

## **Appendix I**

### **Transfer and Purchase of Development Rights Concept/Economic Model**

# The Economics of the Hamilton PDA and TDR Program, and a Draft TDR Ordinance

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## Summary

Two tools have been selected to move the Town of Hamilton out of the floodway, to a new town site North of SR 20. These are the *Hamilton Public Development Authority (PDA)* and a *Transfer of Development Rights (TDR)* program. The PDA provides an administrative framework for developing the property, and can provide a source of revenue for the purchase of flood prone properties. The TDR program can provide a conceptual model for integrating the PDA program with planning legislation, including the Growth Management Act. However, the TDR program is not intended to provide revenue for the relocation program.

## I. The Hamilton Public Development Authority

The Hamilton PDA is formed pursuant to RCW 35.21.730 et. seq. The PDA is a vehicle for the development, sale and management of real property forming the new town site. The Town of Hamilton is occupied with basic civic functions, and is not historically equipped to manage a real estate development. Instead, the PDA provides management and continuity in the design, acquisition, development and ownership of property that the Town government cannot easily accomplish.

**Many Interest Groups.** In addition, the size of the project – which may move up to 400 homes from the floodway to the new town site – affects many diverse interests. The relocation program benefits the larger Skagit River floodway – including lands outside the corporate limits of Hamilton. It is appropriate that the Town expand membership on the PDA's governing board to include interest groups from the larger benefited area. An objection from any group might handicap the program, and the support of all interests will promote the success of the program. The PDA governing board allows for shared authority with all stake holders, including the Town of Hamilton, Skagit County, housing groups, conservation interests and Native American interests, all of which will benefit by removing the Town and other Skagit County residents from the floodway and restoring floodway property to wetlands and salmon habitat.

**Effective Management.** Apart from being a vehicle for political compromises, the PDA can more effectively own and develop the property. Municipal governments are not well suited to develop real estate. They do not routinely create residential lots, and their governing bodies are not adept at thinking like real estate developers. Cities and towns see their functions through the lens of their traditional municipal obligations, and have loyalties to their present constituency. But the PDA can develop, plan, and sell real estate for a new town site under the influence of a broader range of policy objectives, including low-income housing, wetlands restoration, and other purposes not central to public utilities, street maintenance, or re-election. The PDA can focus on public purposes that require specialized management skills and detached decision making.

**Financial Management.** The PDA also serves to separate town funds acquired through normal tax revenue from grant funds and special monies dedicated to the construction of a new town site and the removal of development from the Skagit River floodway. In theory, a municipality could perform all the functions of the PDA through its own powers coupled with interlocal agreements with other agencies. But as a practical matter, segregating funds in a single entity takes a level of political discipline that is rare and not required of a popular elected body. Establishing a separate body, the Hamilton PDA, and sharing management with other interest groups, builds the confidence of funding agencies that the PDA will accomplish its objectives.

By relying on the appointed PDA board to develop the town site, the Town government can focus on its traditional functions, including land use planning and regulations affecting the new town site, and the PDA board is free of the immediate political influences of Town politics (and free to respond to more diverse political influences). The broad mix of political interests on the PDA board will reach their own compromises, and the Town retains adequate control by controlling the land use approval process, and by appointing the PDA board, to see that its needs are satisfied.

## II. Economic Model

The PDA, at its core, is an entity to acquire, develop, hold and convey real property. Some of the property will be used for residential purposes, and some will be restored to a natural condition. In this appreciating real estate market, the development of real property for residential purposes produces value in excess of cost, which the PDA can use to help achieve its policy goals (low-income housing and floodway restoration) that might not otherwise produce income. The PDA will realize revenue from the development of a residential town site, which can, in turn be used to leverage the purchase of additional floodway property, development of low-income housing, and restoration of habitat.

**Public Management.** Private real estate development has failed to relocate Hamilton in three attempts, because its primary goal was to maximize the return for the developer. This was accomplished by bringing in new residents as purchasers without relocating the existing town inhabitants. Many people in Hamilton, and in much of the flood plain of the Skagit River, are not able to pay the highest price for new housing. Many of the inhabitants, though not all, are poor or have other impediments to home ownership. Bringing in new people for the new town site without providing for the relocation of the existing inhabitants will leave the primary problem unsolved. An essential element of the new town site is the thoughtful relocation of a population that may not be able to afford home ownership. The PDA can balance public and private needs more effectively than the private market.

