Friends of Skagit County
PO Box 2632
Mount Vernon WA 98273-2632

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SKAGIT COUNTY
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COMMISSIONERS

August 6, 2014

Submitted 8-6-2014

TDR Special Meeting

Commissioner Ken Dahlstedt
Commissioner Sharon Dillon
Commissioner Ron Wesen
Skagit County Administration Building
1800 Continental Place, Suite 100
Mount Vernon, WA 98273

Dear Commissioners:

Thank you for the opportunity to provide comments on the proposed Transfer of Development Rights (TDR) program.

Friends of Skagit County attended a few of the Citizen Advisory Committee meetings during the course of the TDR grant project and reviewed the materials given to the committee as well as the draft and final reports. It appears that the CAC members received little to no materials that analyzed the risks, costs, odds of or criteria for success of TDRs. We realize that the grant scope of work and deliverables influenced how staff presented information, but we feel the adoption of a land use program that will affect the many years of successful planning and development should not be considered lightly.

The constraints and limitations of TDRs were not fully analyzed by the CAC. In short, some members of the CAC appear to think that a TDR program can be used anywhere, and that a TDR program has no effect on land values. The following facts and information presented below are not included in the TDR reports in any detail and were not discussed by the CAC as far as we know.

"…The ultimate purpose of a TDR program is to create more efficient growth patterns. However, it is just as important for there to be long-term growth expectations to assure landowners in the sending area that there is value in their development rights. **TDRs will not work in very rural areas where there is little or no development pressure on the area to be preserved… (emphasis added)** *Transfer of Development Rights CDFS-1264-98 Land Use Series, Timothy J. Lawrence, Ohio State University Community Development, Columbus, OH, page 4.*

…Unfortunately, what works well in theory may not be effective in practice. **While TDRs appear to be an effective method of preserving farmland, open space, and natural resources, the reality of the situation is that they have been primarily effective within urban settings.** In addition….the county…must…. assure communities in the designated growth areas that a public facility overload will not result from the TDR density bonus…." *Laurence, page 4.*

To our knowledge the TDR project did no more than state that cities could be receiving areas. There did not appear to be an informed discussion the details and operating mechanisms needed for a successful TDR program with elected city officials; in fact, a number of Skagit cities have expressed little to no interest in accepting additional density.

CC: Kirk Johnson

"Features of an Effective TDR Program - TDR programs are very complex and can be very difficult to administer. They can be an effective tool in the preservation of farmland and natural resources; however, **they are appropriate only in very limited areas and circumstances....**"*Laurence, page 3.*

"...To be effective, a TDR program should be simple and easy for landowners and the public to understand. ...**A TDR program takes time to work and must be mandatory, rather than voluntary, for landowners in the sending area and for the higher density building in the receiving areas.** Smart developers usually can gain extra density through variances or other means and will have little incentive to purchase development rights unless the zoning process is relatively inflexible and incorruptible..." *Lawrence, pgs 3-4.*

"The distribution of development rights is the distribution of wealth, and distribution formulas raise equity issues at least as severe as those involved in rezoning. TDR programs may not provide the type of protection that a community might expect and may not provide the equitable distribution of the wealth that the landowners might expect. It has been argued that the only equitable basis for the distribution of development rights is in proportion to the losses landowners suffer due to change in land-use controls. Based on the current farmland TDR programs operating around the country, it is questionable if TDRs can satisfy those losses except in very limited and specific circumstances..." *Laurence, page 4-5.*

Tom Daniels and Deborah Bowers, in their book on the subject, Holding Our Ground: Protecting American Farms and Farmland, notes that **"Next to establishing effective agricultural zoning on the urban fringe and the political struggles that involves, TDR is the most difficult farmland preservation technique to establish..."**

"...It is essential that developers have an incentive to purchase development rights (i.e. a density bonus). **It is recommended that receiving areas should provide for about 30 to 50 percent more building units than the actual number of transferal rights would allow. This creates a competitive market among landowners wishing to sell development rights, and among developers needing to purchase those rights."** *Laurence, page 4.*

"USDA will not allow federal Farm & Ranchland Protection Program money to be spent on TDRs. The program requires retirement of DRs, not the utilization of them someplace else." *– Mary Heinricht, 2006.*

The last thing Skagit County needs is a TDR program that would compete with or jeopardize the success of the Farmland Legacy's Purchase of Development Rights (PDR) Program. Implementing a TDR program on Ag-NRL lands could change the valuation of the development rights to not adequately reflect the true value. The TDR value is based on the market or the value has to be created by changing the zoning of the sending area. The value of DRs should be predictable for the PDR program and to guarantee permanently protected and not converted to other uses.

