

Memo

To: Chairman and Members of County Council
From: Tony Criscitiello, Planning Director T.C.
CC: Gary Kubic, County Administrator
Date: 4/6/2011
Re: Transfer of Development Rights Program

The Beaufort County Planning Department in collaboration with the LCOG, the City of Beaufort, and the Town of Port Royal has developed the attached document. The purpose and intent of the TDR program is to alleviate development pressure around the Marine Corps Air Station and encourage future growth in designated receiving areas.

On April 4th the Beaufort County Planning Commission passed an implementing ordinance that is being changed in minor ways as a result of a public hearing. This ordinance will be on the agenda for the May 2nd Natural Resources Committee meeting. In the mean time, I am forwarding the full TDR Implementation Study to the County Council in hopes that this will give Council ample time to study the report prior to seeing the TDR zoning ordinance amendment.

If you have any questions about the TDR report, please contact me.



BEAUFORT AREA TDR IMPLEMENTATION STUDY

DRAFT BEAUFORT AREA TDR IMPLEMENTATION PLAN

January 28, 2011

LOWCOUNTRY COUNCIL OF GOVERNMENTS

This study was prepared under contract with the Lowcountry Council of Governments with financial support from the Office of Economic Adjustment, Department of Defense. The content reflects the views of the Lowcountry Council of Governments and does not necessarily reflect the views of the Office of Economic Adjustment.

January 28, 2011

BEAUFORT AREA TDR IMPLEMENTATION STUDY
DRAFT BEAUFORT AREA TDR IMPLEMENTATION PLAN

Prepared for

LOWCOUNTRY COUNCIL OF GOVERNMENTS

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EXECUTIVE SUMMARY

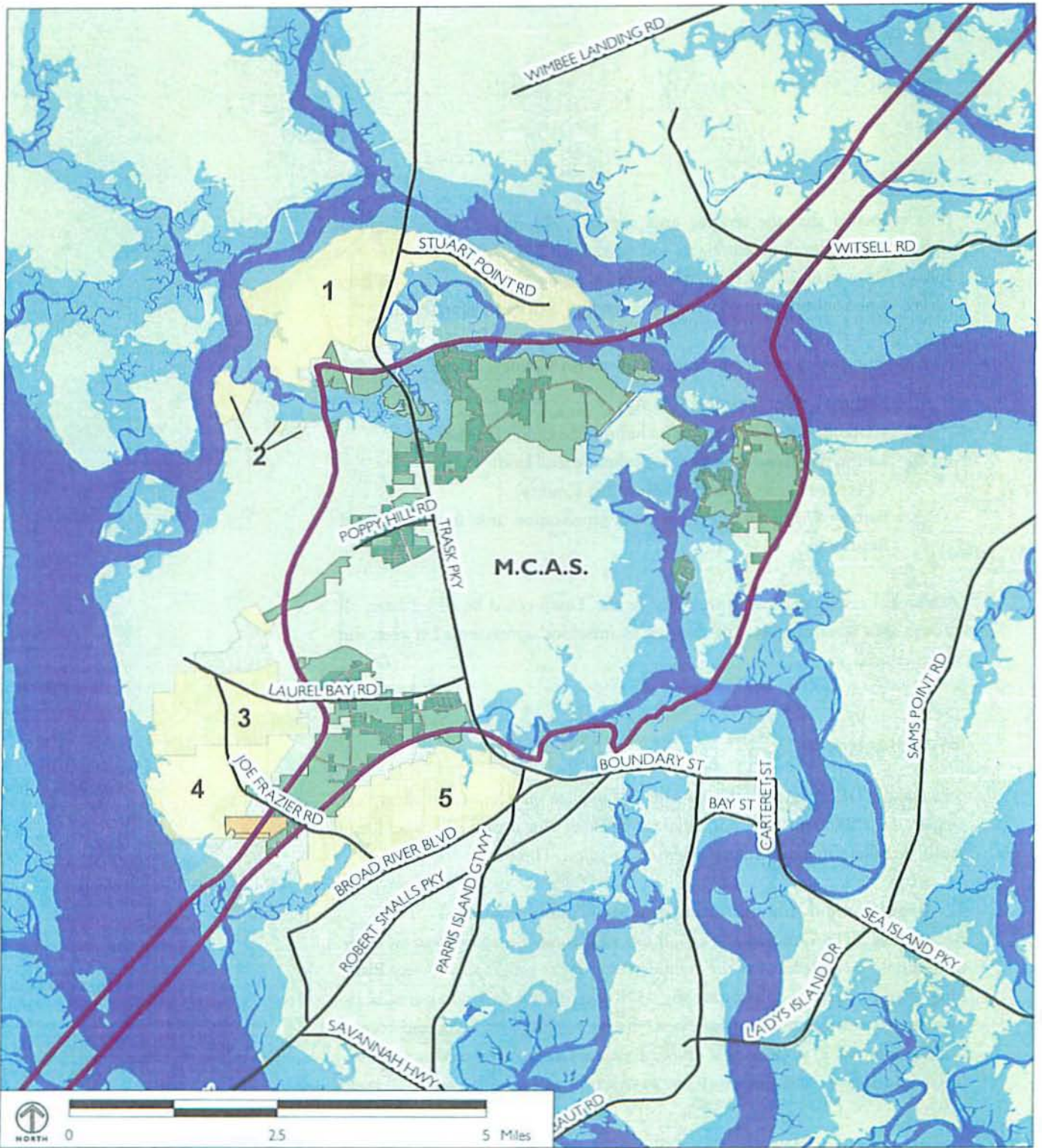
The Lowcountry Council of Governments (LCOG) is working with Beaufort County, the City of Beaufort, and the Town of Port Royal to plan and initiate a Transferable Development Rights (TDR) program. This TDR program will focus on ways to alleviate development pressure around the Marine Corps Air Station and encourage future growth in designated receiving areas. Seed funding totaling \$500,000 is available from the federal and state governments.

After more than a year of working with the Joint Land Use Study (JLUS) Technical Committee and two rounds of meetings with stakeholders, the community, and the North Beaufort Regional Plan Implementation Committee, this report makes recommendations to the County, the City, and the Town for creating and implementing the Marine Corps Air Station (MCAS) TDR Program. These recommendations represent the first phase of the MCAS TDR Program, as more receiving areas could be added in the future. If successful, the MCAS TDR Program structure could form the basis for a broader TDR program in the North Beaufort Regional Plan area.

ES-1. Sending and Receiving Areas

In a TDR program, areas protected from development are known as “sending areas,” while areas to which development rights are transferred are known as “receiving areas.” Landowners in the sending area are permitted to sell development rights to developers in the receiving areas. (Technically, sending-area landowners are issued “TDR Certificates,” which they may sell to receiving-area developers.) Under this system, landowners receive compensation for the value of the foregone development.

The sending-area parcels have been identified as residential land uses within the Air Installation Compatibility Use Zone (AICUZ). Most of this land is zoned Rural (1 dwelling unit per 3 acres, or 1du/3ac) or Rural Residential (1.2 du/ac), though some is zoned Suburban. Some Rural Residential property located in Accident Protection Zones 2B (1 du/ac) and 3 (1 du/3 ac) lost development potential in the AICUZ zoning.



- AICUZ Boundary
- Sending Areas**
- Rural Residential
- Rural
- Suburban

- Receiving Areas**
- 1 Seabrook Area
- 2 Clarendon Road Area
- 3 Laurel Bay Road Area
- 4 Cherokee Farms Road Area
- 5 Battery Creek High School Area

Source: Beaufort County GIS

FIGURE ES-1
 DRAFT SENDING-RECEIVING-AREAS

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It is estimated that the sending area contains 928 remaining development rights and 475 development rights lost to the AICUZ zoning, for a total of 1,403. More than 200 of these development rights are located on two large parcels zoned Suburban that straddle the sending area near Habersham.

Five receiving areas are recommended in Beaufort County. These are:

1. Seabrook Area (Beaufort County)
2. Clarendon Road Area (not including Clarendon Plantation)
3. Laurel Bay Road Area (not including federal land)
4. Cherokee Farms Road Area (Beaufort County)
5. Battery Creek High School Area (annexation area for the City of Beaufort).

Additional receiving areas in the City or the Town could be added later, although this would require the drafting of interlocal agreements between the jurisdictions.

ES-2. Management

Successful TDR Program management will require the County to clearly articulate four different roles for different agencies and organizations and formally designate an entity to undertake those roles. These are:

1. Regulator and Administrator (Beaufort County Planning)

Because the TDR Ordinance is a land use regulation, Beaufort County Planning should be designated as the administrator of the program. County Planning would be responsible for issuing TDR Certificates to sending-area landowners; approving conservation easements on sending-area land; and conditioning approval of projects that exceed Baseline Density in receiving areas on the acquisition of TDR Certificates or payment of a cash in-lieu fee.

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2. Information Clearinghouse (Beaufort County Planning)

In addition, a database of all TDR Certificates issued and all transactional information must be maintained in a central location and available online. We recommend this function be assigned to Beaufort County Planning, though it could be transferred to the Lowcountry Council of Governments if and when the TDR program becomes interjurisdictional.

3. TDR Bank

The County will have \$500,000 in State and federal funds available as seed money and this report also recommends that the County provide an in-lieu fee option for receiving-area developers. Therefore, the County must designate an entity as the administrator or “banker” for these funds, empowered to engage in transactions to buy, sell, and hold TDR Certificates. Such a TDR Bank can help establish the market at the beginning and smooth it out over time. The County could serve as banker, but this is not recommended as the County is also the administrator of the TDR Ordinance, a regulatory program that could affect TDR Certificate values. A private banking entity could also serve the role of the Bank, but this arrangement might create trust and transparency issues. Therefore, we recommend that the County designate a credible nonprofit as the TDR Bank.

4. Easement Holder

When TDR Certificates are severed from sending-area property through sale, an entity will have to hold the resulting easements. We recommend that the County designate a credible nonprofit land trust such as the Beaufort County Open Land Trust as the easement holder.

In addition to the above roles, private landowners, developers, and real estate investors should be encouraged to play an active transactional role. The County should consider working with the TDR Bank, Beaufort County Open Land Trust (BCOLT), and other entities to provide small landowners with assistance in participating.

ES-3. TDR Mechanisms

In addition to the management roles described above, this report also contains recommendations on several TDR mechanisms required for the program to succeed. These mechanisms include the following:

1. Development Rights and TDR Certificates

Sending-area landowners hold "Development Rights" – the right to build dwellings on their property. The right to build one dwelling will equal one Development Right. These Development Rights will be recorded on TDR Certificates issued to sending-area landowners. The TDR Certificate is the basic commodity being bought and sold. TDR Certificates will specify whether the Development Right being recorded exists under AICUZ zoning or was removed by AICUZ zoning, though both will be redeemable in the receiving areas in the same fashion.

2. Transfer Ratios

A transfer ratio is the ratio of Development Rights obtained in the sending area to Development Rights in the receiving area. For example, a 1:3 ratio would mean that a TDR Certificate representing the right to build one dwelling unit in the sending area would be redeemable for 3 "bonus" dwelling units in the receiving area. Often, a transfer ratio is required to provide both sending- and receiving-area landowners with sufficient incentive to engage in transactions.

We recommend that a 1:3 transfer ratio be established for residential density and a ratio of 1 TDR for 5,000 square feet be established for commercial density in receiving areas.

3. Sending-Area Development Rights Calculations

Sending-area landowners are eligible to receive TDR Certificates equivalent to their Development Rights – that is, the unused development potential on their property under current zoning, plus the unused development potential removed by the AICUZ zoning (if any).

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Development rights will be based on a “net density” or “gross density” basis using the calculation instructions in the Beaufort County Zoning and Development Standards Ordinance (Chapter 106, Article VII, Division 2 of the County Code). Any landowner with a Lot of Record will be awarded a Development Right even if their lot is small.

4. Use of TDR Certificates in Receiving Areas under Current Zoning
Receiving-area developers seeking an upzoning must use TDR Certificates (or else pay a cash in-lieu fee) for any residential development project in excess of the current baseline zoning density. This will be an interim system until the North Beaufort Multijurisdictional Form-Based Code is adopted. Developers will be required to purchase the TDR Certificates or pay the in-lieu fee either prior to subdivision approval in the case of land division, or prior to issuance of an occupancy permit when land is not subdivided.

5. Use of TDR Certificates in Receiving Areas under Form-Based Code
The North Beaufort Multijurisdictional Form-Based Code is still under preparation. However, as it is currently contemplated, this Code will serve as a better “fit” for implementing the TDR Program.

The draft work products regarding the form-based code assume a concentration of development in the receiving areas into one village (Cherokee Farms) and three hamlets (Seabrook Area, Laurel Bay Road Area, and Battery Creek High School Area). The code will specify a range of densities in each of these four areas (most likely between 7 and 13 net du/ac for the hamlets and village). Once the code is adopted, receiving-area developers will simply be required to acquire TDR Certificates (or pay the in-lieu fee) to obtain any density above the low threshold. This will require minor changes in the TDR Ordinance to focus receiving areas on the village and hamlets and to change the Baseline Density in the Ordinance from the current density permitted to these other levels.

6. Setting TDR Prices and Cash In-Lieu Fee

The TDR Bank will have to set prices to purchase TDR Certificates. In addition, this report recommends that the County set (and annually update) a cash in-lieu fee that receiving-area developers can pay instead of buying TDR Certificates, thus providing developers with more options.

The cash in-lieu fee is a receiving-area alternative to purchasing TDR certificates. This option would streamline the process for developers to purchase TDR certificates. The cash in-lieu fee should be set to the average price for TDR and the fee can be changed annually without an amendment to the TDR Ordinance. Revenue generated from the cash in-lieu fee would be used by the TDR Bank to buy TDR Certificates.

In each case, we recommend that a methodology of "before/after" appraisals be used. Appraisals should be commissioned to estimate property value before and after development rights are removed. The TDR Bank will be responsible for paying for appraisals for its transactions, unless a landowner chooses to pay for a different appraisal. Direct buyer-seller exchanges do not require an appraisal.

The TDR Bank should use before/after appraisals to set the price on individual transactions, while the County should use several illustrative before/after appraisals to establish the price for the fee. If the TDR Bank has done several appraisals, the County could use those appraisals to set the fee.

The County could set the fee at the average appraisal price or below. A lower price will encourage receiving-area developers to pay the fee rather than buy TDR Certificates, but might not raise enough funds for the TDR Bank to purchase a proportional number of development rights.

It should be noted that the TDR Bank will likely have to restrict use of federal funds only to non-AICUZ development rights but could use State or cash in-lieu funds to purchase development rights lost to the AICUZ zoning. Again, both would be equally redeemable in receiving areas.

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The TDR Bank may adopt a policy that would require it to purchase TDR Certificates from small landowners first. This would be based on a rank-order list of interested landowners, ranked by the lowest to highest number of development rights per landowner.