**Balancing Competing Interests.** In balancing the need to realize revenue from the sale of the new town site lots with the need to relocate a population that cannot universally afford housing and restore floodway property, the PDA will have to compromise all goals. No one goal can be controlling, but all are important. The PDA will have to make a decision about the allocation of resources among these competing priorities. However, the PDA has the option of “optimizing” – achieving the best balance of all three goals. It can make creative proposals for the purchase of property, as well as for the sale of property, which shift monies among the different aspects of its programs. Because the PDA can take a long view – up to twenty years – it has a great deal of flexibility in this regard.

Some people seem to believe that they are going to be given new, free homes for heavily mortgaged floodway property by the PDA. This is unrealistic, probably constitutes a gift of public funds in violation of the State constitution, and would bankrupt the PDA. Any solution to the housing problem will require people to assume some responsibility for the decision they have made to purchase property in the floodway. For the most part, this can be accomplished by paying a realistic, fair market value for flood-prone property. However, providing low-income and affordable housing is an essential part of the PDA mission. The PDA should budget a specific amount for low-income and affordable housing assistance, based on specific programs and policies.

**Paying FMV.** The PDA should only pay fair market value (FMV), or exchange property interests of equal value, to acquire real property in the floodway. This means that a fair discount will be required for property that is flood-prone. Apart from the issue of making an unlawful gift of public funds, consistently paying only a realistic value will avoid putting the PDA in an untenable negotiation position. If potential sellers believe that they can hold the PDA hostage, forcing it to pay more than FMV, the PDA will not be able to negotiate any realistic purchase prices. But paying only FMV does not preclude dedicating funds for affordable housing programs to assist the same owners.

**Use Other Sources of Funding.** The PDA should leverage its purchasing power by using other sources of funding (other than its own funds) to acquire floodway property and pay for PDA residential lots, whenever possible. For example, a buyer can purchase a new lot with NFIP insurance proceeds or FEMA mitigation funds paid for floodway property, if the sellers want to move to the new town site. The PDA may participate in the original purchase by offering funding to help in some aspect of the relocation.

**Low-Income Housing Programs.** The PDA should participate and support low-income or affordable housing programs in a manner that will take advantage of outside funding for the purchase of lots. One example would be to sell lots to a self-help housing program or land trust at 80-90% of FMV upon acquisition of a target property in the floodway with the proceeds from the sale, on the condition that residents participating in the TDR program were given first priority in the program. This would promote multiple program goals of relocation, restoration of floodway property, and affordable housing.

As part of a low-income or affordable housing program, the PDA should offer more than one housing type, and flexible ownership options, to allow a wide variety of people to be comfortably housed. A land trust, self-help housing program, low-income subsidized rental program, and other programs should be considered.

**Supplement Other Purchases.** The PDA may use its funds to supplement other purchases of floodway property, without providing the full purchase price. Where a seller and program purchaser (e.g., FEMA/NFIP) are have not agreed on a sale price, perhaps due to an over-mortgaged parcel, the PDA can offer assistance for the seller to move, or to get into affordable housing, if they sell. The PDA may have to pay funds over FMV outside of the purchase, perhaps by providing interim housing, paying moving expenses, or assist in an alternative housing program. However, in this way the PDA can facilitate the removal of a building from the floodway for a relatively small payment.

**Sale of Less than a Fee Simple Residence / Variety of Options.** The (relocation) program of the PDA is not intended to create private wealth, but is to help people with limited incomes find a home outside the floodway which they can afford. This means that the PDA must have a variety of types of housing, with different costs and values, to accommodate different purchase price points (or trades for like value of floodway property). While some people will be able to realize enough money from the sale of their homes to purchase a lot and house at FMV, other owners are too heavily mortgaged, or

lack value or equity for other reasons, and will not be able to pay for a new residence without help.

Examples of different forms of ownership and occupation include:

- Outright sale of fee simple lot, with or without a structure, for fair market value. This will permit the buyer to go to a bank, obtain a loan based on their equity, and finance the purchase and/or construction based on their own credit.
- Use of financing assistance through federal FmHA or VA mortgage programs to purchase lots.
- Rent or lease at fair rental value, rather than outright ownership.
- Subsidized rent for a fixed term or indefinitely, based on “buy-down” payment (perhaps proceeds from the sale of floodway property) or qualification for a low-income housing program.
- Purchase of property from a land trust, in which the trust retains ownership or the option of purchasing the property for an agreed price (or other restriction) upon resale. This will reserve appreciation to the PDA in return for a lower purchase price.
- Assistance to relocate to housing in another community – it is not necessary that everyone relocate to the new community, but funds may be necessary to permit a resident to rent or buy another property. In some cases, it may serve the PDA’s purposes to simply help residents move into or buy housing in another community, be it market rate or subsidized.

