

Chapter 11. Final TDR Project 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 take action to implement a TDR program at this time. Additionally, the County Commissioners have expressed interest in knowing individual Committee members' views on the subject.

Project staff developed three overall project recommendations for Committee members to consider, based on the range of views expressed by members in their discussions during the course of the project. Those three options were that Skagit County should:

1. Take no action on TDR at this time;
2. Implement a conventional TDR program only (private buyer-seller mechanism); or,
3. Implement a combined program with both a TDR and density credit mechanism.

The Committee discussed these recommendations at its meetings on January 9 and June 4, 2014. The second discussion occurred as part of the Committee's review and comment on a draft of this report, which included detailed descriptions of the three options.

Eight of the 11 Committee members indicated their support for Recommendation #3, encouraging Skagit County to implement a combined TDR and density credit program. More specific details of that recommendation (labeled the "Majority Recommendation") are provided below. A ninth member supported County action to implement a combined TDR and density credit program, but with two significant modifications from the Majority Recommendation related to the use of time-limited conservation easements and additional rural receiving-area opportunities.⁶²

Three Committee members indicated they do not support action by Skagit County to implement a TDR or density credit program. The major reasons these Committee members provided in recommending against Skagit County implementing a TDR program are also summarized below under the "Minority Recommendation" heading.

Other Committee members not identified as supporting either recommendation either abstained or did not provide input in the last several months leading to the conclusion of the Committee's work.

⁶² See Paul Kriegel's written statement in Appendix C for more details.

Majority Recommendation: Skagit County should implement a combined TDR and density credit program

Committee members who support this recommendation are Martha Bray, John Doyle, Margaret Fleek, Bruce Lisser, Kim Mower, Allen Rozema, Kendra Smith, and Joe Woodmansee. Several submitted written statements that are included in Appendix C.

1. Skagit County should develop policy and code provisions to implement a combined TDR and density credit program at this time.
2. The initial two receiving areas would be (a) mixed-use zones within the City of Burlington and (b) Rural upzones in Skagit County. (This is a landowner-requested change from one rural zone to another zone that provides additional development potential.)
3. The program should work in coordination with Burlington’s existing Agricultural Heritage Density Credit Program. Through its 2016 Comprehensive Plan Update process, Burlington will consider possible modifications or expansions of that program based on options explored by the Heartland TDR market analysis.
4. TDR exchange rates and density credit fees would be based on the Heartland TDR market analysis. For a program to be successful, it must offer positive economic incentives to receiving-area landowners and developers.
5. Skagit County should encourage other cities and towns to implement TDR or density credit programs in coordination with the County. County TDR policies should enable cities and towns to join with the County program to conserve land outside of city or town limits.
6. Skagit County should explore a wider array of receiving-area opportunities in the future, including urban growth area expansions, additional CaRD density bonuses, and infill development within Rural Villages.
7. TDR sending areas should include all designated Natural Resource Lands (IF-NRL, SF-NRL, RRC-NRL, and Ag-NRL), and Rural Reserve lands with active agricultural or forestry uses, that are in close proximity to urban growth areas and growth corridors (I-5 and SR-20).
8. Skagit County should use revenues raised through the sale of density credits for conservation of land in these same sending areas. The County should establish a conservation mechanism similar to – but separate from – the Farmland Legacy and Conservation Futures programs, that uses density-credit revenues to conserve natural resource lands in addition to Ag-NRL.
9. Implementation of a TDR and density credit program should be done in a manner that does not change the current operations of the Farmland Legacy Program and in fact complements that program.
10. Participation by sending-area landowners in a County TDR and density credit program should be entirely voluntary. Conservation easements would retire residential development rights while leaving other uses of the land – such as farming and forestry—unaffected. The easement would not grant public access to the land nor modify resource management practices.

Rationale

- Skagit County and other local organizations have shown long-standing interest in TDR and related density-credit programs. Additionally, Skagit County residents have consistently expressed strong support for the conservation of working natural resource lands that contribute to the County's economy, environment, and quality of life.
- The Skagit County Comprehensive Plan encourages the use of innovative tools like TDR to complement the County's existing land use policy and regulatory framework. Having invested the time and resources to evaluate the TDR concept in detail, it is now time to put a program in place.
- A large number of TDR transactions are not likely in the near future. However, it is important for the County to show foresight and leadership by implementing a program now that can be used by developers as market conditions improve. By implementing a TDR program now, the County can encourage and enable additional cities to join over time.
- Some of the highest priority areas for conservation are within and around the cities' urban growth areas, but the cities do not have direct land use jurisdiction in these areas. A joint County-City TDR or density credit program would enable cities to support the conservation of nearly all natural resource lands and open space areas to which their residents have the most direct connection.
- It is not too early to implement a program at this time. Jurisdictions that plan under the Growth Management Act—including Skagit County and the cities and towns within the County—must plan on a 20-year horizon. Planning decisions made today will guide land use and conservation patterns over the next 20 years. If a TDR or density credit program is to be successful in the future, it needs to be incorporated into the planning framework now.
- Although some of the most successful TDR programs are centered around large cities, smaller, more rural communities have also successfully implemented TDR and density credit programs. Starting with a limited number of receiving areas is a way to gain experience and public familiarity with the TDR and density credit concept and implementation.
- A well-designed program can provide an economic incentive for desired development while engaging the private market to support conservation at a time when many sources of public conservation funding are in decline. The fact that the Mount Vernon TDR program recorded a number of successful transactions during the mid-2000s demonstrates that a viable market for TDR or density credit purchases can exist in Skagit County.
- Providing both a TDR and density credit option will encourage greater program use by developers. The ability to purchase density credits based on an established fee schedule will create greater up-front certainty and quicker, easier transactions for participating developers. That option can be especially beneficial for those interested in smaller transactions involving just a few units of additional development.
- At the same time, some developers may be more comfortable pursuing private-market TDR transactions. This can be particularly true for those looking to purchase a large number of

development rights. They may be able to arrange a better price negotiating directly with private landowners than purchasing density credits based on a set fee schedule.