Thus, receiving-area developers would have the option of buying TDR on the open market, buying them from the TDR Bank, or paying the cash in-lieu fee.

An annual TDR Bank report will be provided to the Northern Beaufort County Implementation Committee and the Beaufort County Council.

7. Receiving-Area Developer Incentives

Adequate incentives and benefits are necessary for developers to buy TDRs for development projects in receiving areas. The following developer incentives are included in the Implementation Plan:

- ◆ The in-lieu fee would reduce the time required to find and buy TDR Certificates.
- ◆ Under current zoning, requiring TDR for any upzone would encourage developer participation in the program.
- ◆ Under the form-based code, requiring TDR to develop above the lowest density threshold for each transect would encourage developer participation in the program.
- ◆ TDR Certificates would be due late in the development process to reduce holding costs. In the case of land subdivision, TDR should be required prior to final subdivision approval; in the case of multifamily and infill projects, TDR should be required prior to the issuance of occupancy permits.
- ◆ Developers could buy TDR directly from sending-area landowners without appraisal, based on negotiations with landowners.

ES-4. Implementation Strategy

This report outlines a series of steps the County must undertake to implement the TDR Program. These steps are:

1. Adopt TDR Ordinance
2. Establish an Administrative Mechanism in the Planning Department for the TDR Ordinance
3. Establish an Information Clearinghouse in the County Planning Department
4. Set the Cash In-Lieu Fee
5. Designate the Easement Holder and TDR Bank
6. Outreach to Landowners and Other Private Market Players
7. Issue TDR Certificates to Sending-Area Landowners
8. Monitor Market Operations and Approve Projects with TDR
9. Evaluate Program Performance and Make Adjustments

The Implementation Strategy also estimates that the startup administrative cost to County Planning will be \$50,000, and the annual administrative cost for the TDR Bank should not exceed 10% of the total TDR transaction values for that year. The TDR program will be self-supportive through administrative fees on TDR Certificate applications, easements, and TDR Certificate transfers.

ES-5. Appendices

This report also contains four appendices.

- ◆ Appendix A identifies possible receiving areas in the City of Beaufort and the Town of Port Royal.
- ◆ Appendix B covers legal issues associated with the MCAS TDR Program.
- ◆ Appendix C identifies possible additional funding sources for the program.
- ◆ Appendix D is the proposed TDR Ordinance.

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EXECUTIVE SUMMARY**

I INTRODUCTION

Throughout the United States, the twin pressures of urbanization and land conservation are often strongly at odds. In recent years, interest has grown in programs that use the real estate market to transfer development and conserve land; these programs are called transferable development rights (TDR) programs. The concept of transferable development rights was first proposed and implemented in the 1960s, and is now in use in more than 200 different communities in the United States.

TDR programs allow property owners a chance to voluntarily record a development-restricting easement in return for compensation through the sale of that foregone development potential. In turn, this compensation is generated when development potential is sold in areas targeted for development. Restricted areas are known as “sending areas,” while preferred or targeted areas are the “receiving areas.” Landowners in the sending area are permitted to sell the “right to build” to landowners in the receiving area. Under this system, landowners receive compensation for the value of the foregone development.

The Lowcountry Council of Governments (LCOG) is working with Beaufort County, the City of Beaufort, and the Town of Port Royal to plan and initiate a TDR program. This TDR program will focus on ways to provide incentives for residents, landowners and businesses that will discourage further development around the Air Station and encourage future growth in other locations.

A. *Keys to Success:*

In several years of both crafting and assessing TDR programs throughout the United States, we have found that most successful TDR programs have five proven components. These five proven components of success are:

1. Clear TDR Program Goals
2. Suitable Sending and Receiving Sites
3. Adequate Incentives for Sending- and Receiving-Area Landowners

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INTRODUCTION**

4. Inter-Jurisdictional Cooperation and TDR Service Area Size
5. The Use of Banks and Other “Market-Making” Mechanisms

1. Clear Program Goals

A TDR program is not a policy in and of itself. Rather, it is a tool used to implement a planning policy goal. A TDR program cannot be expected to bear the entire burden of implementation on its own, but rather must work in concert with other tools – including open space and land conservation tools to support the vision.

2. Suitable Sending and Receiving Areas

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

3. Adequate Incentives for Sending- and Receiving-Area Landowners

Financial incentives are the primary tool to get landowners and developers to participate in TDR programs. Without adequate incentives, a TDR market simply will not work. Both sending- and receiving-area landowners in traditional TDR programs are given a voluntary alternative to the conventional development approval process. Therefore, both sets of landowners must view the TDR route as a more attractive alternative. For sending-area landowners, selling development rights must be equally profitable and more feasible than pursuing development of their property. For receiving-area landowners, building at higher densities (or building with a TDR-linked commodity bonus) must be more profitable and feasible than building under baseline regulations. Obtaining permission to build at higher densities by buying TDRs must be more attractive than seeking such permission by any other means. If both developers and landowners are not simultaneously motivated to participate in a TDR market, the program is unlikely to succeed.

4. TDR Service Area Size

TDR programs tend to work better economically, and gain more political acceptance, when the sending and receiving areas are close to one another. In these situations, the receiving-area residents recognize that they are sharing in the benefit of the land preservation in the sending areas. This is why the examination of the geographical scope of the TDR program is so important.

5. Using Banks and Other “Market-Making” Mechanisms

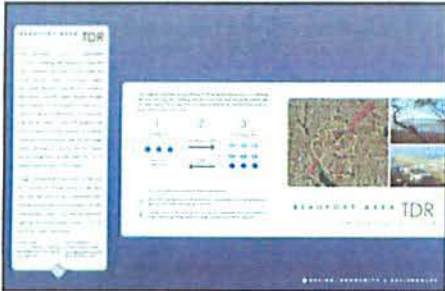
It has been our experience that, in many cases, banks or other mediating institutions are necessary to even out the TDR market. If market players are misinformed or unaware, they will not participate in the market in an effective manner. In addition, land markets frequently do not function in the same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

B. Community Involvement

A high level of community involvement will be required for successful implementation of the Beaufort Area TDR Program. Key groups that were targeted include municipalities, sending-area landowners, and receiving-area landowners and developers. This project was coordinated through a series of meetings with the JLUS Technical Committee. In addition, the following meetings comprise the community involvement strategy for the project:

- ◆ *First Round of Community and Stakeholder Group Meetings.* Sending-area landowners and receiving-area stakeholders were invited to a presentation to learn about the TDR, review the TDR program options, and identify goals and objectives for the community.
- ◆ *Second Round of Community and Stakeholder Group Meetings.* A second presentation provided an overview of this Administrative Draft TDR Implementation Plan, including the recommended TDR bank structure.

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INTRODUCTION



◆ *Policy Committee Meeting #1.* A presentation to the Northern Beaufort Implementation Committee provided a brief overview of successful TDR programs, and identified goals and objectives for the Beaufort TDR program.

◆ *Policy Committee Meeting #2.* This meeting discussed the second round of community outreach and any final changes to the Draft TDR Implementation Plan, including TDR ordinances and the structure of the bank.



This tri-fold brochure was circulated to community members

This outreach strategy provides for a highly interactive community involvement process, which will result in a collaboratively created TDR Implementation Plan that reflects a wide range of input. A letter describing the project was sent to local landowners and community leaders to participate in the meetings. The letter included an overview of the project. A graphically pleasing and informative brochure that explained successful TDR programs to community members was also circulated to community members.

2 SENDING AND RECEIVING AREAS

Any successful TDR program requires adequate sending and receiving areas. In this case, the purpose of the program dictates the sending areas, while the recommended receiving areas are the result of lengthy analysis and discussion with the JLUS Technical Committee.

The Air Installation Compatibility Use Zone (AICUZ) restricts development under the Marine Corps Air Station (MCAS) flight path. One tool used by the AICUZ is the creation of three Noise Zones with different allowable densities. Noise Zone 2a permits 2 dwelling unit per acre (du/ac), Noise Zone 2b permits 1 du/ac, and Noise Zone 3 permits 1 du/3 ac. As will be explained, in some areas these restrictions have removed development potential from property located inside the AICUZ.

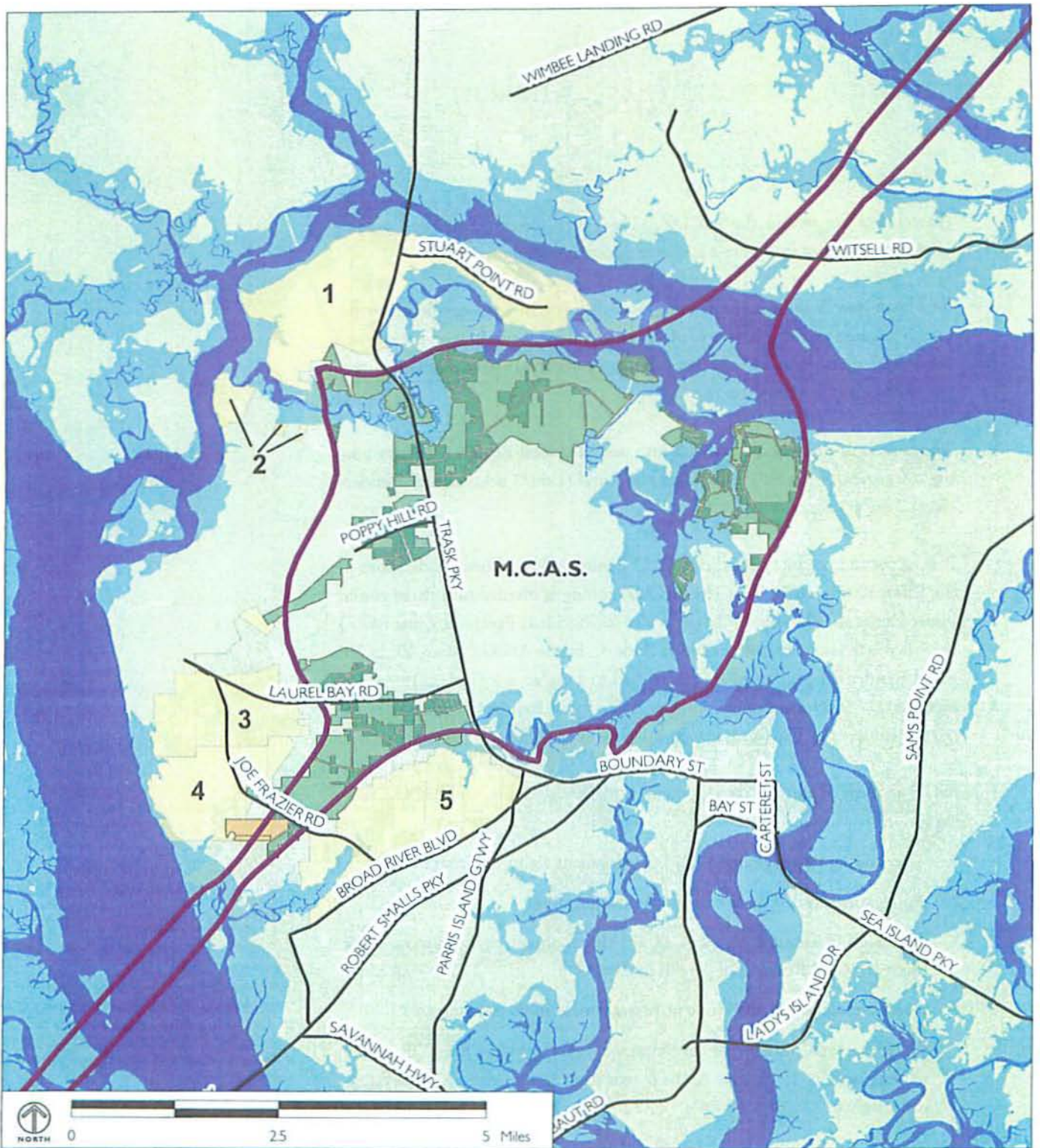
The sending-area parcels have been identified as residential land uses within the AICUZ. The receiving areas will be located in areas of the County outside of the AICUZ. The program could be expanded in the future to include designated receiving areas located with the City of Beaufort and the Town of Port Royal. The Basemap in Figure 1 illustrates the sending and receiving area boundaries.

A. Sending Sites

In indentifying the sending area, the team followed three criteria:

1. The sending area should include all residential zoned areas under the AICUZ, except for Planned Unit Development (PUD).
2. Wherever possible, the sending area should not bisect parcels.
3. The sending area should be compatible with changes to the AICUZ as a result of planned operation of the F-35B Striker jet.

The sending sites are parcels zoned for Rural, Rural Residential, and Suburban use and Lots or Record within these zones. Areas where these parcels exist are shown on the map in Figure 1. Some sending sites straddle the AICUZ boundary. Such parcels are included when 50 percent or more of the



- AICUZ Boundary
- Sending Areas**
- Rural Residential
- Rural
- Suburban

- Receiving Areas**
- 1 Seabrook Area
- 2 Clarendon Road Area
- 3 Laurel Bay Road Area
- 4 Cherokee Farms Road Area
- 5 Battery Creek High School Area

Source: Beaufort County GIS

FIGURE 1
 DRAFT SENDING-RECEIVING-AREAS

**LOWCOUNTRY COUNCIL OF GOVERNMENTS
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SENDING AND RECEIVING AREAS**

parcel area lies within the AICUZ. The entire 106-acre Suburban sending area district shown in Figure 1 is also included as a sending site.

This map may include some sending sites that do not have development potential because the site is too small to be developed, the maximum allowed residential units have already been built, or there are environmental constraints, such as wetlands, on the site.

The parcels in the sending area fall into one of several Beaufort County zoning categories, but most are in either the Rural (1 du/3 ac) or Rural Residential (1.2 du/ac) zones.

It is important to note that the AICUZ zoning affects allowable densities in the Rural Residential zone. The AICUZ zoning is divided into three zones, Noise Zones 2a, 2b, and 3. There is also an Accident Potential Zone (APZ) that allows the same density as Noise Zone 3. In the AICUZ Noise Zone 2B, Rural Residential properties are reclassified to 1 du/ac, a loss of 0.2 du/ac for each parcel. In Noise Zone 3 and the APZ, Rural Residential properties are reclassified as 1 du/3 ac (0.33 du/ac), a decline of 0.87 du/ac.

A GIS analysis of existing development, underlying zoning, and AICUZ zoning found:

1. The sending area contained 1,574 development rights before the AICUZ.
2. Approximately 303 units exist in the sending area.
3. The AICUZ resulted in a loss of 475 development rights, almost all of them on Rural Residential parcels in Zone 3.
4. Approximately 928 development rights remain in the sending area.
5. Thus, the total number of development rights available for TDR in the sending area is 1,403 (the AICUZ reduction + the remaining development rights).

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SENDING AND RECEIVING AREAS**

These totals include 211 development rights contained on two large parcels zoned Suburban, which straddle the sending area near Habersham.