Of the options available, the use of a land trust to hold title to property, permitting the trust or PDA to repurchase the property for what was paid, or for some other arrangement made in return for a lower purchase price, might best accomplish both goals of providing for affordable housing and reserving assets to the PDA to later fund the buy-out program.

**Examples.** These examples illustrate creative use of funding and packaging property rights which might be accomplished by the PDA.

Example 1. The target property is an older, owner-occupied house in the Hamilton floodway. The Town is aggressively using FEMA buy-out programs. The FEMA offer is \$80,000, and the mortgage is \$90,000, based on a current FMV appraisal of \$110,000. The difference between the FEMA contribution and FMV is \$30,000. The PDA contributes \$30,000 by selling the family a \$50,000 lot for \$20,000, allowing them to pay off the mortgage and finance a new home with \$20,000 equity, funded by the family through a construction mortgage. The PDA can transfer the floodway lot to an appropriate entity for restoration to natural habitat. The new home may be constructed by the family through a self-help housing program managed by Whatcom Skagit Self-Help Housing and partly funded by Dept. of Agriculture and FEMA grants and Wells Fargo Bank’s community investment program, via a separate non-profit corporation set up by the PDA.

**Example 2.** The target property is a bare lot with a renter occupied 1970 single-wide mobile home of no value. The lot has an assessed value of \$5,000, but the rent income of \$250 per month results in an income-based FMV appraisal of \$25,000. The PDA can pay \$25,000 from the proceeds of other lot sales, transfer the floodway property to an appropriate entity for restoration to natural habitat, and relocate the family to a small cottage development in the new town site as a rental tenant at a subsidized rent of \$250 per month, with an option to purchase the cottage if they can qualify through a federal low-income home ownership program. The 12-unit cottage development was designed for low-income occupants, and was financed with a combination of monies from the Washington State Housing Finance Commission, a Dept. of Agriculture grant, and the sale of three PDA lots at market value.

**Example 3.** The target property is a substantially damaged owner occupied home outside the Town with a FMV of \$120,000. The home was purchased by its present owner for \$80,000, with \$50,000 still owing over 12 years on a private sales contract. The PDA arranges for a sale of a PDA lot on the market, and uses the funds to purchase the contract from the original seller for \$30,000, at a \$20,000 discount, and NFIP pays the owner \$60,000. The land is conveyed by the owner to an appropriate entity for restoration to habitat, and the family relocates to Mount Vernon.

**Example 4.** The target property is an owner occupied mobile home in Hamilton. The property is a lot worth \$15,000 with a single-wide mobile home worth \$7,000, with no mortgage. However, the living conditions are below average, and the elderly couple has a limited income; they cannot afford to relocate to a different community. The PDA will trade a life estate in a small cottage for the mobile home and lot, providing a permanent housing solution for the elderly couple out of the floodway. On their deaths, the cottage will revert to the PDA or a separate non-profit housing corporation.

**Example 5.** The target property is a rental residence in Hamilton. The property was substantially damaged in a recent flood. The Town aggressively enforces the no-rebuild rule, and the owner/landlord is offered FMV of \$20,000 for the lot, with no value attributed to the building. (The landlord received an insurance settlement of unknown value.) The owner declines the offer, and attempts to rebuild without a permit. The Town takes enforcement action, and the matter ends up in court. The State Attorney General's Office and a large Seattle law firm assist the Town in defending the substantial damage rule in cutting edge litigation. The owner is assisted by the Pacific Legal Foundation. Trial is pending. The family qualifies for the self-help housing program and relocates to the new town site.

**Design Consistent with the Financing Model.** The design of the community will have to accommodate the ownership model. Quality small cottages of 800 SF may be a preferred option for low cost rentals, while larger lots may be a preferred alternative for outright sale. A design of only large homes may not accommodate a guaranteed rent ceiling. Design is everything.

