stated that issues of neighborhood form are important. We don't want to sacrifice them altogether. But, perhaps they could be addressed but fast tracked. Hammering out the details of form-based zoning will be difficult.

Ms. Henley indicated that it is nice for homebuyers to have options. It's attractive to have different styles of communities. It doesn't have to be only the Neighborhood Model. Different models contribute to the character of the community.

Mr. Rephann asked what developers would be willing to pay to deviate from the Neighborhood Model.

Mr. Rotgin stated that under existing ordinance, there are to be no more Glenmores, Carsbrooks, or Forest Lakes (½-1 acre lot subdivisions). But, that's what the market wants. To the extent that it this demand cannot be provided in the growth area, it will move to the rural area or to the neighboring counties.

Jeff Werner responded that the market is already provided with these types of developments like Biscuit Run, North Pointe, etc.

Mr. Rotgin stated that when the housing market is hot, developers make unrealistic assessments of market trends. The market doesn't want those types of models now. They have expensive amenities like street trees, curb and gutter, sidewalks, road improvements, trails, open spaces, etc. These are not the same models that he is referencing.

Mr. Butler indicated under current ordinance you are not required to build according to the Neighborhood Model. If the market is demanding otherwise then building by right according to different specifications is an option.

Mr. Rotgin responded that he was not aware of any land of any size that would allow a by-right development at the density he is advocating.

Mr. Slutzky concurred with this statement. North Pointe had 53-57 by right development rights. It was more advantageous to rezone/proffer to get the additional units.

Mr. Rotgin described North Pointe. It contains a big commercial element. In the eastern part, the residential area is like Forest Lakes minus some of the amenities. He indicated that a developer would be willing to pay the current proffer amounts (\$15,000 per unit) to avoid the Neighborhood Model.

Mr. Williamson asked if the county would be willing to waive cash proffers for a fixed number of developmental rights in order to create a market for TDRs. The county would receive some of the benefits (e.g., retaining more tax revenue from the revenue sharing agreement) discussed earlier.

Mr. Slutzky stated that, perhaps, it would be focused on some subset of the development rights. If the county could impose impact fees, it would be easier to do.

Mr. Willer challenged the question "What are builders and developers willing to pay?" Mr. Williamson's question is "What is the county willing to pay?" It should be a two-sided discussion.

Mr. Slutzky indicated that the county should be willing to pay the benefit it receives from the change in tax status of a property that is placed in easement. That may be a starting point for discussion.

Mr. Marshall responded that when we ask what the community is willing to pay we are making the assumption that continuous growth is okay for the long run. The underlying premise is that developers have a right to build and our job is to accommodate this growth. The community needs to reconfirm what it is we want our community to be in the long run.

Mr. Slutzky responded that the group is working with the assumption that downzoning will not occur. Assuming you are keeping the current number of developmental rights, the question now centers on where they will be expressed.

Mr. Rephann asked if it makes sense to explore using TDRs for commercial-industrial applications.

Mr. Werner stated that a General Assembly committee met recently on the question of using TDRs as an incentive for mixed use. Homebuilders were very opposed to this proposal.

Mr. Sluzky responded that the enabling legislation doesn't make a distinction between residential and commercial development.

Mr. Williamson replied that allowing TDRs for commercial re-zonings would effectively eliminate division rights and convert them into commercial rights.

Mr. Rooker answered that the advantage of this setup would be to create higher values for TDRs.

Ms. Henley stated that the 1980 downzoning served to establish a finite amount of development rights. This establishes a finite residential capacity.

Mr. Rooker responded that significantly more density could be added in the growth area. Moreover, future re-zonings could be made that would accommodate additional population.

Mr. Cannon summarized the discussion to that point. The group agrees that receiving area would be in existing growth area. Also, the group seems to think that the receiving area should be in areas within the growth area that still have rural area zoning because they are not yet developed. Mr. Rooker disagreed, saying that this is too restrictive. There may also be areas that are not zoned rural but underdeveloped or that could accept additional density.

Mr. Cannon indicated that we need additional information to explore these options and be more specific about the receiving areas: (1) Where are these areas? (2) What do they look like? (3) What is their real development potential for the types of development that we might anticipate with this program?

Mr. Cannon stated that a second question revolves around how the TDRs would be generated. One possibility is that they would be generated within the context of a rezoning to a more dense level of development, as part of a proffer or as an offset to proffer. Another option is to select the receiving area and rezone it so that, with the acquisition of the required proffers at the rezoning, the owner of those properties would have a by right entitlement to develop in a certain matter. These are two significant options that should be explored further. The rezoning/proffer is a familiar procedure that might be used as a vehicle for TDRs. The by-right option needs to be described in more detail. The group could decide which of these options is most beneficial.

Mr. Rooker asked if the group should engage state legislators in a discussion of ways the state could help. Mr. Sluzky responded that this might be a tough year to request state assistance.

Mr. Cannon indicated that there is a crosscutting issue throughout the discussion about infrastructure. Would additional infrastructure be needed? How much? How would it be funded? The answers to these questions affect the way you go about expressing the requirement for TDRs (whether as part of a rezoning or as a set zoning category), the possibility of obtaining state matching funds, and the location of the receiving area. Some underdeveloped areas in the growth area may already have the requisite infrastructure. Those areas might be identified as good candidates for receiving areas.

Mr. Sluzky commented that it would be useful to measure the funding value of the increased tax revenue that accrues from development rights being pulled out of the rural area and the increased property values that might result from additional rural protection.

Phil Hightower questioned the policy of promoting conservation easements. An easement creates a permanent development restriction on a property. If the area of present-day Charlottesville had been placed under easement hundreds of years

ago, the city would not exist. Zoning, in contrast, is a democratic process of push and pull. It can be changed in response to changing circumstances. He questioned why the government would want to set policy in perpetuity.

Mr. Rooker responded that placing a property in easement is voluntary. As a landowner you have the right to place covenants and restrictions on your property. It is not required. If you decide to make that decision, there are tax benefits available.

Mr. Rooker remarked that a TDR program could have a deleterious impact on other conservation easement programs. There is a risk that the TDR mechanism that values development rights may provide a lower value than appraisals. Generally, TDRs around the country are trading at \$10,000 or less. What happens if an appraiser comes up with a development right appraisal of \$50,000 per development right but development rights trade at only \$5,000 per development right in an Albemarle County TDR program? How would this situation affect easement appraisals? Also, would it create a way for the IRS to challenge the values of donated conservation easements? He is concerned that TDR might lower easement values in a way that would undermine existing conservation easement programs. These programs are valuable to landowners, the state and the county.

Mr. Slutzky responded that this might be an argument in favor of limiting eligibility to smaller parcels because they are differentiable from the larger tracts where the value of a development right may be higher because of a different amenity effect.

Ms. Stockton stated that she does not favor a program that restricted participation to the 7,800 expressed lots. Mr. Slutzky responded that landowners with larger lots would get more value from participating in other conservation easement programs. Ms. Stockton replied that landowners would realize which program is more beneficial for them. There is no reason to codify these restrictions.

Mr. Rooker responded that it was not possible to create a receiving area large enough to accommodate all of the rural area development rights within the existing growth area. In addition, expanding the growth area is not acceptable to certain stakeholders. Furthermore, if more development rights flow into the market, TDR values will be lower. The question at hand is whether you can create a TDR program without downzoning and without expanding the growth area and also create a market that allows a reasonable development right value that entices landowners to sell them.

Mr. English stated that many smaller lots would not qualify for existing conservation easement programs. They are not large enough, they might not have a stream, etc. that would make them attractive to a holder. For a conservation easement to qualify for the programs, a holder must be willing to accept the easement and confirm that it furthers conservation purposes. Smaller tracts don't have enough conservation value to make them attractive to the holders. However, the county may want to hold the easement to extinguish the right to further its goals. Right now, the Virginia Outdoors Foundation is accepting only 100+-acre tracts. They are not interested in smaller tracts.

Ms. Henley stated that if you make it a voluntary program, the first TDRs may come from less valuable land. As they are bought up, maybe TDRs become more and more expensive because they originate from more valuable land. As the program goes along, maybe the higher priced TDRs become something that someone wants to buy.