The results are shown in Table 1 and the sites analyzed for development rights are illustrated in Figure 2. The difference between development rights lost in the AICUZ zoning and other development rights is an important distinction for program implementation that is discussed in Chapter 3.

B. AICUZ Buffer Zone

Due to ongoing Air Station operation, the receiving areas should not be located adjacent to the AICUZ zone. We drew a ¼-mile buffer between the two and followed the closest parcel lines to match the buffer. This area will allow extra space for the sending area, and reduce the chances that a receiving area located too close to MCAS will need to be flipped to a sending area.

Figure 3 shows that overall, a ¼-mile buffer prevents small- and medium-sized parcels from straddling the boundary.

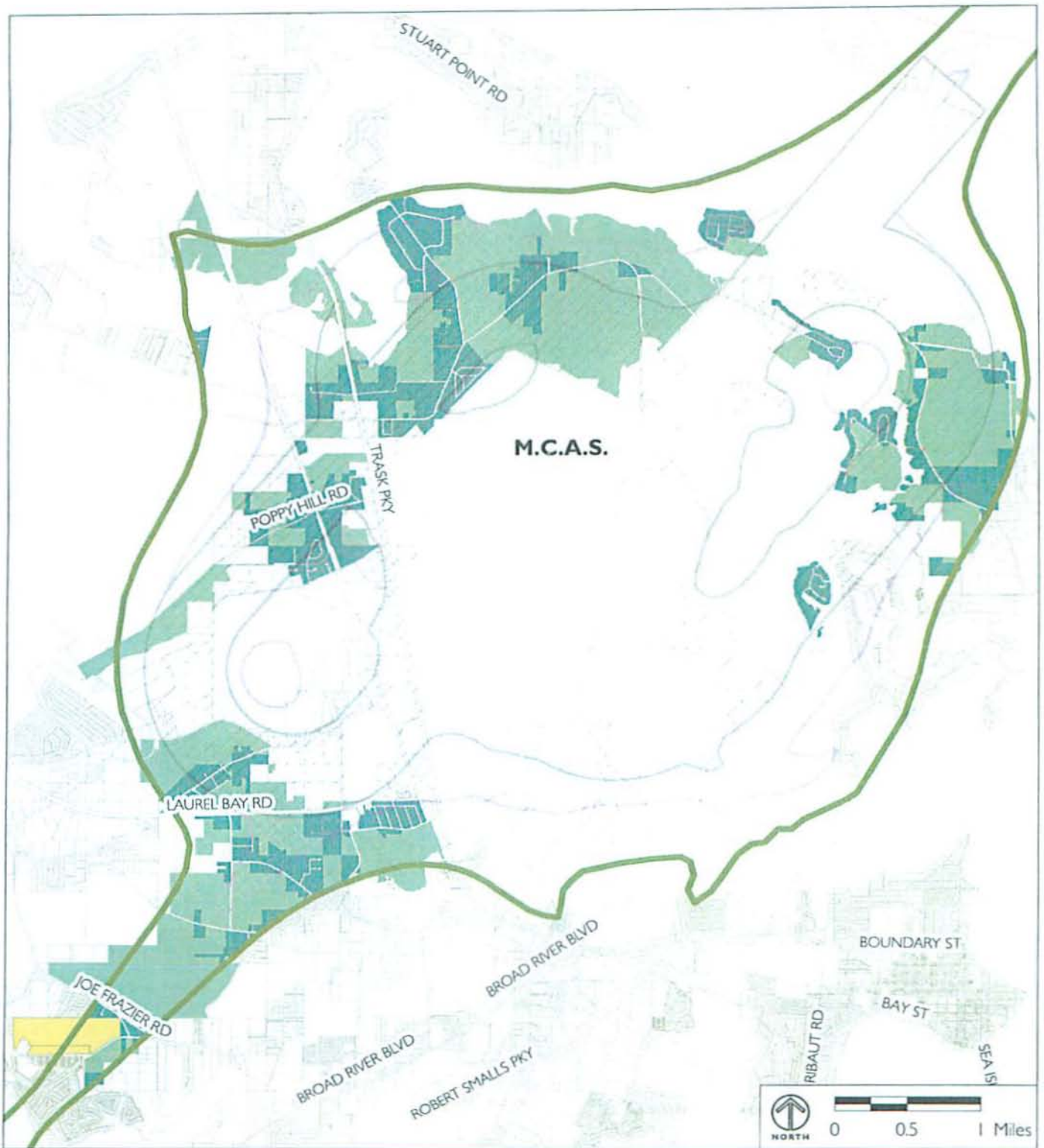
C. TDR Receiving Zones

As part of this project, the team examined possible receiving areas located in Beaufort County, the City of Beaufort, and the Town of Port Royal. After considerable discussion at the JLUS Technical Committee, it was agreed that the program should begin by designating five receiving areas – four in unincorporated Beaufort County, including one that is an annexation area for the City of Beaufort, and one in the City of Beaufort, with the expectation that transactions would occur entirely within Beaufort County. Thus, the draft TDR Ordinance is intended for adoption by Beaufort County only.

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SENDING AND RECEIVING AREAS**

TABLE I TDR SUPPLY ESTIMATE

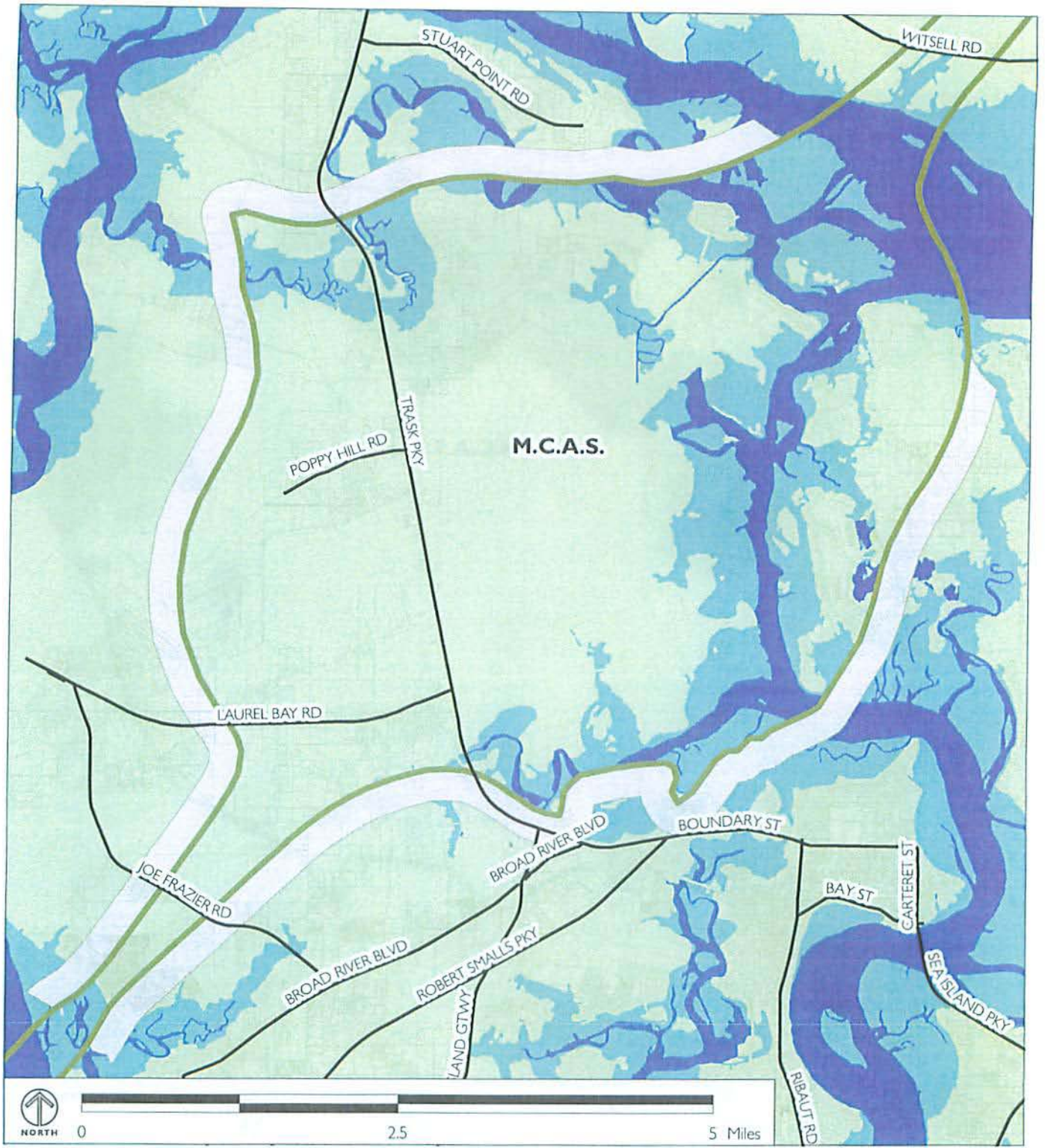
| Zone Class/ AICUZ Overlay | DR Permitted Under Zoning | Existing Units | Remain- ing DR | AICUZ DR Reduction | Total Possible TDR |
|-----------------------------------|------------------------------------|-------------------|-------------------|-----------------------|--------------------------|
| Rural Dis- trict | | | | | |
| 2a | 150 | 21 | 134 | 0 | 134 |
| 2b | 132 | 35 | 102 | 0 | 102 |
| 3 | 113 | 20 | 95 | 0 | 95 |
| <i>Subtotal Rural</i> | <i>395</i> | <i>76</i> | <i>331</i> | <i>0</i> | <i>331</i> |
| Rural Residential District | | | | | |
| 2a | 283 | 53 | 230 | 0 | 230 |
| 2b | 213 | 55 | 132 | 37 | 169 |
| 3 | 471 | 118 | 24 | 438 | 462 |
| <i>Subtotal RR</i> | <i>967</i> | <i>226</i> | <i>386</i> | <i>475</i> | <i>861</i> |
| Suburban District | | | | | |
| 2a | 212 | 1 | 211 | 0 | 211 |
| 2b | 0 | 0 | 0 | 0 | 0 |
| 3 | 0 | 0 | 0 | 0 | 0 |
| All Districts | | | | | |
| 2a | 645 | 75 | 575 | 0 | 575 |
| 2b | 345 | 90 | 234 | 37 | 271 |
| 3 | 584 | 138 | 119 | 438 | 557 |
| <i>Total Overall</i> | <i>1,574</i> | <i>303</i> | <i>928</i> | <i>475</i> | <i>1,403</i> |



Source: Beaufort County GIS

- | | |
|------------------------|---------------------------------|
| AICUZ Districts | TDR Sending Sites |
| 2a | Rural Candidate TDR |
| 2b | Rural Residential Candidate TDR |
| 3 and APZ | Suburban Candidate TDR |

FIGURE 2
 SENDING-AREA CANDIDATE TDR PARCELS



Source: Beaufort County GIS

- Boundaries**
- Sending Area
 - 1/4-mile Buffer

FIGURE 3
SENDING- RECEIVING-AREA BUFFER ZONE

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The receiving areas in Figure 1 were drawn principally on the following criteria:

- 1. The receiving area should not include Lady's Island.**
- 2. The boundaries should be well defined by topographical features that are easily identified, such as roads and rivers.**
- 3. The receiving areas should be located in unincorporated areas located non-adjacent to existing urbanized areas.**

Interjurisdictional transfers to the City of Beaufort and the Town of Port Royal could be added later. Possible receiving areas in the City of Beaufort and the Town of Port Royal are delineated in Appendix A.

The selected receiving areas (included in Figure 1) are as follows;

1. Seabrook Area (Beaufort County)

This area, located north of MCAS Beaufort in unincorporated Beaufort County, is largely undeveloped, but is identified as a Growth Reserve Sector (GR-1) and a TDR receiving area in the Comprehensive Plan. A Growth Reserve Sector is planned for future urbanization, rather than low-density development.

2. Clarendon Road Area (City of Beaufort)

This part of the City of Beaufort, located north of the Laurel Bay Road Area, is currently undeveloped land. Similar to Seabrook, this area is identified as a Growth Reserve Sector (GR-1) and as a TDR receiving area in the Comprehensive Plan. This land is intended for future urbanization, rather than low-density development. This receiving area does not include the Clarendon Plantation, which is located in the City of Beaufort.

3. Laurel Bay Road Area (Beaufort County)

This unincorporated area of Beaufort County, is currently a low-density residential neighborhood, although it is designated for moderate density residen-

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tial in the Comprehensive Plan. This receiving area does not include federally owned land.

4. Cherokee Farms Road Area (Beaufort County)

This unincorporated area of Beaufort County, located between the Laurel Bay Road Area and Habersham, is currently undeveloped, but designated for Urban Neighborhoods/TNDs (G-2). This sector calls for denser, mixed-use and residential development in walkable “traditional neighborhoods”, making the area a good potential receiving area for TDR.

5. Battery Creek High School Area (Annexation area for City of Beaufort)

This unincorporated area of Beaufort County primarily consists of low-density residential neighborhoods and is designated for moderate density residential in the Comprehensive Plan. The proximity to the Burton Area and access to major transportation corridors make this area a good potential receiving area for TDR. This area is generally not adjacent to areas that have been annexed, but it is close to the boundary of Beaufort and Port Royal in some cases.

3 MANAGEMENT

This chapter lays out overall issues associated with setting up and managing the TDR program, including the role that might be played by the County and other players. More detail about how these processes should work is included in Chapter 6, Implementation.

To succeed, a TDR program must be managed to include the following four functions:

- ◆ **Consistent Regulation.** The County (and the City and Town if they choose to add receiving areas) must administer the TDR Ordinance, along with their regular zoning ordinances, in a fair and consistent fashion. In Beaufort's case, this means, among other things, verifying eligibility for TDR Certificates and issuing those certificates.
- ◆ **Transparent Information.** Transparent information means information about market conditions – who the prospective buyers and sellers are and what recent transactional activity has occurred. Reliable information about who is eligible for TDR Certificates, who holds them, and what transactions have occurred must be maintained in a central location by a credible entity.
- ◆ **Active Transactional Players.** Active transactional players are required in order for the program to result in successful TDR transfers. This group begins with a core set of landowners with TDR certificates and developers who are building projects, but realtors, brokers and private investors can also participate. In many cases, there is also a designated TDR "bank" authorized to buy, sell, and hold TDR Certificates.
- ◆ **Holding of Easements.** Once development rights have been removed from a sending-area property, the property will be subject to a conservation easement restricting future development activity. These easements must be held by a trusted and credible organization, which typically is a land trust.

Each function must be performed by an organization or entity assigned to play that role. The following discussion describes each role and recommends a course of action in setting up the MCAS TDR Program.

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A. Beaufort County's Role as Regulator and Administrator

Because the TDR program is a land-use regulatory ordinance, the County must administer the program, just as it administers other zoning regulations.