**Dignity of Occupants / Mix of Housing Types.** One of the problems of any financial plan and community design is to respect the dignity of the new occupants while maintaining a realistic understanding of their financial situation. This means that the PDA will have to match the residents with a dignified housing solution that neither gifts public funds nor demands more than the relocated families can afford. We know many (but not all) residents of Hamilton and the Eastern County have limited incomes and own homes without significant equity, or live on RVs or mobile homes on rented land. But we do not have precise information about their ability to rent or purchase a home, or the prospects for improving their economic situation. In addition, a community of all low-income housing lacks the mix necessary to support a healthy community.

**Example.** It is easy to imagine a first phase of development consisting of:

- a self-help housing program of 20 single family residences;
- a contractor build bank of 5 single family houses using the self-help project blueprints,
- a multi-family 4-plex building which is renter-occupied;
- a court of 12 small 600 square foot cottages, some of which are owner-occupied, and
- five view lots sold to finance acquisition of floodway property.

All of the building would a unified design characterized by compact structures, efficient use of space, community green space, “green” materials, and community utilities and infrastructure designed and constructed for the entire phase. The PDA would have received FMV for  $\frac{3}{4}$  of the lots, and donated  $\frac{1}{4}$  of the value for various purposes. The PDA would reinvest its sales proceeds into the next phase of the acquisitions of floodway property.

More precise information is needed about the financial needs of the inhabitants and the dynamics of the community to determine the relative proportion of *market rate* housing, *subsidized entry* housing (reverting to market rate), and *permanent low-income/subsidized* housing. This information is essential to complete the design of the new community.

### III. Transfer of Development Rights Program

The PDA has proposed an unwritten bargain with funding agencies. The PDA model assumes that the purchase of the property and construction of the infrastructure will be funded by grants, or by non-PDA payments (such as future sewer utility rates). In turn the PDA will realize most of the sales proceeds from developed lots, and will use this money to purchase floodway property in Hamilton and the Eastern County. The more the PDA uses other funding sources to acquire property (e.g., NFIP insurance proceeds) and to provide low-income housing (e.g., USDA programs), the more money will be available from the sale of new lots to purchase other floodway property.

In return for grant funding for infrastructure, the funding agencies will benefit by a guarantee that the sale of some of the lots will support (a) low-income housing on other lots and (b) the purchase of floodway property and development rights. By constructing with grant funds, purchasing floodway property at FMV, and selling property at FMV outside of a housing program, the PDA will generate funds like any other development, to be further recycled into the program. In the current economy, the sales proceeds should exceed the cost of purchasing and developing the property. The reinvestment of the sales proceeds to purchase additional floodway property is at least partially guaranteed through the TDR program.

One goal of the PDA is to remove permanently the possibility that floodway property may be used for residential construction through a Transfer of Development Rights (TDR) program. The TDR program is a creation of the Hamilton and Skagit County land use regulations, with the PDA as the probable sole participant.

**Purpose and Description.** The purpose of a TDR program is described generally in King County's TDR Ordinance 14190 as follows:

*The purpose of the transfer of development rights (TDR) program is to provide a voluntary, incentive-based process for permanently preserving... lands that provide a public benefit. The TDR provisions are intended to supplement land use regulations, resource protection efforts and open space acquisition programs and to encourage increased residential development density... where it can best be accommodated with the least impacts on the natural environment and public services by:*

- 1. Providing an effective and predictable incentive process for... property owners to preserve lands with a public benefit ...; and*
- 2. Providing an efficient and streamlined administrative review system to ensure that transfers of development rights to receiving sites are evaluated in a timely way and balanced with other county goals and policies, and are adjusted to the specific conditions of each receiving site.*

**Traditional TDR Programs.** The mechanics of TDR programs are roughly similar to each other – property owners in one area (sending zone) give up the right to develop their property for certain uses in return for a payment made by owners in another area (receiving zone) who thereby acquire expanded rights to use their property for certain purposes. In the case of Hamilton, the PDA or other agency might acquire a development right from the floodway (through the purchase of property or by placing restrictions on its use – which would prohibit any buildings, at a minimum). This right would be transferred to the new Hamilton town site, where the PDA would acquire the right to build a residence that presently does not exist.