Ms. Henley favors a program in which smaller property owners are eligible to participate. It allows someone with, say, a 10-acre tract with 2 development rights, to place the property in easement and obtain value for their development rights.

Mr. Vanderwarker remarked that changes in the federal government's carbon emissions policy would require cooperation by localities because local land use policies affect carbon emissions. He asked if it possible to look long term to federal funding to assist with a TDR program that would encourages green building within a more compact settlement pattern.

Mr. Slutzky stated that under the Clean Air Act there are state implementation credits. Virginia could get credit for the transfer of a development right from a rural area to the urban area as a justification for a credit that has value to the state. In

addition, the larger climate change agenda that emerges in federal policy will affect localities. The federal government will need to motivate localities through their land use policies to stimulate more compressed communities. The federal government may create a new credit program to motivate local governments to adopt land use policies like TDR.

Mr. Slutzky believes that a substantial amount of rural subdivision occurred because landowners wanted to create an economic asset. But many of these landowners may have no interest in actually selling these lots. With a TDR option for obtaining value, many of these parcels could end up going into a TDR market

Mr. Henley agreed that many landowners might be interested in such a voluntary program.

Ms. Boyd described a different TDR market price dynamic. The first sellers would do better after the initial setup because the price would be set by how it is used in the receiving area rather than qualities of the development right in the sending area.

Mr. Rooker responded that in Montgomery County (MD), TDR prices have declined over time.

Mr. Rephann asked about how the group would determine the size of the sending area that could be accommodated by a receiving area of fixed capacity. If it were focused on the 7,800-platted lots, would it be only a portion of these lots that meet specific criteria? Would the program only accommodate the first 250 or 1,000 TDRs?

Mr. Slutzky responded that you could identify a smaller subset of the 7,800 lots. Some data and research would be needed to identify that subset. Maybe the focus would be on 2-acre lots in certain locations that are most likely to be developed. Maybe we define smaller pockets of the lots based on other criteria.

Mr. Rooker remarked that you could identify resource areas that would reduce the size of the sending area.

Mr. Rephann indicated that a trade-off exists between restricting the number of previously platted lots that are eligible for the program and the level of likely participation in the program.

Mr. Williamson commented that eligibility might be restricted to those parcels that have the highest ecological benefit.

Mr. Rooker stated that watershed areas could be an area of focus. The 250 square miles that are in the Rivanna Watershed is approximately one-third the land area of the county. That restriction would cut that 7,800 down proportionately.

Mr. Slutzky responded that maybe the biodiversity committee could identify the areas.

Mr. Cannon remarked that it would be useful to identify where the 7,800 lots are located and have county staff help us identify those areas with ecological values. The group might be able to determine a sending area that is in balance with the receiving area.

Mr. Williamson commented that the group should be careful that receiving areas they identify are not cost prohibitive for development.

Mr. Jones does not agree with limiting the sending area to a particular part of the county. He would prefer that the sending area is a countywide program. Ms. Boyd concurred. Ms. Stockton also did not favor restricting the program.

Mr. Butler stated that he would prefer that the sending area be some subset of parcels that have ecological value.

Mr. Marshall likes the idea of asking the Natural Heritage Committee to help identify the sending area. He would like the group also to look into the legality of having receiving areas outside of Albemarle County.

Ms. Fisher asked why density bonuses have been used so little in Albemarle County.

Mr. Rooker responded that developers have not exercised their right to the full density. Much of this is due to demand. In the city of Charlottesville, there is more demand for high density.

Ms. Henley would not favor limiting the sending area to certain areas. She would be interested in hearing from residents from the sending area about the issue.

Mr. Willer stated that there is a danger of mission creep if you focus on environmentally sensitive areas. For instance, the definition of the Rivanna Watershed has expanded from the South Fork of the Watershed to the North Fork. If the group wants to protect the air shed, there are no boundaries for that area.

Ms. Rash is concerned that there are 16,000 parcels in the growth area that haven't been developed that could impact a TDR program. Also, she feels that the program needs to be simple. But, it is not simple by restricting the sending area.

Jeff Werner stated that the Comprehensive Plan should be a guide for identifying appropriate areas for protection – Watershed protection is a goal of the plan. Second, he commented that conservation easements are voluntary. They are the ultimate expression of property rights. Third, he questioned the assumption that we need a TDR program to move development rights elsewhere to build rural scale developments. Fourth, if the county would consider using TDRs in lieu of proffers, wouldn't this proffer value be better used as part of a Purchase of Development Rights program like ACE? That way, you could focus on protecting those larger tracts of land to provide more resource protection.

AC Shackleford commented that it is unclear whether TDR is being promoted to reduce growth or preserve the environment. He would prefer to see an expanded Purchase of Development Rights program that does not have the restrictions that come with the current ACE program.

Kathryn Russell commented that it is immaterial whether the funds come from the federal government, state government, or county government. The money ultimately comes from local taxpayers. She also questioned why the county would want to participate in an interjurisdictional agreement that sent development rights to other areas. If growth is so bad for Albemarle County, why would it want to send growth elsewhere? Furthermore, Charlottesville is unlikely to grow into another New York. Its main asset is the University of Virginia. The community can deal with growth issues in other ways.

Mr. Kevin McKenna commented that there is no consensus on the issues, and many questions remain unanswered. Problems can arise if the program isn't done right. Although a handful of TDR programs elsewhere in the country have worked in some respects, many other programs have not. Albemarle County is not confronted with the same type of growth issues as New York City, Montgomery County, Fairfax County, or Loudon County. The group has not done an adequate amount of investigation into the various issues to recommend a workable program.

Linda McRaven stated that she believed that there was no consensus on the issues. For instance, one of the stakeholders indicated that small farm protection is important but this matter is not being discussed. The discussion centers on residential development when the group should be talking about land stewardship. She also questioned the manner in which the group wants to restrict eligibility in the program, and the manner in which previous zoning regulations have deprived landowners of development rights. Lastly, she thought that members of the stakeholder group and citizens were not being given an adequate or equal opportunity to express their views.

Mr. Rephann asked stakeholders to fill out a facilitation evaluation form and drop it into the box at the back of the room.

The meeting concluded at 6:00 PM. The next meeting will be held at the Lounge in Zehmer Hall at 4pm on Thursday, October 16th.

TRANSFER OF DEVELOPMENT RIGHTS DISCUSSION, OCTOBER 16, 2008
Minutes
October 16, 2008
Zehmer Hall Lounge
University of Virginia

The fifth meeting of the Transfer of Development Rights stakeholder group was held in the Auditorium at the University of Virginia's Zehmer Hall. The following stakeholders were in attendance: Dennis Rooker (Albemarle County Board of Supervisors), David Slutzky (Albemarle County Board of Supervisors), Joe Jones (Albemarle County Farm Bureau), Neil Williamson (Free Enterprise Forum), Charles Rotgin, Jr. (Great Eastern Management Company), Alden English (McGuire Woods, LLP), Jack Marshall (Advocates for a Sustainable Albemarle Population), Morgan Butler (Southern Environmental Law Center), Tara Boyd (Charlottesville Regional Chamber of Commerce), Kathy Rash and Sarah Henley (Forever Albemarle), Frank Quayle (Roy Wheeler Real Estate Company), Jay Willer (Blue Ridge Homebuilders Association), David Phillips (Charlottesville Area Association of Realtors), Jeff Werner (Piedmont Environmental Council), and Debbie Stockton (Virginia Independent Consumers and Farmers Association). Jane Fisher (Charlottesville Community Design Center) was unable to attend.

Mr. Rephann thanked the stakeholders for participating fully in the discussion by regularly attending the meetings and voicing their opinions. He recognized Debbie Stockton who asked to make a statement.

Ms. Stockton stated that the discussion has been framed as a discussion about TDRs, but it is really about the future of Albemarle County. She expressed concern about the goals of TDR as articulated by several participants, including the view that preserving open space per se is desirable. She reiterated her concern that fostering agriculture in Albemarle County is most important and discussion should center on that issue. She believes that full discussion was not achieved and the perspectives of other stakeholders, including audience members, were not adequately heard. Ms. Stockton invited stakeholders to a VICFA "Legislators on the Farm Day" to view the workings of an actual farm.