The most important regulatory functions are:

1. Receiving applications for TDR certificates from sending-area landowners;
2. Issuing those certificates based on the site capacity analysis process delineated in the Ordinance;
3. Approving conservation easements on the sending-area property once the certificates have been issued; and
4. Conditioning approval of projects in receiving areas that exceed the Base-line Density on either the submittal of TDR Certificates, or payment of a cash in-lieu fee.

Most of these functions should be performed by the County Planning Department. Planning will have to interact with other departments on some matter (for example, the Building Department to ensure that TDR Certificates are produced or fees are paid).

B. TDR Information Clearinghouse

A database of all TDR certificates issued, including information on all transactions, must be maintained in a central location by a credible entity. Given the fact that this program is starting out as a County-only program, the regulatory agency (Beaufort County Planning Department) should also maintain the database.

The information clearinghouse can perform a range of functions that increase the frequency of TDR transactions. The following three types of lists will

provide information to stimulate the TDR market. These lists should be maintained on the information clearinghouse website:

- ◆ **Interested Party List:** Provides contact information for interested buyers and sellers. This list provides an avenue for direct buyer-to-seller transactions.
- ◆ **Sales Report:** Provides information about the number of TDR Certificates sold and the prices paid each year.
- ◆ **Transaction Log:** Tracks the ownership cycle of a TDR Certificate, from the time it is issued to the time it is retired in a receiving-site development.

One unusual aspect of the MCAS program is that the database will have to track the two different types of TDRs - those derived from the AICUZ downzoning and those unaffected by the AICUZ downzoning. Functionally, there is no difference between these two types of TDRs. However, because federal funds can be used only to acquire TDRs unaffected by the AICUZ downzoning, they should be tracked separately.

C. TDR Bank

The presence of State and federal seed money and the accrual of cash in-lieu fee funds means that a pool of money will be available to purchase TDR Certificates, both at the beginning of the program and on an ongoing basis. The County will have to create some mechanism for the expenditure of these funds.

Although certain administrative functions will always remain at the County because it is the regulator, it is recommended that the County designate an entity to serve as a TDR bank to perform transactional functions. Due to the fact that the TDR Ordinance is a land-use regulation being administered by the County, and regulatory decisions can affect the transactional marketplace, regulatory decisions (for example, calculation of how many TDRs are available to a certain landowner) should be separated from transactional decisions.

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The Bank would:

- ◆ Be designated as the recipient of State and federal seed money in order to engage in TDR transactions.
- ◆ Be designated as the recipient of the County cash in-lieu fee money to engage in TDR transactions.
- ◆ Be empowered to buy, hold, and sell TDR Certificates in order to stimulate and “even out” the market.
- ◆ To the extent appropriate, assist sending landowners clear titles and conduct site capacity analysis.
- ◆ Manage easements on an ongoing basis or else convey the easements to the permanent holder.
- ◆ Complete and submit annual reports to the Planning Director.

The operations of the Bank not only help to stimulate and smooth the market, but they will also have the effect of creating a revolving fund for purchase of development rights. Initially, the bank would use federal and State seed money, and County cash in-lieu funds to buy development rights. However, these rights would eventually be sold to receiving-area developers, thus recapitalizing the bank and allowing it to make additional purchases of TDR Certificates, which will be sold to receiving-area developers, and so on. In this way, the seed money will be used to create a revolving fund to continually purchase development rights from the sending area.

In designating the entity to serve as the TDR Bank, the County has three choices:

1. **The County government**
2. **A nonprofit land trust**
3. **A for-profit private entity**

There are a number of pros and cons associated with different entities performing the TDR Bank function. The pros and cons of three different options are described below:

- ◆ **County Government.** The County government can streamline the management process, especially if it also serves as the easement holder. However the County will also serve as the regulator, verifying TDR Certificates, a role that can conflict with a transactional role. Some landowners may not trust the County. In addition, the County does not have experience buying and selling development rights and may not be able to move quickly to respond to the market. Lastly, the TDR Bank may eventually need to operate across jurisdictional lines, not just in County territory.
- ◆ **Land Trust.** A land trust has the ability to move quickly, experience buying development rights, and the ability to hold easements. In addition, land trusts are non-profit entities that are trusted by landowners and can work across jurisdictional boundaries. One down-side, however, is that local land trusts do not have experience selling development rights.
- ◆ **Private Entity.** A private for-profit entity may be well-positioned to sell development rights and respond quickly to the market. It would also be able to work across jurisdictional lines. However, unlike a non-profit land trust, a private entity may raise the issues of trust and transparency with landowners. There may also be a concern about whether a private entity would put the goals of the program first, above profit goals.

D. Other Private Market Players

The existence of the bank would not preclude direct buyer-seller transactions. Indeed, we would expect an active market of direct transactions in addition to bank transactions, especially if buyers and sellers can negotiate directly rather than have to deal with appraisals. Several different types of entities can play important roles. These include:

1. Real Estate Brokers

Private real estate markets greatly depend on real estate brokers to function smoothly. These brokers represent buyers or sellers and they seek out transactions and parties with which to engage in those transactions. Brokers must have deep knowledge of local markets in order to operate effectively.

In the majority of TDR programs, buyers/developers and sellers/landowners locate each other and negotiate the terms of the sale. However, brokers are effectively used in some markets to assist buyers and sellers in finding each other.

Montgomery County, Maryland boasts one of the most successful TDR programs in the country. There is no banking system available in Montgomery County, but rather the TDR market is operated solely through independent real estate agents.¹ The County directs potential buyers and sellers to agents that specialize in the sale of TDRs and act as brokers between interested parties.

Either the County or the Bank can also play an outreach role to real estate brokers, helping them to understand the TDR market; when TDRs are needed, and how to obtain market information.

However, it is likely that most land transactions will not require TDR purchases. Therefore, outreach efforts to brokers will have to be especially aggressive and will also have to focus on brokers willing to play a very specialized role in the market.

2. Private Investors

Just as there are private investors who deal in land markets, private investors can also play a role in TDR markets. Under the private investment model,

¹ Wells, Margaret and Virginia McConnell. "Transfer of Development Rights in U.S. Communities: Evaluating Program Design, Implementation, and Outcomes." Published by Resources for the Future. September 2007.

investors would purchase TDRs and hold them when they might be sold for a profit. Essentially, private investors could speculate on TDRs.

Traditionally, not many private investors have speculated in TDRs because it can be difficult to predict their future value. This is because markets are often “thin” – meaning there are few transactions and little market information – and because receiving-area developers have other options to obtain increased density, thus tempering the possible speculative increases in TDR value. To have confidence in the TDR market, private speculators must have confidence in the “currency” and believe that it will not go down in value because regulators will increase “supply” by making it easier to obtain increased densities.

Many factors can make it difficult to assure the ongoing value of TDRs, including availability of financing, market conditions, and especially the regulatory actions of the receiving-area land use agency. These uncertainties can dampen the interest of private investors in TDR receiving areas. However, some investors may be willing to speculate on the value of TDRs in individual receiving areas where they know “the lay of the land” and can confidently predict the future of the regulatory system. Therefore, any outreach associated with the TDR program should also include outreach to land investors and land speculators, focusing on those receiving areas which have the most active land markets. This may stimulate some interest among investors.

3. Small Landowners

For reasons described in Chapter 4, small landowners might provide an attractive source of TDR Certificates inexpensively, especially if they own Lots of Record smaller than the minimum density. However, small landowners may have difficulty participating in the market on their own and therefore may require special assistance to become active market players.

In particular, small landowners may need assistance with:

- ◆ Application Completion
- ◆ Site Capacity Analysis

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- ◆ Easement Assistance
- ◆ Title Assistance

Assistance could be provided by a wide variety of organizations, including County Planning, the TDR Bank (recognizing that in some cases the Bank will be in negotiations with a small landowner), BCOLT, or a nonprofit such as the Charleston-based Center for Heirs' Property. In any event, County Planning (or whatever entity plays the information clearinghouse role) and the TDR Bank should aggressively provide information to small landowners about where and how to find assistance.

4. Easement Holder

Before the TDR Certificates are sold by a sending-area property owner, a conservation easement will be placed on the sending-area property, clarifying that additional development cannot be permitted. The intent of the MCAS TDR program is different from the intent of other conservation easement programs in the sense that there is no expectation of ongoing land management for resource conservation. The goal is simply to remove development potential to increase the safety of MCAS operations. Therefore, these easements need not contain detailed restrictions on other activities, as landowners will probably retain some development rights.

Easements should be held either by the TDR Bank or another entity designated by the County, possibly BCOLT.

4 MECHANISMS

Once the management structure of the program is put into place as proposed in Chapter 4, the TDR program still must include a set of “mechanisms” that will allow the program to operate smoothly and allow transactions to occur. This chapter will address these mechanisms, including the following:

- ◆ Development Rights and TDR Certificates
- ◆ Transfer Ratios
- ◆ Sending-Area Development Right Calculations (with particular attention to small landowners)
- ◆ Use of TDR Certificates in Receiving Areas
- ◆ Setting TDR Prices and Cash In-Lieu Fee
- ◆ Transition to Form-Based Code

A. Development Rights and TDR Certificates

As outlined in the previous chapter, the basic commodity being bought and sold is a TDR Certificate. A TDR Certificate is equal to the right to build one dwelling unit on a legally recognized parcel in the sending area – that is, one development right. Many if not most parcels will qualify for more than one TDR Certificate. For example, if a property owner already has one dwelling unit on his or her property and has the right to build two more (based on the methodology included in this chapter), then that property owner would be eligible to receive two TDR Certificates, which could be sold.

Because of the unusual nature of the MCAS, the sending area actually contains two different types of development rights – rights removed as a result of the AICUZ zoning and rights that remain in place even after the AICUZ zoning.

Because some funding sources may not be available to purchase development rights removed as a result of the AICUZ zoning, each TDR Certificate should

note whether it represents an “AICUZ development right” or a “non-AICUZ development right.” This difference should be tracked in the TDR database.

However, there is no functional difference between these two types of TDR Certificates. They are redeemable in the receiving areas for additional density without differentiation.

B. Transfer Ratios

A transfer ratio is the ratio of development rights obtained in the sending area to development rights redeemable in the receiving area. For example, a 1:3 ratio would mean that a TDR Certificate representing the right to build one dwelling unit in the sending area would be redeemable for 3 “bonus” dwelling units in the receiving area. Often, a transfer ratio is required to provide both sending- and receiving-area landowners with sufficient incentive to engage in transactions.

The 2008 feasibility study by Basile Baumann Prost Cole & Associates (BBPC) included a detailed economic analysis to determine the likely value of TDRs. The analysis concluded that a sending-area development right was worth approximately \$31,350, while the receiving-area landowners’ “willingness to pay” for additional density was approximately \$10,450 per unit, meaning it would take 3 bonus units in the receiving area to generate enough funds to pay for 1 TDR from the sending area.

Thus, BBPC concluded that an appropriate transfer ratio would be 1:3. Although land and development values have fallen since 2008, we have no reason to believe that they have fallen disproportionately in the sending area compared to in the receiving area, so we recommend that the 1:3 ratio be implemented.

The proposed ordinance also allows TDR Certificates to be redeemed in receiving areas for bonus commercial square footage. The BBPC study concluded that an appropriate transfer ratio would be 1:5,000 – that is, 1 devel-

opment right could be redeemed for 5,000 square feet of commercial space. We recommend this ratio be implemented as well.

C. Sending-Area Development Right Calculations

Sending-area landowners are eligible to receive TDR Certificates equivalent to the unused residential development potential on their property under current zoning, plus the unused residential development potential removed by the AICUZ zoning (if any). Existing units will be subtracted from the overall number of development rights. Sending-area landowners will be awarded development rights based on the calculation of gross or net density, whichever is lower.

To calculate available development rights, sending-area landowners should follow the site capacity methodology included in the Beaufort County Zoning and Development Standards Ordinance (Chapter 106, Article VII, Division 2 of the County Code). In particular, sending-area landowners should use the calculation table contained in Section 106:1815 to calculate density. The calculation of sending-area density should be based on "Calculation 3" (net density) or "Calculation 4" (gross density), depending on which calculation is lower, as shown in Figure 4.

1. Issues Related to Small Landowners in the Sending Area

Small landowners – that is, those who own parcels smaller than 3 acres – present the TDR program with particular issues but also with particular opportunities.

Small landowners fall into two categories:

- ◆ Landowners who own less than 3 acres but are located in Rural Residential zones, meaning their density is 1.2 du/ac. Based on this density, the minimum lot size is equal to about 0.84 acres.

**FIGURE 4: Sec. 106-1815. Site Capacity Calculation Table
Calculation of Residential/Nonresidential Capacity**

Tables 106-1815(1) and 106-1815(2) provide the procedures for calculating residential or nonresidential use capacity of a site based on protected resources. Where the site is in more than one zoning district, or where the site is to be developed for both residential and nonresidential uses, separate calculations are required. Final capacity calculations shall be rounded down to a whole dwelling unit (du) or square footage.

TABLE 106-1815(1). RESIDENTIAL USE CAPACITY CALCULATION

| | | |
|----------------|---|-------------|
| Calculation 1: | ... | ... |
| Calculation 2: | ... | ... |
| Calculation 3: | ... | ... |
| Calculation 4: | Enter base site area (table 106-1814, calculation 1) | |
| | Multiply by maximum gross density (table 106-1526) | X |
| | Equals district maximum density yield | = du's |
| Calculation 5: | Maximum yield for site (calculation 3 or 4, whichever is less) | =du's |

TABLE 106-1815(2). NONRESIDENTIAL USE CAPACITY CALCULATION

| | | |
|----------------|---|---------------|
| Calculation 1: | ... | ... |
| Calculation 2: | ... | ... |
| Calculation 3: | ... | ... |
| Calculation 4: | Enter calculation 1 or 3, whichever is less |ac |
| | Multiply by maximum gross density (table 106-1526) | X |
| | Equals maximum floor area in acres | =ac |
| | | X43,560 |
| | Multiply by 43,560 to determine maximum floor area in square feet | =sq. ft. |
| Calculation 5: | Minimum landscaped surface calculation 1 (total protected land) or calculation 2 (minimum landscaped area), whichever is greater | =ac |

- ◆ Landowners who own less than 3 acres but have a Lot of Record (a lot that predates the zoning) located in a Rural or Rural Residential zone.

Rural Residential landowners who fall into the first category should be awarded development rights based on their allowed density, and rounded up for each partial development right equal 0.5 or more. For example, a landowner who owns a 1.4-acre Rural Residential site would have 1.67 development rights ($1.4/0.84=1.67$), and since the fractional right is greater than 0.5, the calculation would be rounded up to 2 development rights allocated.

Any landowner who owns a Lot of Record should be awarded 1 development right if, under County codes, that landowner would be permitted to build a unit onsite, no matter what the size of their parcel.