"...In rural settings, the tool (TDR) has been less successful. Even in the few counties and regions that have completed significant transfers, **the underlying economics of the working agricultural landscape have typically declined**. This gives us some insights into the limits of this tool." *Efficiency in Working Lands Conservation: A Hybrid Approach to Growth Management, Mary Heinricht, 2008.*

"...In a traditional transfer program, the developer selects which property to buy rights from. The developer, as a business entitiy, is interested in the least outlay for the most value *for his purposes.* **This typically results in protection of lesser agricultural properties that are not selected for their larger beneficial and sustainable characteristics, but for their lower price.** It also means that there is a much higher probability that **the**

properties will not be contiguous or follow any patter related to a community's preferred preservation strategy....

...The historic approach to land conservation has been to implement a series of programs, hoping that very little "falls through the cracks" between them. In fact, this can be the least efficient way to administer the process because of duplication of effort and expenses, inconsistency in application an dhigher administrative costs. **Review of transfer efforts reveals that government oversight is as extensive in "market driven" programs as it would be without the market element...**" *Heinricht, 2008.*

"....**A significant change in the character of Rural Maryland should not be the price of having successful TDR programs.** Some counties may choose not to adopt a TDR program, if the impact of new development using TDRs in receiver areas is too great, or if such development is not supported by local communities and their elected leaders. They may decide that **other tools for land preservation, including PDRs and protective zoning, can preserve as much or more land without the problems or citizen opposition often associated with using TDRs for development.**" *Final Report of the TDR/Land Preservation Work Group of the Task force on the Future of Growth and Development in Maryland: Part I, 2009.*

"...Seattle and other cities have been receptive to accepting density transfers from rural parts of the county with TDRs, because there is a public recognition that there is a broader regional interest that serves everyone. They believe that development should occur inside of cities where the infrastructure exists, and that farms and forests are permanently protected with TDRs. **The incentive payments built into the interlocal agreements, from county funds to pay for amenities and capital infrastructure in the receiver areas, help offset local concerns about the impacts of higher densities, but the receiver areas are typically within existing high-density communities.**"
Report: The Feasibility of Successful TDR Programs for Maryland's Eastern Shore. Submitted to the Maryland Center for Agro-Ecology, Inc., January 2007. Researched and written by: H. Grant Dehart, Land Preservation Consultant; and Rob Etgen, Executive Director, Eastern Shore Land Conservancy. Page 139.

Why should taxpayers be spending money to subsidize development? Purchasing and retiring development rights is far more cost-effective. *Mary Heinricht, 2005.*

TDR programs work best when the only option for greater density of higher building heights is through the use of TDRs. Burlington's use of density bonuses in their Agricultural Heritage Credit program can be replicated by the other cities and even the County and is simple, easy to understand and far less expensive than a TDR program. The funds raised benefit the FLP PDR program directly and could provide much needed additional funding for permanent protection of farmland.

The following powerpoint explains the economic changes that a TDR program could create and how that would influence the Farmland Legacy Program's ability to continue. There is also a concern that a TDR program may not protect the sending area lands because the type of conservation easement can be less than perpetual – i.e. a deed restriction or other temporary or term mechanism.

Markets

Four *interdependent* economic factors create value in markets:

- Utility (use)
- Scarcity (limitations on availability)
- Desire (demand)
- Effective purchasing power (reasonable price)

Markets and Valuation

- The existence of non-existence of these basic factors will affect market value of all DRs in a program (Danner, 1997).
- The principle of supply and demand, as applied in an appraisal context, states that the price of real property varies inversely, but not necessarily proportionately, with demand, and directly, but not necessarily proportionately, with supply. (Appraisal Institute, 1996).