Chuck Rotgin asked the stakeholders to look at a handout that was distributed entitled "Number of Building Permits and Total Lot Acreage by Lot Size." If you look at the bottom of the table, it indicates 46,665 acres have been developed in the last 10 years – an average of 4,665 acres per year in the rural area. These figures are the genesis of this TDR concept discussion. Many people in the community thought this pattern was an unhealthy trend. There were a number of people in the environmental and business communities that thought there might be a way to protect the rural areas and also provide value to rural area landowners who have seen their land values affected by various governmental actions.

Mr. Rotgin addressed comments made by several audience members in previous meetings about the role of County supervisors Rooker and Slutzky's in the TDR discussions. He remarked that they were knowledgeable about the matters being discussed. Also, they represent one-third of the votes on the Board of Supervisors. If a proposal moves forward with their support, it will pass. However, without their support, it will not pass. Therefore, it is important that the group has their input

Joe Jones remarked that according to the handout the bulk of the development has occurred on large tracts: 37,000 acres of the total acreage consists of parcels of 21 acres or more. He wondered if land was being removed from agriculture and being turned into large residential lots. If so, this pattern of open space will reduce the availability of land for agriculture.

Mr. Rotgin agreed with Mr. Jones. However, he believes that many people who buy large lots would buy smaller lots with urban amenities if they were available. Too much land in the rural area is being used for residential purposes.

Sarah Henley expressed the concern that a large number of people from the audience were not heard at the previous meetings or given adequate time to comment on matters when they were being discussed. She suggested that the format of the discussion be changed to allow public input throughout the discussion.

Dave Phillips disagreed with this suggestion and indicated that it would be difficult to get anything done if the discussion became an open forum.

Mr. Rephann indicated that they would stay with the current format. The format was agreed to at the beginning of the first meeting. Moreover, the group has not yet fleshed out a complete proposal. The public would be given an opportunity for comment at future meetings and public hearings if a TDR proposal moves forward.

Mr. Rooker commented that Ms. Stockton had misunderstood a comment he made at a previous meeting about the impacts of different residential settlement patterns. She had characterized that position as “one person on 5 acres has more impact than 50 people on 1 acre.” He stated that what he meant was that “50 people on 5 acre lots have more impact than 50 people on one acre lots.”

Mr. Rephann presented a few slides that described the handouts. The first handout, referenced by Mr. Rotgin earlier, examines the rural acreage consumed by residential development. The total amount is sizeable and represents approximately 10% of the county’s area over just a 10-year period. However, the vast majority of the acreage is made up of large lots as pointed out by Mr. Jones. These lots could be 21 acres, 50 acres, 100 acres, 200 acres, etc. Only about 6-7,000 acres consisted of smaller lots. However, the area is still sizeable and helps provide some perspective on how large the receiving area must be to accommodate this amount and type of growth.

Mr. Rephann showed a slide that illustrated areas that were zoned as rural in the current Growth Area. Much of this area is on the perimeter of the growth area and amounts to 1,000 acres or more. He showed another slide that illustrated the geographical distribution of parcels where residential development had occurred. The pattern was disbursed rather than concentrated near the growth area.

Jon Cannon had summarized the remaining questions at the previous meeting. These questions were: (a) Can the growth area be structured as a receiving area? (b) Can a voluntary program be developed that would work? (c) What is the size and character of the sending area? (d) What is the size and character of the receiving area? and (e) Can an independent bank be created for TDR transactions?

The group had agreed on several issues addressed during the last several sessions. Agreement was achieved on a list of goals as a whole, although some individuals did not agree with individual goals within the list. No one disagreed with offering at least a voluntary TDR program. Everyone was comfortable with using the growth area as a receiving area. Development rights could be exercised in the growth area by changing zoning in areas currently zoned rural within the growth area and obtaining a relaxation of design standards in the growth area. Group members agreed that individuals who were not eligible for existing Acquisition of Conservation Easement (ACE) and Land Preservation Tax Credit programs would be most likely to participate in a TDR program. These parcels were likely to be smaller. Lastly, the group agreed that TDR transactions not be organized by county government.

There were areas that needed additional work. Although suggestions were made for ways that TDRs could be used in the receiving area, expanding the available options would improve the chances of creating a viable TDR market. Two ideas were introduced without agreement: invite the City of Charlottesville to be a receiving area and allow TDRs to be used for commercial re-zonings. Members also must decide the mechanism for using TDRs: rezoning with by right or special use permit. Also, the group had not arrived at agreement on the sending area characteristics that would be used to limit the size of the sending area since the receiving area as designated would not be able to accommodate all of the development rights in the rural area.

Mr. Rephann introduced Dan Rosensweig who is a member of the Charlottesville Planning and Zoning Commission. Mr. Rosensweig created a PowerPoint presentation entitled “Charlottesville Perspective on TDRs.”

Mr. Rosensweig stated his belief that TDRs are a promising planning tool to channel growth. One of the purposes of his presentation was to foster a dialogue between the city and county. He cautioned that his presentation reflected the perspective of one planning commissioner. There are multiple perspectives in the city. However, during the preparation of his presentation, he spoke to a variety of individuals within city government, including the mayor, members of council, the head planner, and other members of the planning commission. Most of them had not thought much about the TDR issue. For this reason, he thought it would be useful to explore the issue further. As part of his presentation he offered also to share the thoughts of city staff and officials he interviewed.

Mr. Rosensweig started his presentation by reviewing ways that the city has recently begun to channel increasing density. The city's experience may suggest how the county and city might partner in the future to receive development rights. There has not been much dialogue about TDRs between the city and county. This is unfortunate because preserving open space and resources is good for everyone.

Mr. Rosensweig stated that the city has 11 mixed-use zones that are primed to receive density. He described historically how the city created these zones and whether the opportunity exists to expand density in these areas.

Ms. Stockton asked why agriculture was not addressed in any of the slides. Mr. Rosensweig responded that he had wrapped agriculture into the category of "resources" but apologized for not explicitly identifying it.

Sarah Henley asked if resources meant forests, farmland, and open space – preserving rural character. Mr. Rosensweig agreed. He would include any land uses that help create a sustainable region. He believes that Charlottesville residents value county open space and locally grown food, but he is not sure to what degree they would be willing to contribute to help sustain it. He also believes that a healthy, vibrant city is good for everyone. Charlottesville provides a center and activity center to Albemarle that is good for county residents. The county and city are interconnected and have common needs. County and city residents often fail to recognize this interconnectedness.

Mr. Rosenwieg believes that density in the city is good if it occurs in the right places. For example, if the utilities are provided in an area or planned for an area, density is a good thing. If you have dense corridors linking the University to downtown it makes for a better streetscape, it creates the possibility for public transportation (e.g., circulator, bus and trolley), things that make city life more sustainable and enjoyable.

Mr. Rosenwieg stated that regional planning is challenging, especially in a Dillon Rule state. Also, there is much inter-jurisdictional rivalry in Virginia. Although it is difficult environment, governments must find ways to work regionally. Any agreement will involve compromises.

Mr. Rosenwieg commented that there are some other challenges. The city already has density or has plans for density where it wants it. There are eleven mixed-use zones outside the University area. In addition, developers know that the city is already open to granting higher densities. As of 2003, the city had not turned down a special use application because of density. The city has encouraged density. That creates a challenge for implementing TDRs.

Another challenge is that the current economic downturn will affect the immediate practicality of TDR. As land values and home values decrease, there will be less economic activity and fewer development pressures. Therefore, there may be fewer opportunities for development in the city. However, from a planning perspective, this economic slowdown may be good because it will allow the community to more carefully plan.

Mr. Rosensweig described how the city has recently channeled density. Efforts began in 2000 when there was a crisis in student housing. The University was growing but it wasn't housing a high enough percentage of the additional students. Students were moving into residential neighborhoods and renting affordable housing. They were renting in the county and creating problems with traffic and overburdened services. Therefore, the city looked at ways to bring student density closer to the University. Conversations between the University and city revealed that the city would rather have the density just off grounds instead of on grounds. The city would be providing services regardless of whether the students lived

on grounds or off grounds. In this situation, the city preferred to collect tax revenue from off grounds housing. The city wanted to encourage high-density housing around the University. It created UMD (university medium density) and UHD (university high density) districts just off grounds. It increased densities – in UMD, 43 Dwelling Units per Acre (DUA) were allowed by right and 87 by Special Use Permit (SUP). In UHD 64 DUA were allowed by right and 87 by SUP.