The classic TDR model has strengths and weaknesses, as it applies to the Hamilton relocation plan. On the plus side, it serves as a basis for matching the development of the new town site with the reduction in residential building rights in the floodway. This provides a regulatory mechanism for effecting the reallocation of population from the County to the Town, and from one part of the Town to another, in compliance with the Growth Management Act and the grant funding agencies' intentions. This population reallocation, coupled with the TDR program as a regulatory mechanism, will support the Town's argument that an expansion of the Urban Growth Area is GMA compliant. It provides a concise one-to-one correspondence of each new residential unit to each removed residential unit (or potential unit).

On the negative side, the traditional TDR program relies on the free market to value the development rights being transferred. This is not workable if there is no "market", or if development rights in the floodway have no true value. The traditional TDR program uses a profit motive to create an artificial commodity that is traded on a free market. It works well when both the buyer and seller realize profit in the transfer. It may not work well when there is only one buyer, only one receiving zone, or when the development right is a fiction.

Strict adherence to a traditional TDR program may be unnecessarily restrictive. A concurrent "1 to 1" residential transfer requirement might make it difficult to use PDA funds for purposes other than buying residential property, such as affordable housing and habitat restoration programs. Also, some of the proceeds of lot sales will probably need to be used to construct infrastructure for later phases of the new town site.

The PDA needs to have sufficient flexibility to be able to be able to relocate people as the opportunity arises, and generate funds to acquire development rights in the future, whether or not these processes occur on a concurrent basis. Flexibility within a TDR program might be achieved in a number of ways. For example, it is not necessary the credits be acquired on a 1 to 1 basis; the PDA might acquire credits on a 2 for 1 basis. Also, credits might be recognized for classification of a "substantially damaged" (50 %+ ) residence if rebuilding in the floodway is prohibited by law, prior to the purchase of the house. The restriction on rebuilding will effectively eliminate the residence in the floodway whether the house is purchased, and may permit the PDA to obtain a lower price for the property.

It may be appropriate for the TDR program to govern the transfer of population from unincorporated Skagit County, but not from one location inside the town limits to another location inside the Town limits.

The Town has a range of alternatives in forming a TDR program. These include:

- a. A requirement that new residences in the relocated town replace a flexible ratio of residences in the Skagit River floodplain or floodway – it might be higher than 1 to 1.
- b. Give the PDA an initial bank of credits for new houses. The credits might equate to residences already removed from the Hamilton or Skagit River floodway through NFIP and similar buy-out programs, or be tied to a designation of “substantial damage” to floodway properties, whether or not the PDA purchased the properties.
- c. Do not require a TDR credit for new homes until the original OFM population forecast for Hamilton has been reached.
- d. Use the TDR program to relocate population from unincorporated Skagit County to the new town site, but do not use it to relocate residences within the Hamilton Town limits.
- e. Allow the purchase of development rights for non-residential floodway property to qualify for the TDR program.
- f. Allow the PDA to buy credits by paying a pre-determined amount (e.g. \$25,000) from the sale of each new residence into a fund that can only be used to acquire floodway or floodplain property in the future.
- g. Achieve some of the goals of the TDR program by contract and inter-governmental agreement between the Town, County, and PDA, that restricts use of the proceeds of some sales of new residences to the purchase of floodway property outside of a credit bank.

In addition, the program will require some legislation or agreement on the part of the County, which will manage the unincorporated sending zone. (One question for the County to consider is whether it might want to expand the program at a later date to allow other “receiving zones” – that is, allow TDR credits for new homes outside of the Hamilton relocation site, in return for removal of residences from the floodway.)

**Proposal.** The TDR program is an important component of GMA compliance, and dovetails with a reallocation of population from the unincorporated Skagit County to the Town. It is not a funding mechanism, but a method of assuring interested stakeholders that the development of the new town site will result in removal of residences from the PDA. The TDR program will need to be flexible enough to allow the PDA to build new homes prior to purchasing development rights, and will need to allow the PDA to receive credits for the purchase non-residential property as well as residential property. The TDR program for the PDA should not be copied without modification from TDR programs for private, for profit developers.

While it is important to keep the PDA on track to remove residences from the floodway for GMA compliance, the primary means of compliance is participation of a variety of

interest groups in the PDA, who will assure that the PDA does not create a new town without eliminating development rights from the floodway.

**Draft Ordinance.** The attached Draft ordinance establishes a TDR program in for the Town of Hamilton that requires a 1 to 1 transfer of development rights from unincorporated Skagit County to the Town of Hamilton, for location in the receiving zone. This ordinance does not apply to the relocation of residential structures inside the Town of Hamilton to the receiving parcel. The reason for this distinction is that a restriction is not necessary if the Hamilton PDA owns the property in the receiving zone.