- A voluntary TDR and density credit program would provide additional options for rural and natural resource landowners who want to permanently conserve their lands. A voluntary program would be landowner-friendly, respect private property rights, and provide a new source of revenue for interested landowners.
- Including all of the designated Natural Resource Lands as sending areas will create a more viable TDR market with a broad range of development right purchasing options. Including Ag-NRL as a sending area will complement rather than compete with Farmland Legacy by providing a means to conserve active agricultural lands in Rural Resource-NRL and Rural Reserve and creating another option for Ag-NRL landowners interested in conserving their land.

Minority Recommendation: Skagit County should not implement TDR at this time

Committee members who support this recommendation are Charlie Boon, Wayne Crider, and Ed Stauffer. Their written statements are included in Appendix C.

1. Skagit County should not implement a TDR or density credit program at this time.
2. The County can reconsider TDR in the future if and when existing conservation policies are found to be ineffective and additional cities are willing to participate as receiving areas.
3. Cities and towns are free to implement their own TDR programs independent of the County. Cities and towns can also simply change their zoning to grant additional development potential in priority areas within their jurisdiction; such changes do not need to include a TDR purchase requirement.

Rationale

- Skagit County is a rural community whereas TDR programs are more effective and appropriate in urban areas. There are too few County receiving areas, too few cities participating, and inadequate demand for development within the proposed receiving areas for a TDR program to be viable at this time.
- There is no point in implementing a TDR program now if it will not be used now. Implementing a program will require staff time and resources while generating little to no use. By the time there is more demand for development and additional receiving area possibilities, the TDR code and market analysis would need to be updated anyway.
- The Skagit County Comprehensive Plan and development regulations are doing a successful job of protecting natural resource lands, rural character, and environmentally sensitive areas. Under state guidelines, Skagit County identified and then inventoried and protected natural resource lands (Agriculture, Forest, Mineral), critical areas (e.g., steep slopes, wetlands), Rural Villages, and low population-density residential uses through the zoning code.

- Development opportunities in rural areas were greatly reduced through the implementation of the Growth Management Act and the Skagit County Comprehensive Plan in the 1990s, and state and federal environmental and land use regulations have become more restrictive since then. In addition, the Department of Ecology's Skagit River Instream Flow Rule prohibits the drilling of new wells in large portions of rural Skagit County, creating a further significant limitation on rural development.
- Eighty percent of new residential development is already occurring in cities and towns and their urban growth areas, consistent with Countywide Planning Policies. There is no need for TDR at this time as an additional conservation tool. Additionally, the property owners of rural lands in Skagit County are already front-line conservationists and stewards of the land.
- The Farmland Legacy Program is already doing a good job of conserving Ag-NRL land and some in the agricultural community are concerned that TDR will compete with that program. Residential development on Industrial Forest land outside of fire districts is already prohibited. Additional conservation mechanisms like TDR – even voluntary ones that compensate rural landowners – are unnecessary. What starts out as a voluntary program for rural landowners could become a mandatory program over time.
- Developers already face high costs and fees as part of the development process within cities, including urban infrastructure requirements and impact fees. Cities can already rezone land to allow additional development opportunities without a TDR purchase requirement. Such a requirement simply amounts to an additional fee on development, which will increase the cost of housing and make new development less affordable.
- Mount Vernon is the largest city in Skagit County and will experience the most population growth in the future, yet it is not interested in participating in a County TDR program at this time. The two existing examples of TDR and density credit programs in Skagit County have both faced serious challenges. Mount Vernon's TDR program added density to controversial residential development projects in the City and has since been restricted in where TDR can be used. Burlington's density credit program has seen only two density credits purchased to date. Due to its location in the floodplain, Burlington is not the right place to encourage additional development anyway.
- TDR may sound good in concept but it is overly complicated and there are too many unanswered questions for Skagit County to undertake at this time. The County should wait until a program is truly needed and then implement a program that has a larger number of receiving areas and will be actively used from the very start.

Chapter 12. Conclusion

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 consisting of proposed policies and code language at this time. 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 proposed comprehensive plan policies and development regulations by Planning & Development Services;
- Consulting on the draft with the Planning Commission and other County advisory committees, as directed by the Board of County Commissioners;
- Reviewing and analyzing potential environmental and land use impacts of the proposal under SEPA;
- Releasing the proposal for public review and comment;
- Holding a public hearing before, and deliberations by, the Skagit County Planning Commission; and
- Taking 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.



The Board of County Commissioners and the Planning and Development Services Department would again like to thank TDR Advisory Committee members for their participation in this project. Committee members have shared their diverse views and perspectives in a respectful manner and have contributed significant knowledge and insight to this process. Skagit County also extends its appreciation to those community members who participated in the TDR Focus Group meetings or otherwise contributed to this TDR review process.