Mr. Rosensweig remarked that policy was successful. If you look between Elliewood and 14th street, there are nicely designed dense apartments available in this location. Students have no other choice than to walk. This has created a vibrant dense community around the University. The city looked at this success in student housing to inform its plans for mixed-use corridors elsewhere. It converted 11 primarily commercial corridors to mixed use. One example is West Main, which consists of two different zones. Other mixed-use corridors are High Street Corridor (Free Bridge to Martha Jefferson Hospital), Highway Commercial (where K-Mart and Kroger are located), and Downtown Extended. There are areas where the city wanted to encourage density. So in 2003, they increased by-right densities as high as city engineers recommended for the current utilities. Some of the figures were incorrect. By 2007, it was clear that the city had miscalculated utility demands. Also, some enabling legislation by Delegate Toscano allowed the city to accept contributions towards an affordable housing trust fund. City staff began to think that it was a good time to sit down with developers and come up with a new formula for these areas.

Mr. Rosensweig commented that development did not occur at the pace that was expected in 2003 when the new density standards were adopted. For instance, if you look down West Main and Cherry Avenue, there has not been a tremendous amount of development. Nonetheless, the city has approved several projects in that area.

NDS worked with developers and community leaders and came up with radical restructuring to the density matrix. The city lowered by right heights and densities but radically increased SUP heights and densities. This change would encourage density in the area but give the city leverage to have developers provide the utility upgrades that the city needed to handle the additional density.

Mr. Rosensweig stated that the new density regulations for West Main Street South illustrate what might happen if the City were to accept TDRs. By right density is set at 43 DUA. However, up to 240 DUA may be allowed by SUP. This is a 5-6 fold increase in density, but there is an acknowledgement that a developer must pay for the infrastructure to support the increase in density.

The current density regulations illustrate how TDRs might be accommodated. One way would be to lower again the by-right density in the mixed-use areas. For example, the by-right density could be lowered for West Main District density to 33 DUAs. That way the city could accommodate 10 extra DUAs without going over what it had determined to be the carrying capacity for that zone. Developers who sat down at the table and agreed on the new ordinance would resist this change. On the other hand, if you increased the density at which TDRs would be used at above 43 DUA, there will be a gap in funding for utility upgrades. This would leave the city footing the bill for the infrastructure.

Mr. Rosensweig speculated that changes in the revenue sharing agreement might offer one way for the added infrastructure costs to be covered but he was uncertain exactly how it would work. It might involve some give-and-take from the city and county to make it work.

Mr. Rosensweig reviewed staff and official reactions to TDR. Mayor David Norris was very interested in the TDR concept. He wondered how practical it was and what mechanisms would make it work. He was interested in bringing up the topic in the upcoming Charlottesville/UVA summit on climate action. Jim Tolbert, Director of CNS, was interested as well. But, he was concerned about the practicality in the region and whether a market could be created for TDR use. Cheri Lewis is the most senior member of the planning commission. She is under the impression that TDRs are more appropriate for a city like Lynchburg where they are desperate for urban density. However, it is actually the opposite. She also wonders how the city would pay for the added density and what compensation the city would receive.

There is enabling legislation that would allow the city and county to cooperate. It's just a question of whether a compromise formula can be created for this purpose.

Sarah Henley asked if the city would be interested in receiving TDRs if the county would pay for the added infrastructure costs.

Mr. Rosensweig stated that there is some interest in the program. However, somehow, new infrastructure has to be paid for. It is unlikely that the city would want to absorb these costs.

Ms. Henley asked why the county would want to provide an incentive for the city to take the TDRs rather than designate its own area to accommodate the TDRs.

Mr. Rosensweig responded that perhaps there are not many areas in the county that are conducive to extra density. For example, an area like Forest Lakes may not accommodate additional density. However, a pre-existing urban environment with large buildings may offer the right place for adding density.

Mr. Rooker asked how many developers have asked for an upgrade of density by special use permit above 43 DUA.

Mr. Rosensweig replied that the ordinance was passed just last month, and the city has not yet received any applications. However, since developers helped craft the ordinance, the city is expecting some interest.

Jeff Werner commented that TDRs could be used for watershed protection, which provides a tangible benefit to city and county residents. Therefore, officials should weigh the relative advantages of extracting proffers to be used for infrastructure provision versus using proffer monies or TDRs for rural resource protection.

Jay Willer stated that the discussion seems to break down around the questions of who benefits and who pays. Presumably, the city wants density because it has some value. Therefore, perhaps, the City should absorb the cost if it is obtaining a benefit.

Mr. Rosensweig responded that he thinks there is a qualitative value for density to the extent that it preserves open space and farming communities in the county. However, this argument will have to be made with elected officials. He does think there is general agreement among City Councilors about preserving resources. Density does have its benefits but it has real costs as well.

Mr. Rephann asked what formula is used by the city to estimate infrastructure costs.

Mr. Rosensweig replied that he don't have a specific figure

Ms. Rash asked if developers are charged proffers in the city.

Mr. Rosensweig explained that proffers are only charged when there is a re-zoning. There have been very few re-zonings in the city—only four in the last year. This is because the city has set densities at a high level to attract development. The special use permit process allows developers to make contributions but it is not a proffer in name.

Ms. Henley stated that one of the additional benefits the city receives from a greater population would be more money spent in local businesses such as restaurants and the additional revenue gained from this activity. She asked if a new program could be created in the city that charged for both infrastructure and required the use of TDRs.

Mr. Rosensweig responded that this would impose an additional charge on developers, which would not be viewed favorably by them.

Mr. Slutzky commented that he was surprised to hear that the city values the county's efforts to protect rural areas. The irony is that the city actually penalizes the county for protecting rural land under the revenue sharing agreement. Approximately sixty percent of county acreage is in land use taxation. That means that the county invoices taxes based on reduced assessments of the land. On the other hand, the county shares revenue (10 cents per 100 dollars assessed value) with the city based on that land being valued at regular assessment. When the value of the revenue shared with the city is subtracted from the taxes that the county collects for these properties, the county actually loses money. Therefore, if the city were serious about rural preservation, they should be amenable to adjusting this revenue sharing agreement in favor of the county to encourage it to continue the land use program.

Mr. Rooker emphasized that the county is losing revenue in an absolute sense on land-use properties. It's not just foregone county revenue on properties. It's an out-of-pocket expense.

Mr. Werner thought that the revenue sharing agreement, which was put together after much work, might be something that could be altered in order to enhance rural preservation.

Ms. Rash agreed. The agreement was made almost 30 years ago. Maybe it is time for it to be revisited.

Mr. Rotgin stated that there is a quantitative as well as a qualitative value for added density. New residents are going to pay real property taxes, personal property taxes and generate revenue for city businesses. In addition, the loss of those potential residents will have a negative impact on city businesses. This is happening now with growth flowing outside the city and county into adjacent counties such as Greene. It might be worthwhile for the city and county to discuss the revenue sharing agreement in the future.

Mr. Rooker asked if a demand analysis was conducted before the densities were adjusted. He asked what projected potential additional population could be accommodated in these areas.

Mr. Rosensweig responded that he didn't know the answer and concluded his presentation.

Mr. Willer stated that he doesn't understand the map titled "Rural Zones in the Growth Area." An area of indentation near Charlottesville is indicated as rural. If that area is the UVA campus, there is no possibility of it being built up with TDRs for residential purposes. Therefore, the map is misleading.

Jeff Werner indicated that it would be more helpful to look for areas that are zoned to lower density than what the Comprehensive Plan allows. These areas would not be restricted to rural area zones. Of course, some of the areas so identified (e.g., water authority property, airport, city owned land) would not be developable.

Mr. Slutzky believes that there is virtually no developable rural zoned land in the growth area. Part of the indicated area is the airport. Part of it is the university. Some of it has already experienced residential development.

Mr. Werner stated that he thought the area was not insignificant, something like 600-700 acres. However, by looking at other areas that could be developed to higher densities, you would see additional opportunities.

Mr. Rephann asked about commercial/industrial uses for TDR.

Ms. Rash asked if there was adequate light industrially zoned land in the county.