The only property contemplated as being within the receiving zone is the property to be developed by the PDA for the new town site. The PDA can administer the development to provide for optimum transfer of development from the old to the new town site. Maximum flexibility is provided by leaving this issue to the management of the PDA.

On the other hand, the use of a strict TDR program to provide for a 1 to 1 transfer of development rights from unincorporated Skagit County to the Town of Hamilton has other purposes, including assurance of GMA compliance and satisfaction of the stakeholders who require an actual relocation of development.

This ordinance proposal should not preclude the development of a “banking” system, in which the PDA might fund the future acquisition of development rights by paying into a dedicated account for the acquisition of DRs in unincorporated Skagit County, and thereby acquire the right to build residential units in the new town site prior to the purchase of other rights. Nor should it preclude the use of a dedicated fund to acquire environmentally sensitive or flood prone areas in return for the right to construct residential units, if this process is acceptable to the stake holders on the PDA board and Skagit County. However, these discussions have not yet taken place. Therefore, this ordinance incorporates the most conservative approach to a TDR program.

Finally, this ordinance contemplates that it will be supported by an interlocal agreement between Skagit County and the Town of Hamilton, which will integrate Town an County flood mitigation policies with the development of the receiving zone.

#### **IV. Conclusion**

The PDA is the entity designated to develop the new town site, and is governed by several stakeholders. Though no one interest group has complete control, each has a significant voice in the decision-making. Each entity – the Hamilton PDA, the Town of Hamilton, and Skagit County – has a role in making the system works. The design of the new development, the methods by which relocating residents will be financed, and structure of the TDR program need to be integrated into a whole cloth.

**AN ORDINANCE OF THE TOWN OF HAMILTON PROVIDING FOR THE TRANSFER OF DEVELOPMENT RIGHTS FROM THE SKAGIT RIVER FLOODWAY AND FLOOD PLAIN IN UNINCORPORATED SKAGIT COUNTY TO THE TOWN OF HAMILTON.**

Whereas, the Town Council of the Town of Hamilton has formed the Hamilton Public Development Authority to relocate residential development from the Skagit River floodway and flood plain in the Town of Hamilton and unincorporated Skagit County to land within the Town of Hamilton outside of the floodway or floodplain, and

Whereas, the Town Counsel finds that residential structures in the Skagit River floodway and flood plain pose a threat to structures in the Town of Hamilton in the same manner as residential structures inside the corporate limits of the Town, as flood waters do not recognize municipal boundaries, and

Whereas, the Town Council finds that the relocation of residential units from unincorporated Skagit County to the Town of Hamilton under a Transfer of Development Rights ordinance will comply with the Growth Management Act, in that increases in the Town's population will be offset by a corresponding decrease in the population allocation for unincorporated Skagit County, and

Whereas, the Town Council finds that an increase in the population of the Town of Hamilton will provide appropriate economic function for a new Town site in which to relocate the Town of Hamilton outside the Skagit River floodway and flood plain, now therefore,

THE TOWN COUNCIL OF THE TOWN OF HAMILTON DO HEREBY ORDAIN AS FOLLOWS:

**Section 1. Purposes**

The purposes of this ordinance are to:

- (a) remove residences and other development from the Skagit River floodway and floodplain;
- (b) restore property in the Skagit River floodway and floodplain to a natural state for wetlands, fish and wildlife habitat, and open space.
- (c) relocate development rights and development from the Skagit River floodway and floodplain to new Town of Hamilton town site North of SR 20.
- (d) retain open areas in which healthful outdoor recreation can occur;

- (e) implement the comprehensive plan of the Town of Hamilton;
- (f) ensure that the owners of preserved, conserved, or protected land may make reasonable use of their property rights by transferring their right to develop to eligible zones;
- (g) provide a mechanism whereby development rights may be reliably transferred; and
- (h) ensure that development rights are transferred to properties in areas or districts that have adequate community facilities, including transportation, to accommodate additional development.

## **Section 2. Authority**

This ordinance is enacted pursuant to the authority granted by RCW 36.70A.060 and RCW 36.70A.090

## **Section 3. Definitions**

As used in this ordinance, the following words and terms shall have the meanings specified herein:

“Development Rights” mean the rights of the owner of a parcel of land, under land development regulations, to configure that parcel and the structures thereon for residential and other uses.