Study Constraints

- **Any new land conservation approach in Skagit County must work in harmony with the current farmland purchase of development rights program, rural and urban policies, and land use pressures.**

Market Conditions

- A past proposal for TDR was estimated by a local appraiser to increase the value of farmland by $30,000 per existing right (60%).
  - Current zoning = 40:1 @ $50,000 per DR
  - Proposed transfer ratio = 40:4 @ $20,000 per DR = $80,000 for same acreage.
- This would cause an increase in the value of all eligible properties regardless of program participation.
- **This would cause the existing Farmland Legacy Program to have to increase its payments by 60%, reducing the effectiveness of the program. (emphasis added)**
- In a typical year, Skagit sees 7 – 10 requests for higher density per year.

Issues

- Will developers be able to retire all DRs on a parcel in a single transaction?
- Where will these new DRs be applied and are there adequate public facilities to accommodate increased development?

Market Equalization Approaches

- Downzone in Ag zoning to create saleable rights to equal current right value (1:160)
- Downzone receiving areas and <u>require</u> purchase of DR to bring density up to desireable density.
- Multiply the DRs in application in the receiving areas.
- Utilize a system that does not directly link the price of an existing DR with an increase in density for new development.
  - EXAMPLE: Berthoud, CO. Density transfer program is a fee in lieu of traditional TDR.
  - EXAMPLE: Collier County, FL has created a tradable development right based upon priority for preservation rather than zoning.

Conclusion

- **At this time, considering the current market, a traditional TDR program will not significantly increase land conservation efforts in Skagit County, and will increase the cost of rural land purchases.**

Poweroint presentation: TDR Feasibility Study for Skagit County, WA, Mary Heinricht, presentation to the NW WA Planners Forum, Burlington, WA, 2007.

The State of Maryland has completed a Criteria for Successful TDR programs study which identifies and lists qualities, characteristics and criteria for successfully implementing programs. Rather than trying to implement TDR in counties which do not have demand, for example, the state is encouraging counties which do have the appropriate population, market demand and other criteria to adopt TDR programs. This seems a much more rational way to approach TDRs than to attempt to create a program without the criteria in place for a program to succeed.

We request that the County not move forward with developing a TDR program until a thorough economic analysis can be completed on the effect of such a program on land values. The CAC, to our knowledge, did not discuss, for example, what kind of easement might be put on the sending area lands, whether it was a deed restriction or an easement similar to those used in the Farmland Legacy Program. If we do not know how much protection will be provided by TDRs, whether that protection is permanent or temporary and what the real cost will be in land use changes which might be needed to create a successful program, we should not be adopting a TDR program.

We note that the Citizen Advisory Committee of the FLP opposed the original TDR program for various reasons, including those concerning valuation manipulation and easements in perpetuity. FOSC also submitted comments and these are attached for the record.

In a meeting with Dave Thomas at the Skagit County Assessor's office, he confirmed that the removal of a development right from a parcel would reduce the overall value of the parcel and thereby reduce the tax revenue to the county. Even though the amount per parcel might be small, it is still effectively a transfer of revenue from the county to the cities (if the program is interjurisdictional). No matter how much additional money might be generated by the additional permit fees that the County collects, the long term result of the transfer of value is less revenue.

We enclose a copy of the 2006 TDR Feasibility study, including the list of deliverables and timeline for the project included in the Ag Prospects contract. As you know the contract was stopped after Phase III, presumably because the thorough review of the literature and the existing programs showed clearly that TDRs were not appropriate in rural counties with little development demand. At that time the Board of County Commissioners were not willing to "create" a market for TDRs by changing zoning or "taking" or "giving" additional DRs to one group of lands or another. We trust you are still unwilling to take such actions today.

We therefore ask that you not adopt the proposed ordinance to develop a TDR program.

If you have questions or need additional information, please do not hesitate to contact us.