Mr. Rooker responded that light industrial zoned property allows office. The latter generally generates higher revenue for landowners, and so much of the light industrial zoned land has been consumed by office space. County officials are currently discussing a proposal to rezone rural land to light industrial but it hasn't gotten too far.

Mr. Jones asked if additional density could be accommodated in towns such as Scottsville.

Mr. Willer stated that ultimately the places selected as receiving areas have to be places where people actually want to live. Creating receiving areas in places that aren't attractive to the buyer won't work.

Mr. Rooker stated that if you are trying to have this operate on market basis, you need to find a way to encourage a rural settler to move from a rural area to an urban area. However, a buyer is not likely to trade off living in a rural setting for living in a condo. You are not likely to convert that many people.

Dave Phillips questioned why the group needed to restrict the receiving area in any manner. It would be better to let the market decide the receiving area. Then officials can determine whether or not the identified area is a proper place on a case-by-case basis.

Mr. Willer questioned whether the group had restricted itself to a designated receiving area because the enabling legislation requires that such an area be identified. He asked whether that portion of the legislation might be altered to allow receiving areas to be created on demand.

Ms. Henley agreed that demand for the types of densities being created must exist. Therefore, the group should not impose restrictions on development right transfer. That decision would be handled by public hearing to make sure people agree that the transfer is appropriate.

Mr. Slutzky stated that if new enabling legislation allowed development rights to be moved anywhere in the rural area, it would create a situation where a development rights could be moved from, say, Howardsville to Keswick. This is not a desirable scenario. That's why he designated part of the rural area as the receiving area. However, the expansion of the growth area was not well received by the environmental community. That's why the group then turned to the growth area or city as a receiving area. However, you still have the problem of how to pay for the development impact if you forego proffers in favor of TDRs. A solution to these problems may not exist.

Mr. Rooker commented that impact fee legislation introduced by the General Assembly has required that localities designate growth areas and have strategies to channel growth into those areas. The State views impact fees as a transportation initiative to reduce the length of car trips.

Tara Boyd pointed out that easements mean that the properties are protected in perpetuity. Therefore, you could get a permanent Swiss cheese pattern of protection that constrains development in unforeseen ways.

Neil Williamson stated that the losses incurred in revenue from land use taxation/revenue sharing agreement forms the basis for determining how much the county might be willing to give up in proffer. The gap could be filled by TDR but should be based on current numbers.

Morgan Butler commented that the possibility of using TDRs for light industrial rezoning is interesting. Some areas designated as rural may not lend themselves well to residential development. But, these same places may be appropriate for certain types of light industrial activities such as storage space.

Mr. Rephann asked the group to assume for the moment that we have resolved questions about the size and character of the receiving area. Now, the group would focus on the criteria they desire for the sending area. Because the receiving area is relatively small, it will be necessary to restrict the size of the sending area. The group was asked to use wireless keypads for registering their degree of agreement/disagreement with twelve different selection criterion. To demonstrate the use of the voting technology, participants were asked to select a category that best described themselves. The breakdown of responses was: rural landowner/farmer (35%), environmental community (24%), business/real estate development community (29%), and elected official (12%). The following table presents the outcomes of the survey:

Criterion	Strongly Agree (1)	Agree (2)	Neutral (3)	Disagree (4)	Strongly Disagree (5)	Mean
Scenic Viewsheds/ Backdrops	13%	56%	0%	13%	19%	2.6875
Rural Buffer Areas	6%	31%	31%	13%	19%	3.0625
Lands that Provide Recreational Access (e.g., trails, river)	7%	40%	40%	7%	7%	2.6667
Historic Properties	6%	56%	19%	13%	6%	2.5625
Farmland	69%	25%	6%	0%	0%	1.3750
Prime Farmland Soils	44%	38%	19%	0%	0%	1.7500
Forests	60%	40%	0%	0%	0%	1.4000
Mountain Protection Areas	63%	25%	6%	0%	6%	1.6250
Water Supply Watershed	75%	19%	0%	6%	0%	1.3750
Wetlands	50%	13%	19%	13%	6%	2.1250
Natural Habitat/Natural Heritage Inventory Areas	47%	7%	13%	13%	20%	2.5333
Lands Adjacent to Protected Areas (e.g., conservation easements, public parks)	13%	38%	31%	0%	19%	2.7500

During the survey, several stakeholders asked about the characteristics of Natural Habitat/Natural Heritage Inventory areas. Mr. Slutzky explained that natural habitat/natural heritage inventory areas are areas where ecological activities are particularly vulnerable to development. The Natural Heritage Committee has not formally adopted these areas. Lonnie Murray explained that the areas have a high degree of biodiversity.

Linda McRaven asked for clarification about the purpose of the survey. Mr. Rephann explained that the receiving area is a finite size and the sending area has to be restricted in a similar manner to accommodate the development rights that are available.

Mr. Slutzky commented that both receiving area and sending area must be defined with geographical boundaries. In order for a receiving area to absorb the development rights from the sending area and create a value for the development rights, the sending area can be constrained around certain variables. The exercise showed which variables are the most important. It showed that an urban buffer is not as important as might be expected, but that farmland and watershed protection were high priorities.

Ms. Henley asked if adding restrictions would disqualify many residents who have smaller lots and don't qualify for the other land preservation programs but wanted to take advantage of the program. Mr. Rooker added that size of lots could be an additional criterion that is used in the program.

Mr. Rephann asked how the TDR bank would function. Neil Williamson favored allowing realtors to handle the transactions. Mr. Slutzky concurred. Ms. Henley questioned how a TDR bank would work. Mr. Phillips mentioned that the transactions could be recorded in a real estate database.

Mr. Slutzky stated that once a development right is removed from the land, it becomes a taxable real estate asset. There are tax implications of TDR. That would be handled by recordation. It will be known and it will be owned.

Mr. Willer indicated that when the enabling legislation was created to allow the development rights to be “banked,” it did not imply a physical depository is needed. It meant that the right could be separated from the land and used at a later date when a buyer was found.

Questions were taken from the audience.

Lonnie Murray sits on the Charlottesville Citizens Committee for Environmental Sustainability. He stated that the problem with a cap and trade system is that the county has already approved growth in many areas. The one thing that hasn’t been suggested is a downzoning of areas that have recently been approved for greater density.

Mr. Murray also stated that it is likely that the growth area will expand at some time in the future. TDR may not be useful now, but it may be useful later if the growth area is expanded. The lack of a large receiving area should not prevent the group from moving forward with a recommendation for implementing the framework for TDR now.

Mr. Murray also suggested that the group look at the possibility of allowing TDRs for departures from the Neighborhood Model. He suggested that the group recommend a point system for compliance with the Neighborhood Model and allow developers to trade off compliance points for TDRs. He also mentioned the possibility of allowing the transfer of development rights within the rural area from high priority areas to lower priority areas. Lastly, he stated that the city needs to meet its climate change goals. Perhaps, the county could negotiate with the city to return the portion of the revenue sharing funds lost because of land use taxation and use the funds for land preservation.

Rich Collins has attempted to introduce the TDR concept as a mediator in the Baltimore area when he worked for the Institute for Environmental Negotiation. He believes that the discussion group is encountering conceptual difficulties centered on how the TDR market would work. Ultimately, they should focus their attention on trying to create a market platform that would make transactions valuable and feasible. The reason that TDRs don’t work in some other jurisdictions where they have been introduced is that a market wasn’t created.

Mr. Collins commented that the group is working around the edges of the market issue but not addressing the main issue of how to make the TDRs valuable. In order to do this, they have to determine how much value goes to the buyer and seller in the form of private benefits and how much of it goes to the public in the form of environmental benefits. In order to make this decision, the group must assess how much members value the goal of saving the land which is not just private property but also a public asset and resource. The group will be unable to agree without resolving through these issues. Ultimately, it may be impossible to reach consensus. However, it may be possible to forge majority agreement that allows some of the value that is going to be created in the impending urban development to be transferred to the public. Some people get rich through land development and others lose marketable value through re-zoning. If we can adjust those inequities, we will have a fairer distribution of values than otherwise. If you understand the fundamentals of economic rent, you will have a more fruitful discussion about cap and trade and TDRs.

Grant Griffin reiterated the importance of creating a viable market. He can’t see how a developer would have an incentive to use TDRs in the city when currently they can develop 43 DUAs by right and 240 DUA by proffer.