“Overlay District” means a district superimposed over one or more zoning districts or parts of districts that imposes additional requirements to those applicable for the underlying zone.

“Receiving District” means one or more districts in which the development rights of parcels in the sending district may be used.

“Receiving Parcel” means a parcel of land in the receiving district that is the subject of a transfer of development rights, where the owner of the parcel is receiving development rights, directly or by intermediate transfers, from a sending parcel;

“Sending District” means one or more districts in which the development rights of parcels in the district may be designated for use in one or more receiving districts;

“Sending Parcel” means a parcel of land in the sending district that is the subject of a transfer of development rights, where the owner of the parcel is conveying development rights of the parcel, and on which those rights so conveyed are extinguished and may not be used by reason of the transfer of development rights; and

“Transfer of Development Rights” means the procedure prescribed by this ordinance whereby the owner of a parcel in the sending district may convey development rights to the owner of a parcel in the receiving district or other person or entity, whereby the development rights so

conveyed are extinguished on the sending parcel and may be exercised on the receiving parcel in addition to the development rights already existing regarding that parcel or may be held by the receiving person or entity.

“Transferee” means the person or legal entity, including a person or legal entity that owns property in a receiving district, which purchases or otherwise acquires the development rights.

“Transferor” means the landowner of a parcel in a sending district.

#### **Section 4. Establishment of Sending and Receiving Districts.**

(1) The Hamilton Town Council may establish sending and receiving districts as overlays to the zoning district map by ordinance in the manner of zoning district amendments. The Town Planner shall cause the official zoning district map to be amended by overlay districts to the affected properties. The designation “TDR-S” shall be the title of the overlay for a sending district, and the designation “TDR-R” shall be the title of the overlay for a receiving district.

(2) The sending district located outside the Town of Hamilton corporate limits, in unincorporated Skagit County, shall consist of property located in the Skagit River floodway and flood plain selected in cooperation with the Skagit County Board of Commissioners pursuant to an interlocal agreement signed by both the Town of Hamilton and Skagit County.

(3) Sending and receiving districts established pursuant to this section shall be consistent with the appropriate comprehensive plans.

(4) No development right may be transferred to the receiving parcel unless it shall extinguish the right to build an equivalent residential structure on the property which constitutes the sending parcel.

#### **Section 5. Right to Transfer Development Rights**

(1) Each transferor shall have the right to sever all or a portion of the rights to develop from the parcel in a sending district and to sell, trade, or barter all or a portion of those rights to a transferee consistent with the purposes of Section 1 above. The transferee is not obligated to purchase or acquire the rights of the transferor except on mutually agreeable terms and conditions.

(2) The transferee may retire the rights or apply them to property in a receiving district in order to obtain approval for development of a residential unit corresponding with the rights transferred.

(3) Any transfer of development rights pursuant to this ordinance shall not alter or waive the development standards of the receiving district, including standards for floodplains, wetlands, and other environmentally sensitive areas. Nor shall it allow a use otherwise prohibited in a receiving district.

## **Section 6. Determination of Development Rights; Issuance of Certificate**

(1) The Town Planner shall be responsible for:

(a) determining, upon application by a transferor, the development rights that may be transferred from a property in a sending district to a property in a receiving district and issuing a transfer of development rights certificate upon application by the transferor.

(b) maintaining permanent records of all certificates issued, deed restrictions and covenants recorded, and development rights retired or otherwise extinguished, and transferred to specific properties; and

(c) making available forms on which to apply for a transfer of development rights certificate.

(2) An application for a transfer of development rights certificate shall contain:

(a) a certificate of title for the sending parcel prepared by a title company.

(b) five copies of a map of the proposed sending parcel and a legal description of the sending parcel prepared by registered land surveyor, licensed attorney, or title company;

(c) a statement of the type and number of development rights being transferred from the sending parcel based on the development rights permitted under applicable land use development regulations, and calculations showing their determination.