Yours sincerely,

Ellen Bynum

Ellen Bynum
Executive Director

Enclosures – Transfer of Development Rights: A Feasibility Study for Skagit County, Washington, TDR Summary & Literature Review Phase 1 and Phase 2 and Phase 3 (partial), Submitted 15 October 2006, Mary Heinricht, Ag Prospects, Bellingham, WA.; Ag Prospects Contract Scope of Work (partial); FOSC comment letter of 24 August 2004.

cc: FOSC Board; FOSC Office; Deborah Bowers, Preservation Specialist, Caroll Co. MD Agricultural Land Preservation Program

FRIENDS
of Skagit County

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August 24, 2004

Skagit County Planning Commission
Skagit County Planning and Permit Center
200 West Washington Street
Mount Vernon, WA 98273

Dear Commissioners:

Friends of Skagit County advocates for protection and preservation of rural lands using the Growth Management Act. Friends is interested in containing sprawl, increasing density inside cities and urban growth areas, protecting critical areas and preserving the county's rural character.

The Farmland Legacy Program is one proven method of land protection. As long as market prices are not inflated so that the value of the land and the development rights purchased remains stable, the program will be successful. However, with 93,000 acres in agriculture and a large part of other rural lands in agricultural use, the FLP alone, with its limited budget, cannot possibly ensure that lands are preserved.

Transfer of Development Rights (TDR) programs are driven by the demands of the real estate market. The area must be experiencing a high growth rate, increased development demand and a willingness on the part of developers to use TDRs to develop. TDR programs are expensive to operate and manage. Currently Skagit County does not meet the criteria needed for a TDR program.

There appear to be very few TDR programs in other parts of the country that achieve farmland protection. Montgomery Co. and Calvert Co., MD's programs are driven by the urban pressures of Washington, DC. We have found no examples of effective cross-jurisdictional TDR programs.

Friends of Skagit County asks the Commissioners to recommend that the FLP recruit and manage the proposed TDR consultant. The FLP staff and advisory committee have the experience necessary to produce an effective study on TDRs. The scope of work must be defined so that the consultant may recommend other methods of farmland protection, if appropriate. The county must still be clarified, change and enforce its non-compliant GMA issues. Thanks very much for the time and opportunity to comment.

Sincerely,

Ellen Bynum

Ms. Ellen Bynum
cc: Friends Board of Directors
Enclosure – Summary of Maryland TDR program.

From: "Grant Dehart" <grantdehart@comcast.net>
Reply-To: "Grant Dehart" <grantdehart@comcast.net>
Date: Wed, 18 Aug 2004 11:41:52 -0400
To: "Michele d'Hemecourt" <ecopatriot80@hotmail.com>, <landtrust@indiana.edu>
Subject: Re: [LT] feasibility of a TDR program

At the Baltimore LTA Rally the managers of two of the nation's most successful TDR programs (Montgomery Co. and Calvert Co, MD) and I gave a presentation on TDR programs. Below is an outline summary of our presentation on why TDR programs fail and guidelines for making them work.

Two land trusts in Calvert County have been very successful in buying endangered lands and selling TDRs to recoup their investments: Calvert Farmland Trust and the American Chestnut Land Trust. Slides from this presentation can be found in the RALLY Proceedings from the Baltimore program. You might also want to check out the book: "Saved by Development," by Rick Pruits. Hope this helps. Grant Dehart (410) 280 6272, grantdehart@comcast.net. Denis Canavan, and Greg Bowen

Rally Presentation: **THE MARYLAND TDR EXPERIENCE**

Why TDR Programs Fail: *Economics, Insufficient Planning and Zoning, Politics and Alternative tools exist*

Economics:
Insufficient demand for development in either sending or receiver areas .Imbalance of supply and demand for TDRs -Too many sellers chasing too few buyers -Too few receiver areas -Too little absorption capacity in receiver areas -TDR values too low for farmers to sell .Developers can obtain density bonuses in receiver areas without buying TDRs