It was agreed that a sixth and final meeting of the TDR discussion group would be scheduled.

The meeting concluded at 6:05 PM. The time and place of the next meeting will be announced at a later date.

TRANSFER OF DEVELOPMENT RIGHTS DISCUSSION, JANUARY 29, 2009
Minutes
January 29, 2009
Zehmer Hall Lounge
University of Virginia

The sixth and final meeting of the Transfer of Development Rights stakeholder group was held in the Auditorium at University of Virginia's Zehmer Hall. The following stakeholders were in attendance: Dennis Rooker (Albemarle County Board of Supervisors), David Slutzky (Albemarle County Board of Supervisors), Joe Jones (Albemarle County Farm Bureau), Charles Rotgin, Jr. (Great Eastern Management Company), Leigh Middleditch and J. Alden English (McGuire Woods, LLP), Jack Marshall (Advocates for a Sustainable Albemarle Population), Morgan Butler (Southern Environmental Law Center), Kathy Rash (Forever Albemarle), Jay Willer (Blue Ridge Homebuilders Association), Tony Vanderwarker (Piedmont Environmental Council), Jane Fisher (Charlottesville Community Design Center), and Debbie Stockton (Virginia Independent Consumers and Farmers Association). The following stakeholders did not attend: Neil Williamson (Free Enterprise Forum), Tara Boyd (Charlottesville Regional Chamber of Commerce), Sarah Henley (Forever Albemarle), David Phillips (Charlottesville Area Association of Realtors), and Frank Quayle (Roy Wheeler Real Estate Company)

Mr. Rephann introduced the purpose and format of the meeting. The discussion will center on a document that summarizes the content of previous meetings and areas of agreement. During the first round, each member of the group would receive about three minutes to suggest changes to the summary document. In the second round, members would indicate their level of approval with the document. The last 45-50 minutes will be dedicated to public comment.

Dan Rosensweig of the Charlottesville Planning Commission provided an update on possible new avenues for TDR use in Charlottesville. He noted that in the last meeting, skepticism was expressed about TDR incentives and the limited availability of TDR receiving areas. He indicated that one item on the Planning Commissions work plan for the year was examining the level of density permitted in the R1 zone in Charlottesville. There are two perspectives on this issue. There are those who think that there are too many accessory apartments and large buildings and that they ought to be restricted. There are also those who believe there should be opportunities to open up R1 for more dense development. Mr. Rosensweig indicated that he would like to see TDRs become part of that conversation (not only county conservation TDRs but also historical preservation TDRs from the city) and that they would be used as part of creating a zoning district that allows for mixed uses.

Kathy Rash referred to the summary document. Table three on page seven does not make adequate mention of the voluntary nature of the program. She indicated that forcing people to put development rights into a system (selling or banking) was not acceptable. This issue was very important to most people sitting around the table. Table three on page eight addresses administrative aspects of a program. However, Ms. Rash believes that much more time should have been devoted to examining this issue. It could be a logistical nightmare for the city and county to implement and administer TDR. Although the table summarizes important areas of agreement, trying to put them together as well as administering them will be difficult. Lastly, Ms. Rash commented that the survey involving the electronic keypads was skewed. When questions are phrased ambiguously, they can produce results that are not accurate.

Jack Marshall indicated that he was satisfied with the document and had nothing more to add.

Tony Vanderwarker commented that he believes that TDRs have a potential for application in Albemarle County. However, when it gets down to practical considerations, it seems that it is something that is still waiting its time. For example, there is not a crying need for development rights in the growth area at this time.

Jay Willer agreed with Mr. Vanderwarker. The building community has a significant interest in TDRs done properly where the right incentives exist. However, within the current market, it would be difficult to implement.

Morgan Butler indicated that the document provides a good job of summarizing the content of the meetings and boiling it down to pertinent points. He made several suggestions for improving the text. First, on page 6, and again in table 3 he prefers the use of the term “consensus positions” rather than “consensus proposal” since the group did not hash out a specific proposal. Also, in table 3, he recommended that the wording for one of the bullets under “Receiving area credit use” be changed to “TDRs could be used to depart from some or all neighborhood design constraints.” This new wording would help clarify that the group was not necessarily advocating that all design constraints be eligible.

Chuck Rotgin, Jr. stated that the group exercise started out as a primarily academic exercise because the enabling legislation was not broad enough to establish a practical TDR program. However, that situation is about to change because there is new legislation that is far along and hopefully will be adopted soon. This enabling legislation would turn something that was a purely academic exercise into something that could be realized and put into place on a local basis.

Mr. Rotgin indicated that the summary document identifies the issues in the discussion. He believes that it would be good for an ad hoc committee (maybe 5 to 6 people from around this table) to stay together. This way, the committee could boil down some of the more outstanding issues based upon the new enabling legislation. Then the group would re-convene in the future. Everyone could then consider whether it is something the full group would want to recommend to the Board of Supervisors.

Mr. Rotgin had a question about the meaning of the word “fragmentation” which is used in table 1 of the document. Mr. Rephann responded that fragmentation refers primarily to residential development intruding into rural, forested land in a way that affects ecological services and wildlife habitats.

Mr. Rotgin asked about the meaning of the phrase “preserve land ownership” in the same table. Does that imply something about keeping the land in family hands, passed down from generation to generation? If not, he would like another bullet saying that the land would stay in family hands. As it is now, the statement is not clear.

Debbie Stockton answered that the phrase refers to the fact that the farm would remain in private ownership, not necessarily handed down from generation to generation. However, she agreed that preserving family land ownership should be in the report. The group concurred.

Mr. Rotgin referred to the last sentence on page 2 and the next sentence that seemed to suggest that county is responsible for infrastructure in new subdivisions. He indicated that the county does very little in this area – the developers build the roads and contribute to off-site improvements such as schools through proffers. He would like to see some language inserted here that recognizes that developers contribute significant infrastructure funds through the zoning process.

Dennis Rooker indicated that the current legislation seems to suggest that when you create a receiving area, the county must provide infrastructure for that area. It is unclear as the current legislation is written whether the developers make any contribution through proffers. In addition, the county cash proffer policy requiring significant contributions has only been in place about one year. Mr. Rooker did not object to stating that the development community makes contributions toward new infrastructure.

Mr. Rephann asked if the group was comfortable with the notion of forming a sub-committee and re-convening the full group later. Mr. Rotgin explained that the sub-committee would examine the Cooper Center report and enabling legislation and determine if they could come up with a solid recommendation. That recommendation would then be presented to the full group to determine if it should be forwarded to the Board of Supervisors. No one objected to this suggestion.

Mr. Marshall asked Mr. Rotgin if he was familiar enough with the new enabling legislation to know whether it has any breakthroughs about TDRs. Mr. Rotgin said that the legislation would help.

Jane Fisher indicated that she appreciated learning more about TDRs and their advantages and disadvantages. It may work as a tool for promoting rural land use and preserving small farming. She has a concern about characteristics of the receiving area but appreciates that the group thought about this issue and was also concerned.

Debbie Stockton commented that she had the same concerns as Ms. Rash. She also indicated that there is some confusion over some of the terms used. For instance, not everyone interprets the phrase “preserve the land” in the same way. However, she agrees with incorporating another statement that recognizes the importance of keeping land in families. Another statement should be inserted under “Mandatory versus voluntary market participation” which stresses that the program would be voluntary. Lastly, she has some concerns about administrative aspects of TDR and agrees that transactions should be conducted through private negotiations and not involve the county.

Kathryn Russell indicated that she would share some remarks made by Sarah Henley who was unable to attend. First, she felt that the survey conducted at the last meeting and used in table two was misleading and inaccurate. Second, she was concerned about who pays for the incentives that would be offered – this issue was never addressed. Third, she would like to point out that there is a bill in the General Assembly that allows a leasing of development rights. This issue was never presented in this group, and that option should be considered as a tool for land preservation.