If the TDR prices are directly or indirectly based on appraised value, then small landowner TDR, especially TDR from Lots of Record, might be able to provide the private market with an inexpensive option. This could stimulate the TDR marketplace at the beginning by lowering the average cost of TDR while the program is getting started. As these small landowner TDR circulate through the program and are converted into easements, the appraisal values and subsequent prices for TDR can be expected to increase over time.

D. Use of TDR Certificates in Receiving Areas under Current Zoning

In receiving areas, developers may apply under the TDR Ordinance for the "TDR Overlay" designation articulated in the Ordinance. On an interim basis, the TDR Overlay designation will be required for any upzone in the receiving area beyond the current baseline density. Thus, developers seeking an upzone would be required to provide enough TDR Certificates to cover this increase or pay the equivalent cash in-lieu fee

This will be an interim system until the form-based code is adopted. The form-based code will include minimum and maximum densities in each zone,

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and at that time the system will be converted to require TDRs to go from the low end of the range to the high end of the range. The form-based code will be much better suited to implementation of the TDR program than the current zoning. (See subsequent section.)

Table 2 shows the maximum densities available under the current zoning ordinance. Most of the available land in the receiving area is currently zoned Rural or Rural Residential

In the receiving areas, developers receiving approval for densities above the currently zoned baseline density would be required to purchase enough TDR Certificates to cover the additional density at a 1:3 transfer ratio – that is, one TDR Certificate for every 3 bonus units on the receiving site – or else pay the equivalent cash in-lieu fee.

Receiving-area developers would have to provide TDR Certificates only for the number of bonus units actually approved through the County planning process. For example, if a developer upzoned to Suburban but only received permission to build 3 du/ac, then he or she would be required to provide TDR Certificates (or pay the equivalent fee) to cover the additional density above the baseline density allowed by the previous zoning.

In the case of projects involving land division, the number of TDRs required should be calculated and submitted between preliminary and final subdivision approval. In instances involving projects without subdivision, the number of TDRs should be calculated and required prior to the issuance of building permits.

E. Use of TDR Certificates in Receiving Areas under Form-Based Code

The multi-jurisdictional form-based code for the North Beaufort Regional Plan will actually be better suited to implementing the TDR program, and the transition will require relatively simple changes to the TDR Ordinance.

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TABLE 2 MAXIMUM GROSS DENSITIES FOR BEAUFORT COUNTY RESIDENTIAL AND MIXED-USE ZONES

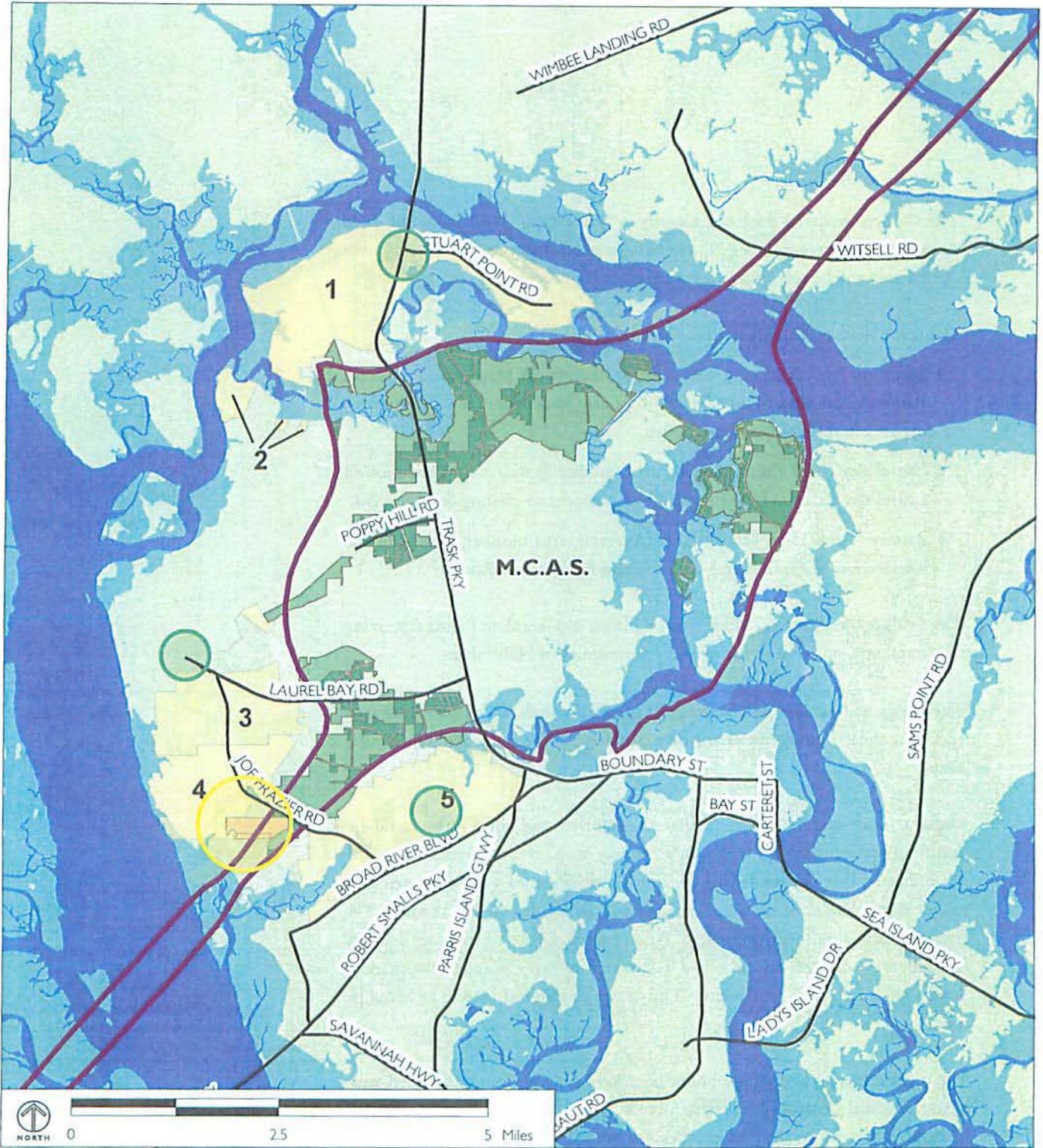
| Zone Code | Zone Description | Maximum Gross Density (Dwelling Units Per Acre) |
|-----------|-----------------------|---|
| U | Urban | 15 |
| S | Suburban | 5 |
| CR | Commercial Regional | 0 |
| CS | Commercial Suburban | 8.3 |
| RC | Resource Conservation | 0.1 |
| RR | Rural Residential | 1.2 |
| RB | Rural Business | 1.2 |

Since the form-based code is under development now, the system described above should be viewed as an interim system.

Because the form-based code is not complete, this report cannot provide a specific recommendation on how the form-based code and the transfer of development rights program should work together. However, based on the work already done by Opticos, this report can provide guidance on how the TDR program and the form-based code are likely to work together and suggest how the TDR ordinance may need to be changed to conform to the form-based code when the new code is passed.

In the sending areas, the form-based code is unlikely to affect the underlying zoning.

As shown in Figure 5, in the receiving area, the form-based code is likely to encourage concentration of development in three "hamlets" and one "village".



- AICUZ Boundary
- Sending Areas**
- Rural Residential
- Rural
- Suburban

- Receiving Areas**
- 1 Seabrook Area
 - 2 Clarendon Road Area
 - 3 Laurel Bay Road Area
 - 4 Cherokee Farms Road Area
 - 5 Battery Creek High School Area

- Form-Based Code Hamlet
- Form-Based Code Village

Source: Beaufort County GIS

FIGURE 5
 RECEIVING-AREAS FOR FORM-BASED CODE

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The Opticos material does not identify a “place type” for Clarendon Road Area (receiving area number 2), assuming instead that eventual development of that area will be subject to a separate planning process.

The three “hamlets” are likely to be located as follows:

- ◆ Seabrook Area (receiving area number 1) near the intersection of Trask Parkway and Stuart Point Road. This area is designed as a TDR receiving area in the Comprehensive Plan.
- ◆ Laural Bay Road Area (receiving area number 3) near the intersection of Laurel Bay Road and Joe Frazier Road, adjacent to existing development.
- ◆ Battery Creek High School Area (receiving area number 5) west of the intersection of Parris Island Gateway and Broad River Road.

The “village” designation is likely to be placed at Cherokee Farms (receiving area number 4) adjacent to the existing community of Habersham.

The village and hamlets will be assigned specific boundaries in the form-based code but those boundaries could be expanded if development interest warrants.

Opticos’ draft material suggests that the hamlets and the village could be zoned anywhere from T-3 to T-4 in a transect-based zoning system. Opticos has indicated that the residential densities in these zones will be created as a range. Most likely, hamlets and villages will be located in T-3 through T-4 transects with a net density range of 7 to 13 du/ac. Rural zones, not located in hamlets or villages, will be zoned T-2, which is likely to retain the current density of 1 du/3 ac gross density. This is not certain but merely an assumption.

The specific hamlet and village boundaries have not yet been established, nor have the actual densities been determined. These will be recommended by Opticos in the future and adopted in the form-based code. However, the

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likely structure of the form-based code will make transition relatively easy, especially the hamlet boundaries and the range of net densities.

At the time the form-based code is adopted, the TDR ordinance should also be amended to allow receiving-area developers to use TDR certificates (or pay the cash in-lieu fee) to exceed the minimum net density in the zoning district (for example, 7 du/ac in T-3) up to the maximum allowable net density in that zoning district (for example, 13 du/ac in T-3). The form-based code requirements for building design and configuration of development in the hamlets will help to ameliorate receiving-area concern about increased density.

F. Setting TDR Prices and Cash In-Lieu Fee

Although it is expected that most transactions will occur between private buyers and private sellers, two sources of cash are available for the program: seed money provided by the State and federal governments and funds generated by the cash in-lieu fee program.

Federal funds totaling \$250,000 are available to “jumpstart” the TDR program. State funds totaling \$250,000 are also available. The TDR program would best be served by using these funds to purchase sending-area TDR Certificates immediately and banking them for later sale, thus creating the “revolving fund” system described in Chapter 3. (Some of these funds should be used for program administration as described in Chapter 5 and some could be set aside for marketing and education about the program.)

These transactions could be made by the TDR Bank if the County chooses to create one, or by the County itself, or by another entity designated by the County to undertake such transactions.

1. Separating the Purchase of AICUZ and non-AICUZ Development Rights

Unlike the State funds and the fee money, federal funds CANNOT be used to purchase “AICUZ development rights. For this reason we have suggested

the creation of two different types of TDR Certificates. But this limitation should not discourage the County from using funds to buy TDR Certificates.

The revolving nature of the fund means that when rights bought with federal seed money are sold, the resulting revenue can never be used to purchase AICUZ TDR certificates. Other funds could be used to buy any TDR Certificates. This system is not impossible to administer; the California Tahoe Conservancy has a similar accounting method for different funding sources and different types of rights in buying and selling TDRs in the Lake Tahoe market. However, it does make accounting somewhat more complicated for the TDR Bank or whoever is administering these funds.

2. Setting the TDR Price and the Cash In-Lieu Fee

If the TDR Bank or another entity using public money purchases TDR Certificates, that entity faces two questions: which rights to buy and how much to pay for them.

In using the State and federal money at the outset, the TDR Bank should use the "before/after" appraisal methodology. The Bank should commission two appraisals of the property – one with the development rights available and one with the development rights removed. The TDR Bank should then offer the monetary difference between the two appraisals. The TDR Bank would be responsible for paying for the appraisals, unless a landowner chooses to have a different appraisal; in which case the landowner would be responsible for paying for the appraisal.

Furthermore, in expending public funds, the TDR Bank should prioritize the purchase of TDR Certificates from small landowners. This report recommends the following process:

1. TDR Bank policy will require TDR certificates to be purchased from small landowners based on the number of TDRs they hold, from smallest to largest. Thus, in expending its funds, the bank will pur-

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chase rights from all landowners who hold only one TDR first, followed by those who hold 2 TDRs, and so on.

2. The TDR Bank will establish a time period during which it will accept letters of interest from landowners. At the close of the window, the TDR Bank will create a rank-order list of sellers based on the number of TDRs they claim to have.
3. The Bank will purchase TDRs in rank order. The bank will arrange and pay for appraisal and valuation of the certificate.
4. If landowners do not have their TDR Certificates at the time the Bank is ready to purchase their TDRs, the landowner will simply be passed over temporarily and remain at the top of the list until they obtain their TDR Certificates, at which time a transaction can occur.

This method will ensure that small landowners will have the opportunity to sell their TDRs to the bank first. It will also encourage large sending-area landowners to engage in transactions directly with receiving-area developers, thus ensuring that private landowners on both sides will have incentive to engage in transactions.

Although the Bank's appraisals and transactions will likely set a standard for market price, private transactions would not be bound by this methodology. Private buyers and sellers could engage in transactions without an appraisal and at any mutually agreeable price.

In its role as regulator, the County will also have to set a price that receiving-area developers pay for cash in-lieu fees. This fee is an alternative to TDR certificates, designed to provide certainty for developers and meet their timing needs.

The starting point used to calculate the correct rate should be based on before/after appraisals on several (perhaps 3 to 5) representative sending-area parcels. The County could also use the before/after appraisals commissioned by the TDR Bank for individual purchases. The average difference of the before and after appraisal values, divided by three for the transfer ratio,

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should be the basis for the cash in-lieu fee rate per bonus unit; however these appraisals can also be used to provide a range of potential TDR values and, hence, a range of potential cash in-lieu fee options.

Based on these appraisals, the County Council will set the cash in-lieu rate and retain the right to adjust the rate annually. The County Council should not set the rate higher than the appraisal values; but it could set the rate lower than the appraisal values. Doing so would encourage receiving-area developers to pay the fee rather than buy TDR. This will help provide funds for the TDR program but may not raise enough money to buy TDR on a proportional basis because average market cost may be higher than the fee.

Developers would have the option of buying TDRs on the open market, buying them from the TDR Bank (subject to the policy of selling to small landowners first), or paying a cash in-lieu fee. Most developers would presumably choose the option with the lowest cost and least amount of time required. This would usually mean paying the cash in-lieu fee or negotiating directly with larger sending-area landowners, rather than negotiating directly with smaller sending-area landowners. Thus, it is expected that the bank (using seed money and cash in-lieu fee money) will be able to purchase TDRs from small landowners, while large sending-area landowners will deal directly with receiving-area developers.

An annual TDR Bank report would be provided to the Northern Beaufort County Implementation Committee and the Beaufort County Council.

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5 IMPLEMENTATION STRATEGY

The goal of this Implementation Strategy is to identify key tasks that need to be completed in order to set up the TDR Program and ensure its early success. Whether transactions occur through a Bank or the private market, the program should be easy and inexpensive for the County to administer and for buyers and sellers to participate.