Planning and Zoning:
Comprehensive Plan does not delineate sending and receiving areas .Comprehensive Plan does not explicitly allow maximum densities in receiver areas .Local as-of-right zoning capacity exceeds market demand -In sending areas, county is unwilling to limit density to protect farms and forests -In receiving areas, zoning already encourages density greater than or equal to market demand -County is unwilling to downzone sending and receiving areas, or grant density increases only with TDRs

Politics
A farm community that is skeptical of TDRs .Communities in or adjacent to receiver zones oppose higher densities with TDRs .Residents of receiver areas do not value the benefits of open space preservation in sending areas .Infrastructure cost of higher densities is paid by existing residents through higher taxes .Increased traffic and congestion is opposed .Higher densities are not offset by quality design

Easier alternatives exist
Alternative open space preservation programs are available and supported with funding - to extinguish rather than transfer development rights -Purchase of Development Rights (PDR)
- Fee acquisition
-Protective Agricultural Zoning

.Baltimore County, MD - 1 development unit./50 acre density
.Montgomery Co., MD - 1 development unit./25 acre density

TDR Design Guidelines
How to create a successful TDR program
Assess the Market for TDRs
.Determine whether your Community has the real estate market where TDRs will work .Will long term growth pressures assure that all TDRs will be absorbed in Growth Areas?
.TDRs are not effective in remote rural areas

Amend Comprehensive Plans and Zoning
.Identify sending & receiving areas
.Zone sending areas to limit density without TDRs .Zone receiving areas for higher density only with TDRs .Consider downzoning receiver areas to create demand for TDRs and minimize local opposition to density bonuses

Carefully balance TDR supply and demand
Total the amount of TDRs that can be sold .Identify the amount of TDRs that can be utilized in receiver areas between base and highest density .Evaluate the relationship between the value of development rights in sending and receiver areas

Keep it Simple!
.TDRs should be simple to administer and understand .Limit landowner options in sending areas (do not allow use of rights on sending site) .Limit development options in receiver sites (do not permit density bonuses without TDR purchase)

Minimize uncertainty of TDR transactions and government decisions .Allow independent purchases and sale of TDRs as real property .Approve use of TDRs on receiver sites with minimum of red tape .Farm owners must have incentive to sell TDRs - high value and no option to use density on site .Developers must have incentive to purchase TDRs - bonus density must be worth the TDR purchase and allow profit on sale of development rights .Consider granting "multiplier" of TDR value between sending and receiver site .Consider adequate public facility waivers, if costs are not shifted to receiver community

Manage the impacts of increased density from TDRs .Plan to avoid development "overload" .Assure communities that impacts will be managed .Address housing type and community capacity issues .Consider downzoning prior to TDR receiver area designation .Design guidelines for attractive higher density development

Public involvement & community relations . Identify and involve political leadership in sponsoring and implementing the program .Include farmers in the leadership team and decision-making .Communicate the benefits of TDR to the public -Open Space & farmland preservation -Quality design in receiver areas -Public savings compared to costs of sprawl or purchase of development rights .Invite TDR sellers to planning & zoning hearings for receiver areas .Consider how TDRs can help mitigate restrictive land use regulations to avoid a "taking".

Exhibit

Skagit County TDR Feasibility Study

Scope of Work

A. Overview

Skagit County is seeking to evaluate the feasibility of initiating a Transfer of Development Rights (TDR) program for designated agricultural and forest lands of long-term commercial significance; environmentally sensitive areas; and lands of historical significance.

Private forest and agricultural lands account for approximately 43 percent of the county's land base. These commercial resource lands will come under increasing pressure for conversion as the county's population increases substantially in coming years. The county currently implements an agricultural purchase of development rights program called the Farmland Legacy Program, which is limited by its modest funding. An analysis of TDR may determine that it is a complementary tool for expanding agricultural land protection efforts while adding forest, critical area and historic components.

