

Chapter 1. Executive Summary

At the direction of the Board of County Commissioners, the Skagit County Planning and Development Services Department has worked with a Board-appointed Transfer of Development Rights (TDR) Advisory Committee to consider the possible implementation of a TDR program in Skagit County.

This report provides a comprehensive overview of TDR programs and methods and their potential application in Skagit County. It seeks to reflect the diverse views and opinions of TDR Advisory Committee members and others who have participated in discussions throughout this project. It also reflects research and analysis conducted by Planning & Development Services staff with the help of two project consultants, Forterra and Heartland.

Overview of TDR

TDR is a market-based tool that can help a jurisdiction implement its growth and conservation goals. TDR uses the “economic engine” of new growth to conserve from development lands that provide economic and environmental benefits to the community, such as working farms and forestlands, environmentally sensitive areas, and open space lands.

In a TDR program, a jurisdiction identifies areas it wants to conserve, known as “sending areas,” and areas where additional development is appropriate, known as “receiving areas.” Receiving areas may include cities, urban growth areas, or selected rural areas that have the infrastructure and services to meet the needs of increased growth.

TDR can provide additional options to natural resource landowners interested in permanently conserving their land, while offering incentives to developers to concentrate development in areas best suited for growth.

Developers can gain access to additional development potential in receiving areas by purchasing development rights from sending-area landowners, whose participation is entirely voluntary. The sending-area property is protected through a conservation easement that permanently prohibits residential development but does not affect other uses of the land, such as farming and forestry.

Why is Skagit County considering TDR?

The Skagit County Comprehensive Plan, the Countywide Planning Policies, and the Washington State Growth Management Act all encourage jurisdictions to consider the use of TDR. TDR is not a substitute for planning and zoning. In fact, many analysts report it works best in jurisdictions like Skagit County that have a strong planning framework in place. TDR can provide additional options to resource landowners interested in permanently conserving their land, while offering incentives to developers to concentrate development in areas best suited for growth.

There has been a long-standing interest in exploring the use of TDR in Skagit County. A citizen advisory committee that assisted the County with its 2005 Comprehensive Plan Update

recommended increased use of incentive-based tools such as TDR to conserve natural resource lands. The Envision Skagit Citizen Committee also recommended implementation of TDR in its 2011 *Final Report and Recommendations*. The Board of Directors of Skagitonians to Preserve Farmland has recommended implementation of a TDR program in Skagit County by 2020.

In 2011, Skagit County submitted a grant proposal to the Washington State Department of Commerce to assist with a comprehensive review of TDR, including a detailed market analysis. That successful grant proposal was cosponsored by Skagitonians to Preserve Farmland, the Skagit/Island Counties Builders Association (SICBA), the City of Burlington, and the Skagit Land Trust, all of whom have participated on the TDR Advisory Committee along with other community members.

Will TDR work in Skagit County?

TDR experts and researchers have documented numerous successful TDR programs around the country. While many of those programs are located in urban communities, some successful TDR programs are found in rural communities similar in size or other characteristics to Skagit County. At the same time, many communities have implemented TDR programs that have generated few if any transactions or land conservation. TDR programs can be complex to implement. They need some level of growth to be occurring in the community. Furthermore, they require policies that grant additional building potential to developers who purchase TDR credits to help serve that growth.

The Washington State Office of Financial Management projects population growth of nearly 36,000 new residents in the County by 2035, boosting the population to nearly 154,000 from around 118,000 today. There will be a corresponding increase in commercial development to serve that growing population. If even 10 percent of the projected population growth were tied to TDR purchases, the result could be almost 10,000 acres of conserved land—about the same amount of land conserved by the Farmland Legacy Program since its inception in 1996.

In other words, demand for development exists in Skagit County. The question is whether Skagit County and other local jurisdictions are interested in implementing policies that make access to additional development opportunities available through the purchase of TDR credits—and whether developers will realize adequate financial rewards to encourage their participation.

Major concerns about TDR

In addition to supporters, TDR has its skeptics and critics on the Advisory Committee and within the broader community. As noted above, some believe there is too little demand for development and too few receiving areas for a program to be viable at this time. Others are concerned about TDR's complexity and believe Skagit County may not be able to implement a successful program given limited staff and resources. Some note that TDR is typically linked to higher density residential development and that many higher-density residential projects in Skagit communities have faced strong opposition from existing residents and city councils.