A. Key Tasks for County

Step 1: Adopt TDR Ordinance

The County's first step should be to adopt the TDR Ordinance and establish the necessary administrative mechanisms.

The ordinance adoption process will include the following steps:

- ◆ Metropolitan Planning Commission presentation and review,
- ◆ Planning Commission public hearing, presentation and review,
- ◆ County Council Committee presentation
- ◆ County Council Hearing #1
- ◆ County Council Hearing #2
- ◆ County Council Hearing #3

Step 2: Establish an Administrative Mechanism in the Planning Department

Administratively, the TDR program should be administered by the Planning Department just as any other land-use regulation is administered. As outlined in Chapter 4, these responsibilities include:

1. Receiving applications for TDR Certificates;
2. Issuing those certificates based on the capacity analysis process delineated in the ordinance;
3. Approving conservation easements on the sending-area property once the certificates have been issued; and
4. Conditioning approval of projects that exceed the base density on acquisition of TDR Certificates or payment of a cash in-lieu fee.

Step 3: Establish an Information Clearinghouse in the County Planning Department

As discussed in the Management chapter, an information clearinghouse is a vital component of a successful market. Both regulators and market players need ready access to information. The information clearinghouse should host three online information portals: a Transaction Log, a Sales Report, and an Interested Parties List.

The Transaction Log Tracks a development right from when it is severed and converted into a TDR certificate, to when it is sold and retired at the receiving site development. The Transaction Log should also note which TDRs are AICUZ TDRs and which are non-AICUZ TDRs.

The Sales Report shows how much TDRs have sold for on an annual basis. Prospective buyers can use this as a tool to estimate the current cost of TDRs.

The Interested Parties List provides an interface in which private buyers and sellers of TDR can contact one-another and complete transactions. The Lowcountry Council of Governments (LCOG) should also designate a staff person to conduct outreach out to local developers, brokers and investors in order to add names to the interested parties list.

At least at first, this information clearinghouse should be located in the County Planning Department, where all transactions will be cleared anyway. If other jurisdictions join the program, the clearinghouse could stay with County Planning (if Beaufort and Port Royal consent) or it could move to the LCOG.

Step 4: Set the Cash In-Lieu Fee

Next, the County should set the cash in-lieu fee as called for in the TDR Ordinance. The cash in-lieu fee should be set using the methodology contained in the Chapter 4 section – by commissioning before/after appraisals on several illustrative parcels to provide a baseline of possible fee ranges. As stated

previously, the fee could be set at the appraisal price or it could be set lower. A lower fee will encourage developers to pay the fees rather than purchase TDR Certificates, but it might not provide enough funds to buy TDR Certificates on a proportional basis.

The information gathered in the fee-setting process would have the additional advantage of informing the TDR Bank's pricing of Certificates; or, alternatively, the TDR Bank could commission the appraisals as a baseline for both the Bank's transactions and the County's fee.

Step 5: Designate the Easement Holder and TDR Bank (if any)

Before transactions begin, the County must designate an entity to hold the easements that will be laid down on sending-area properties whose owners have sold their TDR Certificates. This entity is most commonly a trusted local land conservation group such as Beaufort County Open Land Trust (BCOLT), but it could be the County as well. It could also be the TDR Bank. If it is a group such as BCOLT or the TDR Bank, the easement holder, the County, and MCAS should reach early agreement regarding the conditions contained in the easements.

Also before transactions begin, the County should decide whether to designate a TDR Bank and, if so, what organization should take on that role. Options describing who can run the bank are described in Chapter 3, Section C.

Step 6: Outreach to Landowners and Other Private Market Players

In order for the TDR market to be successful, it must be well-marketed to and well-understood by sending-area landowners, receiving-area developers, and others in the private real estate market who might play a role in transactions. The County should seek to take aggressive steps to reach out to these landowners and other players, or else charge the TDR Bank or the Easement Holder with this responsibility.

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Among the steps that should be taken are:

1. Publicizing the information available online through the information clearinghouse.
2. Prepare clear and understandable material about the program.
3. Reach out to small sending-area landowners in particular to help them understand what opportunities exist for them and how they might obtain assistance (from the County, the TDR Bank, BCOLT, or other organizations) in setting themselves up to participate in the program.
4. Work with other government agencies and nonprofits to focus existing heirs' property assistance programs on MCAS AICUZ property owners.

The marketing and outreach efforts could be funded from seed money or from a small fee on transactions.

Step 7: Issue TDR Certificates to Sending-Area Landowners

As land use regulator, the County must be responsible for issuance of TDR certificates to sending-area landowners. This can be a complicated part of the process, but if procedures are followed correctly, it provides a solid foundation for a functional TDR marketplace.

There are many choices for methods to issue TDR certificates. We find that a majority of county attorneys prefer a process similar to the New Jersey Pinelands TDR program.¹ The following bullets describe the steps to issue TDR certificates:

a. Gather Submission Materials

First, sending-area landowners should be contacted and informed that they are candidates to participate in the program. After notification, the interested landowner should initiate an application to get TDR certificates assigned for

¹ The detailed procedure to apply for a certificate in the New Jersey Pinelands TDR Program can be found here: http://www.state.nj.us/dobi/pinelands/howtoapply_indiv.html, accessed by DC&E on March 16, 2010.

remaining development capacity on his property. The application will require a number of criteria to be met and some information will require technical assistance from the County. The key items are listed below:

- ◆ Tax information to verify parcel acreage and the number of existing units,
- ◆ A notarized letter, called a Letter of Interpretation, completed by the applicant describing the property, including the number of existing units and the number of units permitted (according to the pre-AICUZ zoning),
- ◆ A copy of the deed to prove ownership, and
- ◆ A letter from the mortgage lender (if necessary) should be obtained to show that the mortgage lender is aware of, and does not object to, a deed restriction filed on the property when the certificate is issued.

The County will be required to provide assistance calculating the number of development rights dating back to pre-AICUZ zoning and determining AICUZ and non-AICUZ development rights.

b. Complete Forms

The applicant should complete a deed restriction form and an affidavit of title form and have both notarized. The affidavit declares whether there are any liens on the property. The deed restriction should not be recorded until the application is approved.

c. Complete an Application

The applicant should complete and submit an application for a Beaufort Area TDR Development Credit Certificate to the County. The New Jersey Pine-lands program charges a recording fee for the application review. If the application is complete, the County records the easement, thereby creating the basis for the TDR Certificates. A reversibility clause may be included in the easement if requested by the owner and if the corresponding certificate is never sold. However, once a certificate is sold, the development rights are retired in perpetuity and the easement is conveyed to the Easement Holder.

Step 8: Monitor Market Operations and Approve Projects with TDR

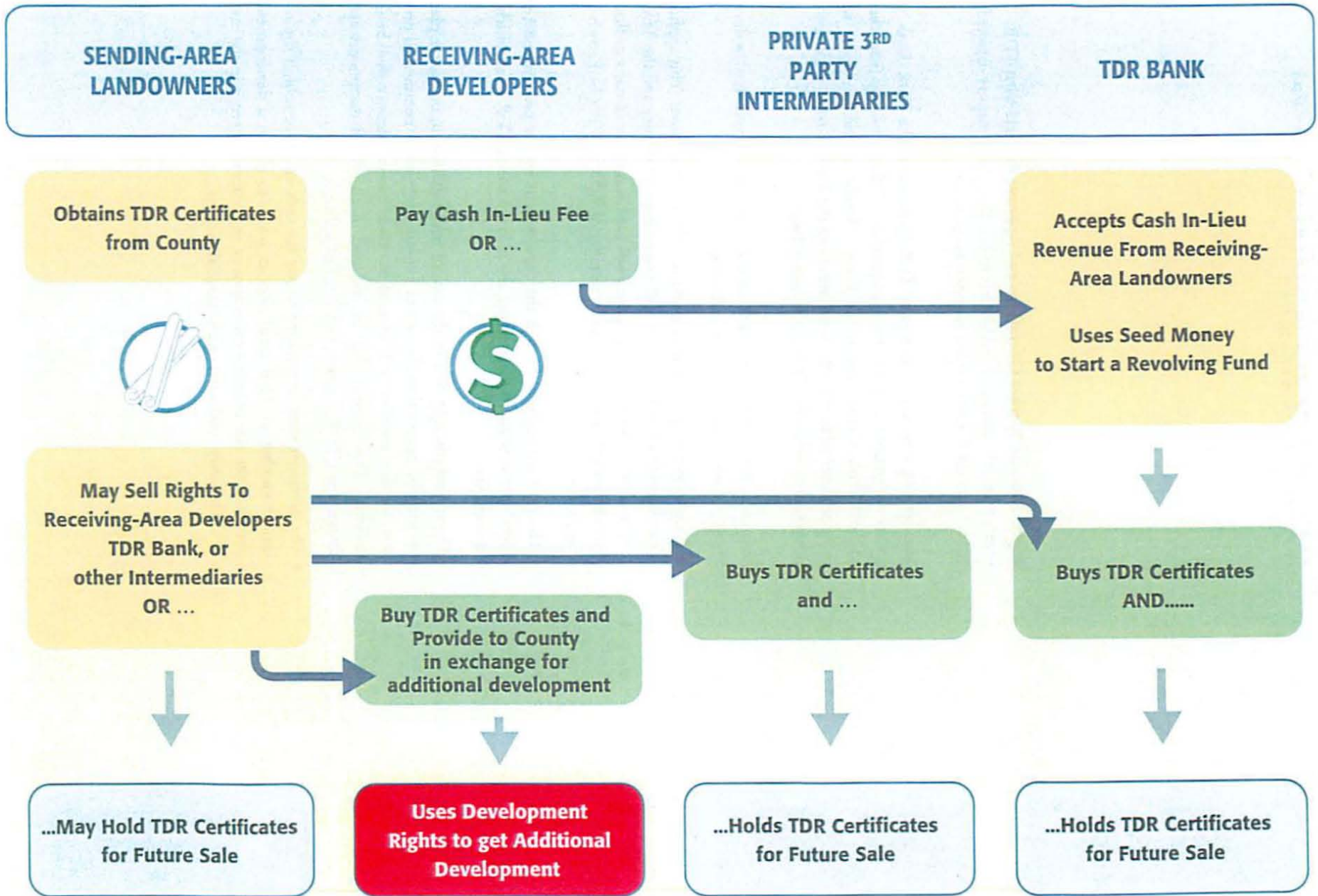
At this point, the market should be left to function in the manner depicted in Figure 6 and the County should monitor its operations.

Once sending-area landowners have TDR Certificates, the TDR Bank (or another designated entity) can begin to purchase TDR Certificates from them and hold those Certificates in the Bank. Receiving-area developers will choose whether to buy TDR Certificates from the Bank or from sending-area landowners or, alternatively, pay the cash in-lieu fee.

The process for incorporating TDR considerations into receiving-area development projects must include the following:

- ◆ A developer proposes a project and submits an application. This application identifies that the project will exceed Baseline density and the developer agrees in writing to purchase TDR for the number of units or floor area over the Baseline. The exact number of TDR may not be known at this point.
- ◆ The project proceeds through the development review process and the developer is required to reference the planned use of TDR in all official documents.
- ◆ Upon final plat approval in the case of land subdivision, or master plan or site plan approval in the case of a housing project or commercial project, the final number of TDR used to exceed baseline density shall be finalized. This number shall be included in all official documents and flagged for a TDR payment by Code Enforcement.
- ◆ The developer shall be required to pay the cash in-lieu or submit the required number of TDR certificates in order to obtain a development permit in the case of land subdivision, or an occupancy permit in the case of multifamily residential or commercial projects.

Figure 6: Draft Process Diagram for Beaufort County MCAS TDR Program



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Step 9: Evaluate Program Performance and Make Adjustments

After one year, the County and other interested parties, including the TDR Bank and the Easement Holder, will assess the success of the program and determine whether any adjustments need to be made. Possible adjustments could include: designate a different entity for the TDR Bank or Easement Holder, a change in the transfer ratio, and an adjustment of the cash in-lieu fee. The interested parties should also assess how successful marketing and outreach efforts have been and determine whether changes to these efforts should be made.

In addition, it is likely the form-based code will be adopted. The changes to the TDR Ordinance outlined in Chapter 4 should be made at that time to align the TDR Ordinance and the form-based code.

B. Administrative Cost Estimate

Table 3 shows our estimate of administrative costs to the County to initiate the TDR program and successfully transfer one TDR. Between \$10,000 and \$12,000 will be required for a mid-level County Planner to initiate the TDR program. This estimate should include another \$3,000 to \$5,000 for managerial time and Counsel review, bringing the total TDR program initiation cost to the County to approximately \$15,000.

Another \$35,000 should be used to contract with an outside entity to initiate the TDR Bank and run through the seed money and stock the TDR Bank with certificates. A total of about \$50,000 from the seed money would cover the full cost to implement the TDR program, setup a TDR Bank, and stock the Bank with TDRs. This would leave \$450,000 to buy TDR, pay for appraisals, and provide small landowner support for the application process.

After startup, most operational costs should be covered by a small administrative fee on applications, easements and certificate transfers. The bank will be self supportive through the sale of TDR certificates to developers and through accrual of in-lieu fees.

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We recommend that the TDR Bank finance the required appraisal, unless the landowner elects to use a different appraiser. The requirement to track both federal and non-federal TDR funds will also require some extra effort compared to other TDR programs that are typically funded through bond measures.

If the County chooses to contract with an outside agency to manage the TDR Bank, it may do so in a fashion similar to the Rural and Critical Lands Program, which contracts with the Beaufort County Open Land Trust to purchase development rights and administer easements. The annual cost to manage Rural and Critical Lands is \$144,000, but the TDR program is on a smaller scale and the Land Trust estimated that it could manage the TDR program for much less. This is just one estimate, and the County should contact other entities for cost estimates prior to entering into an agreement.

A general rule of thumb is 10 percent of the seed money and annual revenue generated should go toward administration. By this measure, \$50,000 of the seed money should be used to contract with an outside entity and purchase the initial round of TDR certificates.

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TABLE 3: TDR Program Initiation Cost Estimate

| Step | Description | Hours- Low* | Hours- High* | Cost- Low | Cost- High |
|--------------|---|------------------------|-------------------------|----------------------|-----------------------|
| 1 | Adopt TDR Ordinance | 59 | 73 | 1,800 | 2,200 |
| 2 | Contract with TDR Bank** | 72 | 88 | 3,200 | 3,600 |
| 3 | Landowner Outreach** | 54 | 66 | 2,600 | 3,000 |
| 4 | Apply for TDR*** | 4 | 6 | 100 | 200 |
| 5 | Issue TDR Certifi- cates*** | 7 | 9 | 200 | 300 |
| 6 | Market Operations**** | 54 | 77 | 2000 | 2500 |
| 7 | Development Project Includes TDR*** | 2 | 2 | 100 | 100 |
| 8 | Developer Submits Cer- tificate for Bonus*** | 7 | 9 | 200 | 300 |
| Total | | 259 | 319 | \$9,900 | \$11,800 |

*Estimate of County time required to administer program. Does not include standard duties including the project review and permitting process. County was unable to provide rates for senior staff and overhead. Assumes \$30 per hour for a County Planner.