B. Study Process and Scope of Work Requirements

The TDR Feasibility Study will be carried out in six general phases. In *Phase One*, a national literature review will be completed. *Phase Two* will be comprised of review and analysis of operating programs, with an emphasis on programs operating simultaneously with agricultural PDR programs. *Phase Three* will be a series of county work sessions to review the completed research and to develop parameters for the feasibility analysis work. *Phase Four* will include a series of focus groups with local stakeholders and individual interviews with selected regional experts. *Phase Five* will be interviews of selected TDR Program Managers or Administrators. Based upon the research, analysis and interviews of the previous phases, *Phase Six* will be an economic study and compatibility review which will examine the feasibility of utilizing this tool in Skagit County. *Phase Seven* will be the final preparation and editing of the feasibility study.

These phases may overlap or be extended, depending upon scheduling and availability of interviewees and/or parameters for research or analysis.

Phase 1: National Literature Review

The consultant will assemble and review analyses, scholarly papers, scientific reports and studies, legal decisions, and publications that are relevant to the analysis of TDR programs within the United States.

This literature review will be organized around the concept of determining the feasibility of operating a successful TDR program in Skagit County which does not negatively impact the existing Farmland Legacy Program and, after implementation, leaves the commercial agricultural and forestry industries in a state of long-term viability.

The consultant will prepare a written summary report of this review.

Phase 2: TDR Program Summary

There are more than 140 adopted TDR programs throughout the country with purposes as diverse as protection of historic landmarks, provision of affordable housing and open space protection which will provide ample reference for program implementation.

The consultant will assemble and review enabling legislation, ordinances and available program performance summaries that are related to operating TDR programs around the United States. This summary may include, but may not necessarily be limited to, TDR program purpose, program structure and process (i.e. TDR bank, density transfer, etc.), annual rate of activity, development values, and program incentives, if available. In-depth analyses of specific programs will be completed in Phase Four – TDR Interviews. The consultant will also review and summarize TDR programs operating in the State of Washington.

The consultant will prepare a written summary report of this review.

Phase 3: County Work Sessions

The consultant will prepare a presentation summarizing the findings of Phases One and Two, with appropriate handouts for a single presentation/workshop to appropriate staff, selected by the County. This educational presentation will serve as a "primer" on the principles and workings of TDR programs, as well as a review of the research and analyses completed in Phases One and Two.

After this initial educational meeting, the consultant will facilitate up to three county group work sessions with appropriate staff. The purpose of the county work sessions is to (a) agree on current County conditions or base levels and (b) to determine a "preferred" set of parameters and thresholds for a potential Skagit County TDR program. The consultant will also meet with individual County staff and policymakers on specific issues and questions.

These parameters and thresholds will include, but may not be limited to:

Establishing a current rate of growth (baseline)
Establish a current rate of resource land protection
Establish current average land values in resource lands

Identification of candidate sending areas
Identification of candidate receiving areas

Identification of target future growth rates
Identification of target future densities
Identification of target future preservation rates

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Identification of desirable program incentives
Define preferred program format and administrative structure

Identify stakeholders and local experts to be interviewed
Identify issues to discuss with stakeholders

There will be periodic meetings with the County Project Manager and Project Team throughout the project.

The results of these meetings will be used to determine questions and issues to be explored during the stakeholder interviews and PDR Program Manager interviews. The parameters and target goals will also be used in the economic analysis and compatibility assessment.

Phase 4: Stakeholder Focus Groups and Interviews

The consultant will conduct up to six (6) focus groups of community stakeholders, or interest groups to determine willingness to participate in a TDR program and gather information regarding current markets and anticipated future demand. These stakeholders may include, but are not restricted to realtors; builders and developers; bankers; appraisers; conservation interests; farmers and foresters; and municipalities.

The consultant may also conduct individual interviews with experts to determine specific information and issues.

Summaries of these interviews and focus groups will be prepared.

Phase 5: TDR Interviews

The consultant will complete in-depth telephone interviews of the program managers of selected operating TDR programs. The issues examined in these interviews will derive from the County Work Sessions and the parameters and thresholds agreed upon for the potential program.

The consultant will examine successful TDR programs that protect farmland, timberland, historic properties and habitat and critical areas. Special consideration will be given to identify characteristics, trends, or other information that relate directly to conditions in Skagit County.