Joe Jones referenced the next to last bullet on the last page: “The county should develop a system to evaluate the impact of land use regulations on development rights.” He interprets that to mean “How will a TDR program affect pocketbook values?” If this is to move from being an academic exercise into realistic exercise, a system must be developed that evaluates the impacts on people who will be selling and buying TDRs. That point should be in the next TDR discussion if it goes forward

Alden English requested that more language be inserted regarding taxation of TDRs. This is likely to be an important issue, especially if TDRs will be banked. Second, he feels more work needs to be done characterizing the value to be received by purchaser of TDRs. Third, to entice sellers, he believes that the county’s existing procedure for issuing official determination of rights letters could be a way to establish the number of development rights, rather than having the expensive process of proving whether those rights could be used for development.

Leigh Middleditch stated that there is general consensus that if the county had enough money to purchase rural development rights, it would be done in that manner. However, since there is never going to be enough money in the county to do that, it is important to look at other options.

Mr. Middleditch complimented Mr. Slutzky for introducing the TDR topic. But, he doesn’t think the group can afford to simply place the report on a shelf and forget about it. He would like to see things move forward, and agrees with Mr. Rotgin that there should be subsequent efforts to crystallize these issues in hopes that some general consensus can be reached.

Mr. Rooker indicated that the discussion has been extremely interesting and an eye opener for everyone. Any plan that went forward would have to prove that it was practical, that it would be likely to be exercised and utilized. The county is looking for ways to save money right now, not to add administrative expenses. Therefore, the county would like to know that any plan would benefit landowners and achieve significant results.

Mr. Rooker mentioned one concern that is not in the report. If you look at TDR plans around country, the values for development rights have been low (typically \$5,000-10,000 per TDR). There are only a couple of plans that have been successful out of a hundred plans nationwide. There are numerous plans set up where no development rights have ever been transferred. When you compare the value a landowner can get from transferring development rights versus utilizing or selling tax benefits, they are very different.

Mr. Rooker stated that the number of areas in the growth area that have already been approved for residential building is another obstacle. These areas are probably enough to satisfy demand in the growth area for the next 10-12 years. Lastly, you have to consider what kind of value will be placed on development rights sold by rural landowners. He believes that the value will not be as high as what can be obtained from other conservation easement programs. Therefore, he is skeptical of spending time on a route that might not be successful because the value would not be high enough. If that hurdle can be overcome, then it would be worth pursuing.

Mr. Slutzky indicated that he appreciates that people came out. He learned a lot from the experience. It is very clear now that mandatory downzoning is a non-starter. He also understands the apprehension some have about expanding the growth area. He echoed Mr. Rooker's concern that there must be confidence that TDR would work if it is to be implemented.

Mr. Slutzky remarked that one thing that came across through the discussion is that many development rights could be extinguished if there was better distribution of information to landowners about the opportunities that exist to sell them. Therefore, the Board of Supervisors will need to look at an outreach strategy for existing programs.

Another interesting idea is having the city as the receiving area. There is clearly an open mind on City Council about figuring out how to create a receiving area to make this work. The city recognizes they have a stake in preserving rural land because of the ecological systems that provide value. It would be good for the city and county to enter into a dialogue and explore how they could collaborate.

Mr. Slutzky indicated that he is comfortable moving forward on a voluntary basis because he thinks there is still potential for a lot of development rights to be transferred. Also, he believes that the group arrived at better understanding on all sides about the dynamics of protecting the rural area. And he is fine with the fact that his original straw man proposal disappears, as long as something productive comes of this exercise

Mayor David Norris agreed with Mr. Slutzky that the City is open to exploring the possibility of working together on rural protection. The devil is in the details, but it seems like a good opportunity. He is looking forward to learning more about it.

Mr. Rephann asked Mr. Rooker if he thought there were enough receiving area credit uses outlined in the summary table to provide value for TDRs. He also asked if he thought that the ideas outlined were worth pursuing further.

Mr. Rooker indicated that the idea of a marketplace helping to eliminate development rights in the rural area, preserve property, and provide compensation for landowners is an attractive concept. His major concern has to do with the administrative time and money to set up a program that doesn't work because the economic incentives aren't there to make it work. Looking around the country at other plans, the values that TDRs trade are so low that it couldn't compete with values that could be realized by using other programs. If you are a landowner and you want to realize value, why would you go through the TDR approach if you can't get much value?

Mr. Rephann asked if the TDR should be recommended because it targets a category of property that is not eligible for programs such as ACE and the State Land Preservation Tax Credit Program. Is TDR potentially a tool that allows landowners to get some value for development rights and, at the same time, become eligible for lower property taxes? Would this aspect and the possibility of using TDRs in Charlottesville and elsewhere influence his decision?

Mr. Rooker indicated that if it can be shown that a market would result then it is worth pursuing. However, even if a market is created, he has an additional concern that it might involve landowners selling TDRs who never intended to sell development rights before the program (for example, landowners who live on 21 acre estates with five development rights). If such landowners end up being the ones who sell their development rights, then TDR doesn't really achieve any rural area goals because those development rights would not have been exercised in the first place. Therefore, one must examine who would be incentivized to sell their rights.

Also, there is an administrative expense involved. These plans sound simple, but a county staff report on implementing TDR indicated that it is an extensive, time-consuming process of changing the Comprehensive Plan, zoning laws, providing public notice, and holding public hearings. That is only worth going through if we could put in place a plan that could generate a substantial number of transactions.

Mr. Rephann remarked that the staff report addressed Mr. Slutzky's proposal and that some of those costs would not be incurred with what would be recommended by the group.

Mr. Slutzky responded that there would be an administrative burden for any type of TDR program. If the county were to invest those resources, it must be confident that the program will be used. If the only benefit of TDR were removing development rights from lots that would not be developed anyway, it would not pass the test. On the other hand, if the program targets properties that were too small to be eligible for other programs, these properties had environmental or natural resource value, and those rights could be utilized and sold, it might be worthwhile to pursue the program.

Mr. Rephann indicated that there should be a reevaluation of administrative costs. He asked the group's reaction to Mr. English's suggestion that the tax status of banked TDRs be clarified. The enabling legislation allows TDRs to be taxed, but does it require it? And, might the county provide incentives for banking by not taxing them?

Mr. Slutzky indicated that TDRs are interests in real property. The tax assessor's assumption is that it is a taxable asset. Taxing TDRs might have a chilling effect on banking but not necessarily on transfers. He is not sure that the enabling legislation allows a TDR to be treated different from other real estate. However, this issue might be addressed in future enabling legislation.

Mr. Jones addressed Mr. Rooker's point that TDRs might be used to extinguish rights that would never had been used. He remarked that very seldom are the rights exercised until a landowner dies and a new landowner assumes ownership. If in the meantime you have purchased those rights from the present owner so they can't be sold when the property changes hands, then you have protected the land from further development.

Mr. Rooker responded that they are talking about two different types of properties. He was referring to 'estate lots.' For a large home in the middle of 21 acres, it is unlikely that the property would be subdivided because it would be detrimental to the land. Mr. Jones responded that these properties could potentially be subdivided in the future under different ownership.

Mr. Rotgin agreed with Mr. Rooker. Under the constraints of the existing legislation, there would not be enough value for TDRs as opposed to participating in ACE Program and tax credits. The pending TDR legislation might change that situation. Counties are supporting amendments to the enabling legislation. Other constituencies (e.g., VACO, Virginia Farm Bureau) have been supportive of the legislation, with only the Home Builders Association being initially opposed, but now on board. The new enabling legislation is meant to incorporate banking provisions and clarify many things in the existing code.

Mr. Rotgin stated that when the discussion started, the goal was to protect the rural area. The consensus was that the group wanted to find ways to protect the rural area so the proliferation of houses doesn't continue. In order to do this, you need to find a lot (in the growth area for example) that would compete with 21 acre or 5-acre rural area lots. However, we took the expansion of the growth area off the table. That is unfortunate because originally he thought that the receiving area ring around the county would be a fair tradeoff – but the group didn't come to that conclusion.

Kathryn Russell asked about the status of the TDR leasing legislation. Mr. Butler remarked that it is a leasing of development rights, not transfer of development rights. This legislation allows localities to enter into LDR programs. It has similarities to the land use taxation and Ag-Forestal District programs. It is effective for only seven years.

Ms. Stockton indicated that she became involved in the discussion out of interest for preserving the rural area. However, the group has never discussed the conditions that gave rise to the current situation. It is obvious that zoning regulations and the role of planning commission decisions need to be examined.

Mr. Rephann asked the group how they felt about the document moving forward with the suggested revisions.