** Assumes \$1,000 in printing costs for forms, web design, TDR Certificates and other materials.

***Per TDR application. Cost should be covered by application fee; therefore this estimate could be used as a starting point for application fees.

****Assumes County spends moderate effort during the initial round of TDR purchases using the seed money.

APPENDIX A:

POSSIBLE SENDING AND RECEIVING AREAS IN THE CITY OF BEAUFORT AND THE TOWN OF PORT ROYAL

Although the JLUS Implementation Committee decided not to recommend sending and receiving areas in the City of Beaufort (with one exception) and the Town of Port Royal at this time, the team spent considerable time discussing possibilities in these jurisdictions. This appendix summarizes possible sending and receiving areas in the City and the Town for future consideration.

TDR receiving-areas are located in both outlying undeveloped areas that will eventually be annexed, and in areas within the City and Town where infill opportunities lie and neighborhoods can accommodate higher density in the future. These areas should be designated as TDR receiving zones.

a. TDR receiving zones that will be upzoned by request

Under the Northern Beaufort County Regional Plan, aside from US Marine Corps installations, all of Port Royal Island is expected to be annexed. In nearly every instance in which property is annexed it is rezoned to a density greater than the underlying County Rural Residential designation. The legal analysis in Appendix B describes reasons why TDR cannot be required for annexation; however TDR can be required for all bonus units allowed by the new TDR zoning adopted as these areas are annexed.

b. TDR Receiving Zones that will be upzoned for consistency

TDR receiving zones can be overlaid in areas identified in comprehensive plans to accommodate growth. In 2009, the Town of Port Royal and City of Beaufort each adopted updated comprehensive plans that lay the foundation for form based code/conventional zoning ordinance hybrid. Compared to the previous Comprehensive Plans, the residential densities called for in some areas were increased. These areas will be upzoned during the zoning ordinance update. These areas and districts specifically identified for redevelopment should also be identified as TDR receiving zones. The

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following discussion describes recommended receiving zones in the City of Beaufort and the Town of Port Royal.

In its Comprehensive Plan, the City of Beaufort identified some R-1, single-family residential neighborhoods as G-2 Urban Neighborhoods that will permit up to R-4 zoning. Higher-density infill in these areas can generate demand for TDRs. Many of the areas are located in the Ribaut Road area that is on an isthmus connecting Beaufort to Port Royal. A large single-family zoned area located in the vicinity of Ribaut Road and Hermitage Road has been designated for these higher densities. Similarly, southwest of the former wastewater treatment site, an area located around Riverside Drive has been designated for G-2 development. These areas should be zoned as TDR receiving areas.

By that term, we mean the maximum density allowed under the former zoning will be identified in the new TDR zoning as baseline; all dwelling units in excess of baseline will be considered bonus units and one TDR will be required for each three bonus units.

In addition to these evolving single-family areas, Section 12 of the City of Beaufort Comprehensive Plan identifies catalyst sites and focus areas. The sites that could be used as TDR receiving zones are briefly summarized below:

◆ **Lafayette Street Area**

This area is located near the water, contains a commercial core with Downtown access, and many parcels have been purchased by investors. The current density is 4-5 dwelling units per acre but the Comprehensive Plan states that density increases of as much as 50-100 percent would be appropriate. The conceptual redevelopment study estimated 72 townhomes and 184 detached homes could be added to the neighborhood.

◆ **Downtown Infill**

Higher density in the downtown would provide long-term support for local businesses. Specific infill sites are indentified, but height and density

standards could limit the TDR potential for this area. The plan recommends expanding the waterfront park into the marina parking lot, but if the City decided to develop the site, the high values for condos in this area could sell TDRs.

◆ Northwest Quadrant

This neighborhood has a rich history and is within walking distance of downtown. The area has experienced some decline but will be targeted for revitalization policies that could promulgate redevelopment. The Comprehensive Plan states that this area "represents perhaps the best opportunity for development intensification." The conceptual redevelopment study estimated 33 townhomes, 47 flats and a total of 222 housing units can be built here.

◆ Battery Creek High School

This area has a number of sensitive lands and areas near the AICUZ. In the areas that can be developed, the Comprehensive Plan calls for densities of at least 4-6 dwelling units per acre and estimates that approximately 320 apartments and townhomes and 383 detached units could be built in his area.

◆ The Robert Smalls Village Center

This area contains vacant lands that could be developed for multi-family housing. The Comprehensive Plan calls for land between the Village Center and the waterfront to be developed into a neighborhood that is denser than 6 units per acre. The plan estimates about 750 condos, apartments, and townhomes could be built in the village center and about 125 in the surrounding neighborhood. 175 detached homes could also be built there.

◆ The Southside Park Neighborhood

This area is a former wastewater treatment plant that will be recycled into a neighborhood. The Comprehensive Plan calls for a Neighborhood Master Plan and estimates there is space to accommodate about 140 new units, approximately 50 of which would be townhomes.

◆ **Burton**

This unincorporated area is located between the City of Beaufort and Town of Port Royal. Both jurisdictions plan to annex portions of this area, and the vicinity of the intersection of Robert Smalls Parkway and State Road S-7-802/Singleton Hill Circle will eventually be the jurisdictional boundary. While it is not specifically identified as a catalytic focus area, the Beaufort Comprehensive Plan identifies this area as a G-2 sector appropriate for urban neighborhoods with centers and denser, mixed-use development. A village-center concept similar to the Robert Smalls Village Center discussed above could be considered in this area.

i. Town of Port Royal

The Town of Port Royal Comprehensive Plan identifies Planning Areas that can be designated as receiving zones. Generally the "Walkable Neighborhood" areas should be zoned as TDR receiving areas. These areas are identified on the Future Land Use Map and are located adjacent to the Activity Centers that would demand mixes of housing types and provide suitable locations for high-density development.

◆ **Shell Point**

The terminus of Savannah Highway at Paris Island Gateway is an opportunity for a mixed-use node that could also accommodate residential densities. There is an area located south of the commercial center, in the vicinity of Cypress Street and Broad River Drive that is zoned R-7 and MU-2, but planned to be upzoned to R-5 in the Future Land Use Map.

◆ **Burton**

The Burton area contains a mix of commercial, industrial and residential development. The area contains a number of greyfield sites that the Town would like to see redeveloped into neighborhood centers. There is a tract of land located south of the waste treatment plant, on the southeast corner of the Grober Hill Road and Highway 280 intersection zoned as GC but designated for R-5, medium density residential in the Future Land Use Map.

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◆ **Broad River**

The Broad River area is a low density residential enclave with space to grow. Habersham, a new urbanist community is located in the northwest corner of this area. If Habersham is successful, it could provide inroads for similar developments, in which higher densities provide an opportunity for TDRs.

◆ **The Current Naval Hospital Property**

This 127-acre site is identified as future activity center than will be redeveloped. The property has historical resources and access to deepwater that adds to the property's value. This is a large, valuable, catalytic site that could also be developed under a public-private partnership that includes TDRs.

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APPENDIX B LEGAL ANALYSIS

A working TDR program requires a coherent regulatory structure to work properly. Local regulations are an important aspect of this structure. Another aspect is compliance with state laws related to aspects of the TDR program. This legal analysis section covers two key issues.

- ◆ Delegation of the authority to plan and zone, including the power to enact a TDR program, under South Carolina law.
- ◆ The ability to link TDRs to an upzoning simultaneous to an annexation of land by a municipality.

A. TDRs and the Power to Plan and Zone

Under South Carolina statute, which grants local governments the right to employ zoning within their own discretion, the State law's overarching goals and general language give support for the use of TDR in South Carolina. South Carolina law encourages the use of innovative land use strategies for the sake of providing responsible and coordinated development, in line with a local government's police powers. Further, South Carolina has provided additional encouragement for the use of market-based strategies and density transfers, akin to a traditional TDR program.

B. TDRs, Annexation and Development Agreements

Nothing in South Carolina's annexation laws indicates that requiring developers to purchase TDRs to upzone newly annexed property to its maximum allowable growth level under the comprehensive plan is a prohibited act. Also, South Carolina law on pre-annexation development agreements seems to allow a negotiated agreement that would require a developer to purchase TDRs with an upzoning simultaneous to an annexation.

The South Carolina Code provides the procedures for municipal annexation. Like most states, South Carolina requires that annexed land be contiguous to existing municipal boundaries. Aside from procedural provisions, this is the only legal requirement to annex property. However, state law does not allow

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additional legal requirements to be added by localities to the annexation requirements. Therefore, it should be clear that the TDRs are required as part of an upzoning that happens at the time of annexation, not as a condition of the annexation itself. With that caveat, there do not appear to be any significant legal issues with including newly annexed property in the TDR receiving area such that developers would be "required" to purchase TDRs in order to increase the development potential of their property consistent with the comprehensive plan. If the developer's applications for annexation and upzoning/rezoning are simultaneous, for the sake of administrative convenience, the procedures for and decisions on both matters still remain legally separate and distinct. As a result, nothing in South Carolina's annexation laws should have any legal significance for the separate zoning decision to include the property in the TDR program.

Inherent the process of annexation and rezoning is uncertainty for developers who petition for annexation without knowing how their property will subsequently be zoned by the City. Recognizing the economic and social harm of undue uncertainty in the development process, South Carolina has authorized local governments to enter into pre-annexation development agreements. In the Beaufort area, the municipalities provide for the negotiation of such pre-annexation development agreements as part of the Planned Unit Development (PUD) process. Developers who are granted PUD approval are allowed to negotiate with the municipalities to resolve issues like zoning of newly annexed property. There do not appear to be any legal issues under the law governing development agreements with negotiating an agreement requiring developers to purchasing TDRs after annexation. There is one caveat, however, practically, such an agreement may be difficult to obtain from developers. To the extent that the municipalities are seeking to induce a developer to annex, a developer may not look favorably upon zoning that requires the purchase of TDRs. The developer may simply demand to be zoned at the higher density without having to purchase the TDRs. It will require significant political will by the municipalities to maintain a requirement that developers purchase TDRs to achieve increased density in the receiving zones when that density is granted through an upzoning at the time of annexation.

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C. Conclusion

South Carolina law allows and encourages local governments to use zoning tools such as TDRs. In addition, existing requirements for annexation and development agreements should not be a hurdle to the implementation of a TDR program. The local governments will need additional assistance to integrate TDRs into their local ordinances.

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APPENDIX C

ADDITIONAL FUNDING SOURCES

Beaufort County is in the advantageous position of having two sources of seed money to kick-start the TDR program (the federal and state money) and the recommendation is to create a third source in the form of an in-lieu fee. Nevertheless, it will take a very long time, even on a revolving-fund basis, to acquire all the MCAS development rights given current resources. Therefore, Beaufort County should consider the possibility of additional funding sources to aid the MCAS TDR program, especially if this program is likely to form the basis of a countywide (or North Beaufort) TDR program.

Based on our research and experience, we believe that funding is likely to originate from local and outside sources. This is typical of funding requirements in land conservation. There are at least five potential funding sources for the TDR funding:

- ◆ *Open Space Bonds.* The most promising source of funds for staking a TDR bank would be local and state land conservation bond funds. This was the method used in Palm Beach County, Florida when voters approved a \$100-million bond to stake a TDR bank and purchase environmentally sensitive lands. Voters in Beaufort County passed two open space bond measures; one for \$40 million in 2000, and another for \$50 million in 2006. Most of these funds are accounted for but it might be possible to obtain some funds to stake the TDR bank. Land conservation advocates are working to place another measure on the ballot in 2010. Between \$5 to \$10 million funds for the TDR bank could be earmarked in this legislation.
- ◆ *Local philanthropists.* The Beaufort area is blessed with many local philanthropists, some of whom have an interest in land conservation. These resources should be strongly considered in “staking” the TDR bank. Philanthropic organizations may not be able to provide millions of dollars upfront, but they could provide a match on TDR purchases.

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- ◆ *Local governments.* Receiving areas are located in the City of Beaufort, the Town of Port Royal, and Beaufort County. These local government agencies could provide upfront funds. The Beaufort Redevelopment Commission, although it is funded by the State, might use the TDR bank in conjunction with higher-density (and, hence, higher-value) development in both downtown Beaufort, Port Royal and in other neighborhood centers. This could be a good opportunity for local governments to show that they are truly invested in preserving the MCAS.
- ◆ *South Carolina Conservation Bank grants.* In 2000 a grass roots effort identified lands to be protected and sustained in what was termed the Land Legacy Initiative and resulted in Legislation approving the South Carolina Conservation Bank Act. The program seeks to limit sprawl and support orderly development through annual grants. Since its inception in 2004, the first year grants were awarded; the program has spent between \$13 and \$27 million annually on conserving forests, wetlands, urban parks, farm lands and historic lands.
- ◆ *Local developers and landowners.* Developers and landowners could also provide funds to stake the bank and accrue the resulting benefit of a tax deduction.

If successful, the TDR bank could play a larger role in land conservation in Beaufort County. By purchasing development rights up-front and then selling density credits to developers in the receiving-site areas, the TDR bank might cover administrative costs if the value of the density credits in the receiving areas appreciate, and they could be used as, essentially, a revolving fund for land conservation throughout Beaufort County or for amenities in neighborhoods that accommodate the higher densities. Obviously, this possibility involves possible rewards for both the bank and land conservation efforts.

APPENDIX D

DRAFT TDR ORDINANCE FOR BEAUFORT COUNTY

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Section 1.1 - Purpose

The purpose of the Transfer of Development Rights (TDR) program is to support County efforts to reduce development potential near the Marine Corps Air Station Beaufort (MCAS—Beaufort) and to redirect development potential to locations further from the Air Station, consistent with the Northern Beaufort Joint Land Use Study Plan and the Beaufort County Comprehensive Plan. This preferred development pattern is intended to reduce hazards associated with aircraft operations near MCAS—Beaufort in a way that respects the rights of property owners and utilizes a free market system to achieve planning objectives. The TDR program is also intended to work in concert with other regional, County, and local programs that promote good land use planning and to facilitate inter-jurisdictional

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cooperation between Beaufort County, the Lowcountry Council of Governments (LOCG), the City of Beaufort, and the Town of Port Royal.

Section 1.2 – Definitions

The following words, terms and phrases, when used in this appendix, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Affordable Housing Units means dwelling units that comply with Article IX (Affordable Housing Incentives) of the Zoning and Development Standards Ordinance.