A few critics see more fundamental flaws in TDR and believe Skagit County should not implement a program now or in the future. They believe TDR interferes inappropriately in the private

development market by requiring developers to pay to access additional development opportunities. Others say TDR is not needed because existing comprehensive plan and zoning protections adequately conserve rural and natural resource lands.

Some members of the agricultural community have expressed concern that a TDR program could interfere with or draw political support from the County's successful Farmland Legacy Program. (Farmland Legacy is a purchase of development rights (PDR) program that uses public funds to purchase development rights from Agricultural-Natural Resource Lands (Ag-NRL)). Some timber managers are uncomfortable with permanent TDR conservation easements, preferring a term-limited easement or an opportunity to re-purchase development rights if timber management is no longer viable in the future.

Conservation goals and sending areas

One of the Advisory Committee's key tasks was to identify potential conservation goals for a TDR program. The Committee generally identified working farms and forestlands, and lands with significant open space value, as the highest priorities. The Committee also discussed environmental conservation priorities including the floodplain, priority watersheds (including those that generate drinking water supplies), and wildlife habitat.

From the above, the following Skagit County land use designations emerged as the most viable TDR sending areas at this time:

- Secondary Forest-NRL
- Industrial Forest-NRL
- Rural Resource-NRL
- Agricultural-NRL
- Rural Reserve lands in active agricultural or forestry use

These lands are clearly defined and mapped through the Skagit County Comprehensive Plan. Additionally, TDR is a particularly good mechanism for conserving natural resource lands because it retires a property's residential development right without restricting other uses such as farming and forestry.

Generally, the Committee felt that lands closest to cities, towns, and their urban growth areas should have the highest priority for conservation. These areas are more likely to experience development pressure than more remote areas, and receiving-area residents are more likely to support conservation of lands near where they live.

Development goals and receiving areas

TDR programs function most effectively when they are closely aligned with a community's vision as reflected in key planning documents such as the comprehensive plan. The Skagit County Countywide Planning Policies and Comprehensive Plan seek to direct 80% of new population growth to cities, towns and their urban growth areas.

Burlington, Mount Vernon, and La Conner have participated on the TDR Advisory Committee, but only Burlington is actively considering becoming a TDR receiving area at this time. Burlington already offers the Agricultural Heritage Density Credit Program, which allows developers who purchase density credits to build additional units of residential density in certain City zones.

Burlington provides revenues from the sale of those credits to the County's Farmland Legacy Program to conserve agricultural land surrounding the City.

The Committee concluded that for a County TDR program to have the most significant impact over time, additional cities should be encouraged to participate. Other receiving areas under County land use jurisdiction that are worthy of attention include CaRD density bonuses, Rural Village infill or expansions, and urban growth area (UGA) expansions.

Developer incentives

The Committee noted that TDR is entirely market-driven and without development-right purchases there will be no resulting conservation. Developers will only participate if there is market demand for the development incentives offered as well as a positive financial return. Similarly, a program must be easy to use. Uncertainty, risk, and changing program policies are strong disincentives. Delays in the permitting process cost money. Incentives offered through a TDR program must be compatible with other regulations.

The most common developer incentive offered through TDR programs is increased units of residential density. However, the Committee encouraged exploring other incentives as well, including additional commercial square footage, industrial lot coverage, and reduced parking requirements.

TDR market analysis

The TDR market analysis conducted by Heartland focused on the following three potential receiving areas and zones:

1. The City of Burlington's downtown business, commercial, and industrial zones;
2. The Bayview Ridge Urban Growth Area's residential, industrial, and community center zones; and
3. Rural upzones, or landowner-requested changes from one rural zone to another zone that result in additional development potential.

Heartland concluded that market conditions in the receiving areas analyzed will likely not support a robust TDR program in the near term. In the urban areas, a large amount of development capacity exists under current zoning that can be built without TDR purchases. Initial activity would likely consist of the use of TDR credits where benefits exceed costs on individual projects. Changing County priorities at Bayview Ridge will likely preclude the use of TDR for residential development there.

Heartland did identify several benefits to implementing a program now: it will allow the County to be prepared to capture funds for conservation when development does occur and to fine-tune and expand awareness of the program before major utilization occurs. Heartland indicated program

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usage would likely increase as the economy strengthens, existing development capacity is built out, and additional receiving areas are created.

Transaction mechanisms: TDR and density credits

The Committee considered several options for structuring a TDR program, including:

- **Conventional TDR (private buyer-seller):** This involves a private-market transaction between a buyer and seller who directly negotiate the sales price. The program issues development certificates to the buyer and records a conservation easement on the seller's property.
- **Density credit (or fee-in-lieu):** A developer purchases density credits to build to a higher density or intensity than baseline zoning allows. The program uses revenues from density credit sales to purchase development rights in priority conservation areas.
- **Combination TDR and density credit:** This approach offers both a private buyer-seller TDR option and a density credit option.