(d) applicable fees; and

(e) such additional information required by the [zoning administrator] as necessary to determine the number of development rights that qualify for transfer

(3) A transfer of development rights certificate shall identify:

(a) the transferor;

(b) the transferee, if known;

(c) a legal description of the sending parcel on which the calculation of development rights is based;

(d) a statement of the number of development rights in either dwelling units per net acre or square feet of nonresidential floor area eligible for transfer;

(e) if only a portion of the total development rights are being transferred from the sending property, a statement of the number of remaining development rights in either dwelling

units per net acre or square feet of nonresidential floor space remaining on the sending property;

(f) the date of issuance;

(g) the signature of the Town Planner and

(h) a serial number assigned by the Town Planner

(4) No transfer of development rights under this ordinance shall be recognized by the Town of Hamilton as valid unless the instrument of original transfer contains the Town Planner's certification.

### **Section 7. Instruments of Transfer**

(1) An instrument of transfer shall conform to the requirements of this Section. An instrument of transfer, other than an instrument of original transfer, need not contain a legal description or plat of the sending parcel.

(2) Any instrument of transfer shall contain:

(a) the names of the transferor and the transferee;

(b) a certificate of title for the sending parcel prepared by a title company;

(c) a covenant the transferor grants and assigns to the transferee and the transferee's heirs, assigns, and successors, and assigns a specific number of development rights from the sending parcel to the receiving parcel;

(d) a covenant by which the transferor acknowledges that he has no further use or right of use with respect to the development rights being transferred; and

(e) any other relevant information or covenants required by the Town Planner.

(3) An instrument of original transfer is required when a development right is initially separated from a sending parcel. It shall contain the information set forth in paragraph (2) above and the following information:

(a) a legal description and plat of the sending parcel prepared by a licensed surveyor, attorney, or title company;

(b) the transfer of development rights certificate described in Section 6(4) above.

(c) a covenant indicating the development rights remaining on the sending parcel and stating the sending parcel may not be developed to other than as permitted by the remaining development rights;

(d) a covenant that all provisions of the instrument of original transfer shall run with and bind the sending parcel and may be enforced by an appropriate government agency or nonprofit conservation organizations.

(4) If the instrument is not an instrument of original transfer, it shall include information set forth in paragraph (2) above and the following information :

(a) a statement that the transfer is an intermediate transfer of rights derived from a sending parcel described in an instrument of original transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the records of the Skagit County Auditor.

(b) copies and a listing of all previous intermediate instruments of transfer identified by its date, names of the original transferor and transferee, and the book and the page where it is recorded in the records of the Skagit County Auditor.

(5) The Town Planner shall review and approve as to the form and legal sufficiency of the following instruments in order to affect a transfer of development rights to a receiving parcel:

(a) An instrument of original transfer

(b) An instrument of transfer to the owner of the receiving parcel

(c) Instrument(s) of transfer between any intervening transferees

Upon such approval, the Town Planner shall notify the transferor or his or her agent, who shall record the instruments with the Skagit County Auditor and shall provide a copy to the Skagit County Assessor. Such instruments shall be recorded prior to release of development permits, including building permits, for the receiving parcel.

### **Section 8. Application of Development Rights to a Receiving Parcel**

(1) A person who wants to use development rights on a property in a receiving district up to the shall submit an application for the use of such rights on a receiving parcel. The application shall be part of an application for a development permit. In addition to any other information required for the development permit, the application shall be accompanied by:

(a) an affidavit of intent to transfer development rights to the property; and

(b) either of the following:

1. a certified copy of a recorded instrument of the original transfer of the development rights proposed to be used and any intermediate instruments of transfer through which the applicant became a transferee of those rights; or

2. a signed written agreement between the applicant and a proposed original transferor, which contains information required by Section 6(2) above and in which the proposed transferor agrees to execute an instrument of such rights on the proposed receiving parcel when the use of those rights, as determined by the issuance of a development permit, is finally approved.

(2) The Town of Hamilton may grant preliminary approval of a proposed development incorporating additional development rights upon proof of ownership of development rights and covenants on the sending parcel being presented to the Town of Hamilton as a condition precedent to final subdivision approval.

(3) No development approval shall be approved and no development permits shall be issued for development involving the use of development rights unless the applicant has demonstrated that:

(a) the applicant will be the bona fide owner of all transferred development rights that will be used for the construction of additional dwellings, the creation of additional lots, or the creation of additional nonresidential floor area;

(b) a deed of transfer for each transferred development right has been recorded in the chain of title of the sending parcel and such instrument restricts the use of the parcel in accordance with this ordinance; and

(c) the development rights proposed for the subdivision or development have not been previously used. The applicant shall submit proof in the form of a current title search prepared by a title company.