Air Installations Compatible Use Zone (AICUZ) means the area surrounding MCAS—Beaufort as identified in a zoning ordinance overlay district implemented in Appendix A1, of the Zoning and Development Standards Ordinance.

AICUZ Buffer means the quarter-mile area surrounding the AICUZ.

Baseline Density means the maximum density allowed on a Receiving Area property without participation in the TDR program.

Baseline Zoning means the zoning in effect on a receiving area property upon adoption of the TDR Program.

Cash In-lieu means the fee rate identified in the County Fee Schedule that can be paid for increased density above Baseline zoning.

TDR Bank means an intermediary authorized by Beaufort County to act on its behalf in the TDR Program.

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TDR Certificate means the official document issued by the County identifying the number of TDRs owned by the holder of the TDR certificate.

TDR Option means the option of a Receiving Area property owner to increase density above baseline zoning through participation in the TDR Program.

TDR Program means the rules and requirements of this article for the transfer of development rights from Sending Areas to Receiving Areas.

TDR Receiving Area means properties on which upzonings trigger the establishment of the TDR overlay district.

TDR Sending Area means areas within unincorporated Beaufort County that are eligible to sell TDRs.

Intermediary means any individual or group, other than a Sending Area landowner or Receiving Area developer, which buys and sells TDRs.

Section 1.3 - Voluntary Nature of Program

The participation of property owners in the TDR program is voluntary. Properties within TDR Sending and Receiving Areas may develop at densities as permitted by the applicable zoning district. Nothing in this article shall be interpreted as a requirement for Sending Area property owners to sell TDRs, for Receiving Areas property owners to purchase TDRs, or for any property owner or County resident to otherwise participate in the TDR program.

Section 1.4 – Establishment of TDR Sending and Receiving Areas

(a) Sending Areas.

1. TDR Sending Areas shall include all properties within unincorporated Beaufort County that are:
 - a. Located within the Air Installations Compatible Use Zone (AICUZ); and
 - b. Zoned Rural (R), Rural Residential (RR), Transitional Overlay Rural (TO-R), Transitional Overlay Rural Residential (TO-RR), or Suburban (S).

(b) Receiving Areas.

1. TDR Receiving Areas shall include all properties within unincorporated Beaufort County that are located:
 - a. Outside of the Air Installations Compatible Use Zone (AICUZ) and the AICUZ Buffer; and
 - b. Within the boundaries of Port Royal Island.
2. The cities of Beaufort and Port Royal may also participate in the TDR Program by designating TDR Receiving Areas and submitting a complimentary ordinance and interjurisdictional agreement

Section 1.5 – TDR Bank

- (a) **Purpose.** The County may choose to contract with an outside agency, hereto referred to as a TDR Bank, to assist or manage TDR program administration, buying, holding, and selling TDRs as well as performing other functions as directed by the County Council. The purpose of the TDR Bank is to facilitate a well-functioning TDR market by performing these tasks. The County is ultimately responsible, managing and administering the TDR program and the TDR Bank.

(b) TDR Bank Description.

1. The TDR Bank is an intermediary specifically authorized by the County Council to perform functions assigned to it by agreement by the Authority and the County Council. These functions may include the acquisition and sale of TDRs as well as TDR program promotion and facilitation.
2. The County Council is not required to form a TDR Bank. The County Council may instead elect to use County personnel to perform TDR Bank functions.
3. The establishment of a TDR Bank shall not preclude direct buyer-seller transactions of TDRs.

(c) TDR Purchase Priorities. The TDR Bank will prioritize the purchase of TDRs from small landowners over large landowners in the following way:

1. The TDR Bank will purchase TDR Certificates from Sending Area landowners based on the number of TDRs they hold, from smallest to largest. Landowners with one TDR will be bought out first, followed by landowners with two or more TDRs.
2. The TDR Bank will establish a time window during which it will accept letters of interest from Sending Area landowners. At the close of the time window, TDR Bank will create rank-order list of sellers whose TDR Certificates it will buy.
3. The TDR Bank will purchase TDR Certificates starting at the top of the list from landowners who have TDR Certificates. For example, if the landowner at the top of the list does not have a TDR Certificate, the TDR Bank will go down the list until it reaches a landowner with TDR Certificates.

(d) TDR Bank Operation. The duties and operating procedures of the TDR Bank, if established, shall be specified in an agreement between the Authority and the County Council. These procedures shall reflect the

TDR program goal of reducing development potential within Sending Areas.

Section 1.6 - Transfer of Development Rights (TDR) Overlay District

- (a) **Purpose.** The purpose of the Transfer of Development Rights (TDR) overlay district is to allow Receiving Area properties to exceed Baseline Density through compliance with TDR program requirements.
- (b) **Establishment of TDR Overlay Districts.** TDR overlay districts shall be established concurrently with the approval of any rezoning that increases residential density potential within a TDR Receiving Area. As part of the rezoning, the new zoning designation shall include a TDR overlay district suffix indicating the need to comply with TDR Program requirements in the event that the property owners choose to use the TDR Option and exceed Baseline Density.
- (c) **Rezoning Procedure.**
 - 1. Establishment of a TDR overlay district shall occur as part of the County's standard rezoning process, as described in 1.6 (b) above, and shall not require separate application or approval procedures. The approval or denial of a TDR overlay district shall be based on the plans, codes, procedures, findings or other requirements in effect at the time of the proposed rezoning.
 - 2. The TDR overlay district does not affect County procedures for placing conditions on rezoning approvals to implement County plans and policies. The TDR program does not affect the authority of the County to initiate amendments to the Zoning and Development Standards Ordinance or County procedures for responding to rezoning applications submitted by property owners.

Section 1.7 – TDR Certificates

- (a) **General.** A TDR Sending Area property owner may choose not to participate in the TDR Program or, alternatively, may choose to participate by applying for a TDR Certificate.
- (b) **TDR Certification Application Submittal, Review, and Issuance.**
1. To request a TDR Certificate, a property owner shall submit to the Planning Department an application that includes the information and materials required by the County for TDR Certificate applications, together with all required application fees.
 2. The property owner shall submit to the Planning Department proof of clear title of ownership. The application shall include written approval of the TDR Certificate application from all holders of liens on the subject property.
 3. TDR Certificate applications shall include draft easement language as required by Section 1-9 (Sending Area Easements). At the property owner's option, this easement may preclude one, some, or all of the allowable TDRs not foregone by previous TDR easements or similar deed restrictions. The Planning Department shall calculate the number of allowable TDRs for a Sending Area property using the methodology described in Section 1-8 (Calculation of TDRs in Sending Areas).
 4. Upon recordation of the easement, the Planning Director shall issue a TDR Certificate documenting the number of TDRs generated by the recorded easement, the serial numbers of all TDRs created by the easement, the Sending Area that generated these TDRs, the identity of the property owner/certificate holder, and any other documentation required by the Planning Director.

(c) Sale and Tracking of TDRs.

1. Once a Sending Area property owner receives a TDR Certificate, the property owner may sell or give one, some, or all of the TDRs documented in that TDR Certificate directly to the developer of a Receiving Site property or to any intermediary.
2. In accordance with procedures approved by the Planning Director, upon the sale or gift of any or all TDRs, the holder of a TDR Certificate shall notify the Planning Director, who will void the original TDR Certificate and issue one or more new TDR Certificates documenting the new owners of the TDRs.
3. The Planning Director shall maintain a TDR registry, publicly accessible via the internet, documenting current TDR Certificate holders and the serial numbers of the TDRs contained within all TDR Certificates. The Planning Director shall develop and implement procedures to ensure that the transfer process is accurate and transparent.

Section 1.8 – Calculation of TDRs in Sending Areas

(a) Methodology.

1. The Planning Department shall calculate the number of allowable TDRs for a TDR Sending Area property using the methodology for calculating the gross site capacity of a parcel as outlined in Article VII, Division 2, Section 106-1815, Tables 1 and 2, Calculations 3 or 5 of the Zoning and Development Standards Ordinance, whichever is lower. The calculation shall be based on the underlying zoning classification, not on the limitations imposed by the AICUZ overlay district.
2. When 50 percent or more of a parcel is located with a Sending Area, or if a parcel is located within the Suburban Sending Area

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District, the calculation of maximum allowable TDRs shall be based on the entire land area of the parcel.

3. The maximum number of allowable TDRs shall be permitted dwelling units minus any reduction in this calculation created by the recordation of previous TDR easements or similar deed restrictions.
 - (b) **Fractional Development Rights.** Any fractional development right exceeding 0.5 shall be rounded up to the nearest whole number. Only whole TDRs shall be issued.
 - (c) **Appeals.** The Planning Director's calculation of allowable TDRs may be appealed to the Zoning Board of Adjustments in a manner consistent with Article III, Division 6 of the Zoning and Development Standards Ordinance.

Section 1.9 – Sending Area Easements

- (a) **Maximum Residential Density.** Owners of TDR Sending Area properties that choose to participate in the TDR program shall record an easement that reduces the permitted residential density by one, some, or all allowable TDRs on the property.
- (b) **Calculation Adjustments.** The maximum permitted density shall be reduced by one TDR for each existing dwelling unit on the property. The Planning Director shall develop and implement procedures, if needed, to reduce the TDR allocation to reflect existing non-conforming, non-residential improvements if the owner declines to remove these improvements from the sending site.

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- (c) **County Review.** The Planning Department and County Council shall review and approve draft easement language as part its review of a TDR Certificate application as specified in Section 1-5 (TDR Certificate).
- (d) **Required Language.** At a minimum, easements shall specify the following information:
1. Serial numbers for all allowable TDRs to be certified by the Planning Department for the parcel.
 2. Written consent of all lien holders and other parties with an interest of record in the sending parcel.
 3. If the County chooses, and at the request of the property owner, a reversibility clause can be included to allow for the removal of the easement if the property owner does not sell the associated TDR certificates, chooses to not participate in the TDR program, and returns all TDR certificates to County Planning within an allotted time period. All TDR Certificates issued to a property partially within the TDR Sending Area as allowed by Section 1.7 (TDR Certificates) may only be reversed together at the same time and shall not be unbundled.
 4. A statement that the easement shall be binding on successors in ownership and shall run with the sending parcel in perpetuity.
- (e) **Easement Monitoring and Enforcement.** The County shall be responsible for monitoring of easements or may select any qualified person or organization to maintain the easements on its behalf.

Section 1.10 – Development Options within TDR Overlay District

- (a) **Baseline Development Option.** Owners of properties within a TDR overlay district may choose to not participate in the TDR Program and to develop the property at or below the Baseline Density. Properties developed under this option shall be subject to the requirements of the

underlying zoning district as well as all applicable development standards and procedures specified in the Zoning and Development Standards Ordinance.

- (b) **TDR Development Option.** In addition to the requirements imposed by the underlying zoning district, developers who choose to exceed Baseline Density within a TDR overlay district shall satisfy TDR requirements in the following ways:
1. One TDR shall be retired for every three dwelling units of residential development in excess of baseline density.
 2. One TDR shall be retired for every 5,000 additional square feet of commercial development beyond the maximum permitted by the baseline zoning.
 3. Developers have the option of paying cash in lieu of each TDR that otherwise would be required in an amount specified in the County Fee Schedule.

Section 1.11 – Exceptions to the TDR Requirement

- (a) **Affordable Housing Projects.** Affordable Housing Units shall not be counted when calculating the extent to which a proposed development project exceeds baseline density.
- (b) **Commercial Density.** The County may approve an additional 250 square feet of commercial development for each proposed residential unit without the use of TDRs. This exception is intended to promote smart-growth and mixed-use communities in a manner consistent with the goals of the TDR program.
- (c) **Industrial Development.** Industrial development shall be excluded from the TDR requirement. However, in order to be excluded from the TDR requirement, industrial development must be proposed in such a way

that it and its density can be easily calculated separately from any other uses.

Section 1.12 - TDR Compliance

- (a) **Purchase Price.** All TDR Certificate purchase prices shall be open to negotiation between the buyer and seller, except that public funds shall not be used to purchase TDRs for an amount greater than their market value. The TDR Bank shall publicly post and update the dates and sale prices of all TDR Certificate transactions.
- (b) **Timing of Compliance.** A Receiving Area property owner shall transmit TDR Certificates containing the required number of TDRs, or make a cash payment in lieu of TDRs, before final subdivision map approval of a project involvement land division or prior to the issuance of building permits for a project that does not involve land division.

Section 1.13 - Development Project Procedures

- (a) **Identification of TDRs.** Project applicants that propose to exceed baseline density in a TDR overlay district shall acknowledge in all official development applications the number of TDRs that must be retired prior to final project approval.
- (b) **Final Approval.** The Development Review Team shall grant final approval of a project utilizing TDRs for additional development only after the applicant has transmitted TDR Certificates containing the required number of TDRs to the Planning Department. The serial numbers of all TDRs to be retired for Receiving Area projects shall be recorded on the final plat or the permit.

Section 1.14 – In-Lieu Payment Option

- (a) **General.** The developer of a property in the TDR overlay district who chooses to exceed Baseline Density may satisfy TDR requirements through a cash in-lieu payment rather than or in combination with the retirement of TDRs.
- (b) **Fee Amount.**
1. The fee amount shall be established by the County Council
 2. The amount of the cash in lieu payment shall be as set forth in the County Fee Schedule.
 3. The Planning Director shall submit an annual report on the TDR program to the Rural and Critical Lands Board, the Northern Regional Plan Implementation Committee, and County Council, in this order. The annual report shall include recommendations on potential changes to the cash-in-lieu amount. This recommendation shall reflect changes in the assessed value of Sending Area properties, actual TDR sales prices experiences, and general real estate trends. The County Council may adjust the cash-in-lieu amount when it approves the County Fee Schedule.
- (c) **Use of Revenue.**
1. Revenue from cash in-lieu payments shall be applied exclusively to the TDR program unless the potential supply of TDRs has been depleted and/or Sending Area landowners decline to sell their TDRs at full market value. In this event, the County Council may choose to expand the TDR program by adopting additional TDR Sending Areas.
 2. Other than TDR acquisition, revenue from cash in-lieu payments shall only be used for costs incurred in administering the TDR program, including but not limited to facilitating TDR

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transactions, preparing/recording TDR easements, monitoring/enforcing easements, and maintaining records.

3. The County Council may authorize County staff to use cash-in-lieu proceeds in accordance with procedures adopted by the Council. Alternatively, if the County Council chooses to enter into an agreement creating a TDR Bank, the Council may transmit cash in-lieu proceeds to the TDR Bank for the purposes specified by agreement between the Council and the TDR Bank. This agreement may direct the TDR Bank to combine the cash in-lieu proceeds to create a general TDR acquisition fund. All TDRs purchased with such a general TDR acquisition fund shall be offered for sale to Receiving Area developers.
4. The TDR program may operate with federal or other land preservation programs.



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BEAUFORT AREA TDR IMPLEMENTATION STUDY
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