Ms. Rash has many of the same concerns as Mr. Rooker. She is also concerned about how a landowner would be credited TDRs. She is concerned that landowners would be credited for theoretical development rights rather than actual development rights.

Mr. Slutzky believes that the consensus obtained at a previous meeting was that the requirements would be the same as requirements for platting minus the requirement of percolation test and drilling a well.

Mr. Rooker replied that these requirements would still cost the landowner a substantial amount of money (\$5,000-\$8,000) for surveying and other expenses to establish the number of development rights available. It might not compensate for the low TDR values that the seller might realize.

Ms. Rash asked if there are any restrictions on creating conservation easements for smaller tracts.

Mr. Vanderwarker responded that there is no restriction on the size of property that you may place under easement. However, there are size restrictions imposed by holders of conservation easements and conservation easement program participation.

Mr. Slutzky indicated that there is no tax credit benefit with placing such easements. He believes that that a TDR program works because it is able to deal with smaller lots that would not be eligible for the ACE and tax credit programs. He agrees with Mr. Jones that many of these smaller lots might potentially be developed.

Mr. Marshall thinks that this issue is terribly important, and wants to continue the discussion. He understands that the 'devil is in details,' and that it has taken a long time to arrive at this point. In the last five years, the scientific community has learned much about the impacts of development on the environment. This is why he participated in the discussion group. He is here, not because he favors a pretty view and fewer houses, but because, more development will have a large negative impact on the environment. He believes that the community must take this issue more seriously. He is also grateful to Mr. Slutzky for raising the issue of finding mechanisms to reduce rural area development.

Mr. Vanderwarker commented that residential trends might change because of rising gas prices, people tiring of long commutes, new public policies, etc. Perhaps, these trends will make denser development in Charlottesville more attractive, and it will have more potential as a receiving area. He favors keeping an open mind about this issue.

Jay Willer indicated that TDRs might present an interesting opportunity in the future.

Mr. Morgan stated that he is fairly comfortable with the document after the changes discussed have been made. Looking at the broader picture, he agrees that it is an issue warranting further discussion. Although the group has really limited the scope of the type of TDR program that could work in the county, there may be potential for a smaller scale program. So, if there is a group of citizens willing to put their heads together, then it is an issue worth pursuing.

Mr. Rotgin remarked that there is a fair amount of brainpower around the table. He believes the discussion should continue. He asked Mr. Rephann to e-mail the summary document to the group after revisions. He agreed with Mr. Rooker that there may be enough platted properties for 10 years of residential development. But, the group hasn't addressed continued development in the rural area. He does not believe that this development can be satisfied in the existing growth area, which suggests that absent an alternative, building in the rural area will continue.

Ms. Fisher remarked that it had been a worthwhile discussion. She is not convinced that a TDR program is exactly what the community needs. However, she agrees that looking at that program as a way to protect rural land is an important discussion.

Mr. Jones indicated that the document is acceptable. But, he would predicate going forward on having representatives from the City of Charlottesville and the University of Virginia at the table. Albemarle County has already spent millions on protecting the watershed, etc. for the city and the University. Therefore, they should be represented in the future. This point should be placed in the summary.

Mr. English and Mr. Rooker indicated that they agreed with the previous comments.

Mr. Rephann responded that he would post the modified redlined document in the near future for the group's inspection.

Mr. Slutzky asked how the group should move forward and if there were individuals who wished to participate in the sub-committee.

Mr. Rephann remarked that the sub-committee would need to work within the framework outlined in the summary document. They should investigate the technical issues such as administrative costs, TDR mechanics, and enabling legislation implications and needs rather than engage in discussion of wide-ranging philosophical issues such as was involved in establishing TDR goals.

Mr. Slutzky asked that Mr. Rephann send out the participant list with contact information for each participant. Then the group would sort out who would be involved in the next phase.

Mr. Rooker stated that the ability to have a market pay substantial amount for a development right depends on there not being "by right" development rights. But, they are in a great abundance. He also asked if the city has areas presently not zoned for higher density development where builders would like to build. He indicated that the county does not currently have a demand for denser development in the growth area.

Mr. Slutzky responded that Mr. Rosensweig had addressed this latter issue at the beginning of the meeting. He envisioned that there would be some areas that would be up-zoned. They could scale that back and require TDRs for additional density.

Mr. Rephann asked the audience if they had any additional questions or comments.

Linda McRaven asked why the group was concerned with landowners who build a single house on a 21-acre lot rather than the stated goal of protecting the rural area. She also cautioned that the details are so complex that it would not be prudent to move forward and recommend a series of actions based on a report. Lastly, she questioned the composition and representativeness of the discussion group.

Lonnie Murray indicated that there are small farms (under fifty acres) with unused development rights. Currently, there are no tools to deal with this category of properties. These landowners can't sell their development rights and may not be eligible for land use taxation. Moreover, certain types of rare and endangered plant species (e.g., American chestnuts) might be found on smaller parcels, and they would benefit from this additional rural protection. He also recommended that the group consider allowing TDRs within the rural area when they result in improved protection of rare and endangered species.

Rose Myers stated that TDR was a foreign term to her when the discussion first started. When she first heard it might be mandatory, she was upset. She has been placated somewhat by it being made voluntary. She remarked that the farmer who sold his land should not be faulted for rural development pressures. The role of the planning commission needs to be addressed. For instance, in one instance thirty houses have been built on a rural parcel that had ten development rights. Why has the planning commission granted these additional rights? What rules are governing them? There needs to be additional accountability. Ms. Myers also questioned the representation on the stakeholder group.

Phil Hightower speculated that Mr. Slutzky needed to propose TDR because nobody wants to tackle the zoning issue, which is a political issue. TDRs may be a politically expedient but ultimately ineffective way of dealing with the problem. If you really want to deal with the sustainability issue, the role of zoning and the planning commission must be addressed head on.

Linda Lewis remarked that she has been to each meeting and the discussion has been gradually narrowed. She is concerned that the group will be constrained by the framework in the summary document from discussing the larger philosophical issues such as the vision set forth in the comprehensive plan and the reluctance to zone.

Ms. Lewis questioned the mechanism for TDR transactions. According to the document, these transactions are to be handled by realtors. As a licensed realtor, however, brokering development rights is not something that she or other local realtors are prepared to handle. It is a different type of commodity than real estate.

Also, the group does not know how many developmental rights exist in the sending area or can be accommodated by the receiving area. Before any committee goes forward, someone needs to be assigned the task of doing this research. Where are the development rights and how many are available?

Ms. Lewis remarked that it seemed from the composition of the panel and disposition of the facilitator that the Cooper Center has some motivation in making sure that a proposal goes forward. What would be the downside in not going forward? Perhaps, the group is not ready to go forward. Maybe, it should do its homework and then go forward.

Mr. Rephann responded that many conditions have been imposed on the consensus positions and additional fact checking is needed. For instance, the group doesn't yet know if the positions summarized in the summary document would result in a functional market. If not, TDR would not be worth pursuing. A sub-committee would be assembled as suggested that would investigate the technical issues embedded in the summary document and report back.

Kathryn Russell remarked that there are empty places for people who have never shown up at the meetings, and there are many others in the room who are not represented by an organization and who were not selected to participate in the discussion. She stated that the current economic situation demonstrates how markets based on perceived values for things that don't really have value can go awry. She commented that the 1980 zoning created development rights arbitrarily and gave some landowners more value than others.

Ms. Russell stated that there does not appear to be consensus about what it means to protect the rural area. She also raised questions about the sending area survey and did not feel that it translated into hard data in the way it was presented in the report. Lastly, she felt that Mr. Rooker had made good points about the cost effectiveness of TDR.

Mr. Slutzky remarked that his straw man proposal was a catalyst that got the group together, and he thanked everyone for participating in the discussion. He believes it was a productive exercise. He is not sure that the group arrived at an endpoint. However, he would be happy to reconvene in another form.

Mr. Slutzky stated that his motivation for starting the discussion was that he wanted to protect the ecological systems of the rural area. There is potential for more development activity in the future that endangers sustainable development. However, there is also a sentiment against downzoning. So, he was trying to develop a program where downzoning would occur with compensation. He believes that TDRs have potential and hopes that exploration of their potential benefits can continue.

The meeting concluded at 5:45 PM.