TDR and existing conservation programs

Farmland Legacy

Many in the agricultural community have expressed concern that a TDR program focused on Ag-NRL could harm the Farmland Legacy Program. At the same time, many TDR analysts suggest that TDR and PDR programs (like Farmland Legacy) can operate in a complementary manner. A PDR program, being publicly funded, can strategically conserve the highest priority lands and those under the greatest development pressure. A TDR program, by harnessing the private market, can be effective in conserving resource lands that extend beyond the focus of the PDR program, such as forest land and non-designated farm land.

Heartland did not find any inherent conflicts between TDR and Farmland Legacy in the market analysis. Mindful of the above concerns, however, Heartland suggested two potential options:

1. A TDR program could focus on lands not currently conserved by Farmland Legacy, such as Forest-NRL and Rural Resource-NRL. That would effectively establish a firewall between a TDR program and Farmland Legacy to prevent the negative interactions that some community members fear.
2. Alternatively, a TDR program could include Ag-NRL as a sending zone and not, in Heartland's opinion, directly compete with Farmland Legacy. That is because a market-based TDR program would naturally gravitate toward lower-value Ag-NRL land that would likely not qualify for Farmland Legacy purchases, acting as a secondary option open to Ag-NRL owners.

City of Burlington

The TDR market analysis provides Burlington several options related to its Agricultural Heritage Density Credit program: (1) Maintain the program as is; (2) Consider raising fees for density credits based on the improving housing market; and (3) Implement a new density credit or TDR option

linked to increases in commercial development potential. The last action would involve implementing a floor area ratio (FAR) cap on commercial development permitted outright through zoning. The cap could be exceeded with the purchase of commercial density credits or TDRs.

Burlington is considering its options through its ongoing 2016 comprehensive plan and development regulations update.

Committee recommendations

The resolution appointing the TDR Advisory Committee did not formally task the Committee with developing consensus recommendations. However, the Committee process did seek to identify areas of general agreement or disagreement among members on key issues, including whether Skagit County should implement a TDR program at this time.

- **A majority of Committee members recommended that Skagit County should move forward to implement a combined TDR and density credit program.**

Recommended sending areas would include all of the County's designated natural resource lands (SF-NRL, IF-NRL, RRc-NRL, Ag-NRL), and Rural Reserve lands in active forestry or agricultural use. Initial areas eligible for TDR or density credit purchases would include the City of Burlington and rural upzones. Committee members encouraged the County to explore additional rural receiving areas, including UGA expansions, CaRD density bonuses, and Rural Village infill development,

Although a large number of TDR transactions would not be likely in the near future, these Committee members felt the County would show foresight and leadership by implementing a program now that can be used by developers as market conditions improve over time. By putting a TDR program framework in place, the County will also encourage and enable additional cities to join over time, which would significantly increase TDR usage.

- **A minority of Committee members recommended against the County implementing a TDR or density credit program at this time.**

These Committee members felt that TDR programs are more effective and appropriate in urban areas rather than more rural communities like Skagit County. There are too few cities participating, too few receiving areas, and inadequate demand for development within those receiving areas for a program to be viable at this time. Although some of these Committee members believe TDR may be warranted at some point in the future, they felt there was no point implementing a program now that would not be used at this time. Currently, the Skagit County Comprehensive Plan and development regulations are doing an adequate job of protecting rural character, natural resource lands, and open space areas.

Further details about each recommendation, including an expanded rationale for each, are included in Chapter 11, Final TDR Project Recommendations.

Next steps

This report seeks to provide the Board of County Commissioners with information to help it decide whether to move forward with a TDR legislative proposal. The report may also help cities and

towns consider TDR options now or in the future. If the Board decides to move forward with a legislative proposal, the next steps would include:

- Drafting of proposed comprehensive plan policies and development regulations by Planning & Development Services.
- Consultation on the draft with the Planning Commission and other advisory committees, as directed by the Board of County Commissioners.
- Review and analysis of the proposal under SEPA.
- Release of the proposal for public review and comment.
- A public hearing before, and deliberations by, the Skagit County Planning Commission; and
- Final action on the proposal by the Board of County Commissioners.

Alternatively, the Board may decide it does not want to move forward with development and consideration of a TDR legislative proposal at this time.