There will be an additional focus on programs that have been implemented in communities that also operate agricultural purchase of development rights programs (PDR) and/or that operate TDR programs specifically for agricultural lands with an examination of the commercial viability of agriculture after program implementation.

Summaries of these interviews will be prepared.

An overall evaluation of this research will include identification of common characteristics of successfully implemented programs with evaluations of timber and agricultural industry conditions and trends after program implementation, where applicable.

Phase 6: Feasibility Study

Utilizing information gathered in prior investigative phases and the parameters agreed upon with County staff, an analysis of the feasibility of implementing a proposed Skagit County TDR program will be conducted. This may include an examination of administering multiple concurrent programs, as well as a single, multi-purpose program.

The feasibility study will involve a series of analyses which will include, but not necessarily be limited to:

> *Zoning Capacity and Land Use Policy Compatibility* – Current regulatory framework and changes to accommodate a program; evaluations of both proposed sending and receiving areas;
>
> *Real Estate Market Capacity* – Current and future market absorption capacity;
>
> *Market Sensitivity* – Changes in land values or conditions like incentives or timing which may change program viability;
>
> *Fiscal Sensitivity Projections* – Induced infrastructure requirements, potential real estate tax impact, and administrative requirements;
>
> *Conservation Program Compatibility* – Currently implemented programs for land conservation, best management practices, habitat restoration, etc;
>
> *Industry Viability* – Examination of resource industry (timber, agriculture) health post implementation.

a. The initial review will be to examine the economics of a program through a study of zoning and land use policy in both sending and receiving areas; real estate and economic trends including absorption capacity; residual land value pro forma models for sending and receiving areas.

b. If there appears to be no economic "basis" for a TDR program, we will examine market sensitivity to see if program incentives, timing, or changes in the real estate market or county policies will create a valid economic basis for a program.

c. A conservation programs and policies review will examine the compatibility of a TDR program with existing conservation programs including CRP (Conservation Reserve), CREP (Conservation Reserve Enhancement), FRPP (Farm and Ranchland Protection Program); Farmland Legacy; habitat and wetlands restoration and mitigation programs. This review will look at economics and policy compatibility.

d. The presence of identified common characteristics of successful TDR programs will be determined, as well as projections about the likeliness of those characteristics being developed or eliminated in the future based upon trends and projections.

e. A analysis will be conducted of what, if any, changes may be induced in land markets and the potential effect those changes may have on resource land markets and overall industry viability, as a result of a TDR program.

f. Contingencies, like a county-established fund or development right bank, will also be examined to determine their compatibility in Skagit County.

A report of the findings of these analyses will be prepared for review and discussion by County staff, policymakers and selected outside reviewers.

Phase 7: Final Report

The consultant will prepare a draft report which will be reviewed by select County staff and stakeholders for comment. From these responses, the consultant will prepare the final report and submit it to the County.

C. Project Team

Project Manager and Primary Researcher – Mary Heinricht, Ag Prospects

Researcher/Interviewer - Suzanne Heflin, Research Consultant

Financial Analysis – Daniel Patrick O'Connell, Evergreen Capital Advisors, Inc.

Economic Analysis – Stephen Peck, PhD., Fleche, Inc.

SKAGIT COUNTY TDR FEASIBILITY STUDY
Timeline 2006/2007

PHASE/TASK	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar
Phase 1												
Literature Review	■	■										
Phase 2												
TDR Overview	■	■										
Phase 3												
Workshop & primer			■									
Work Sessions & interviews			■	■				■			■	
Phase 4												
Stakeholder Focus Groups					■	■	■					
Phase 5												
TDR Program Manager Interviews					■	■	■					
Phase 6												
Economic Analysis								■	■			
Compatibility Review										■	■	
Phase 7												
Feasibility Report												■

Transfer of Development Rights: A Feasibility Study for Skagit County, Washington

TDR Summary & Literature Review
Phase 1 and Phase 2 and Phase 3 (partial)

Submitted 15 October 2006

Ag Prospects
717 16th Street, Bellingham, WA 98225 USA

Introduction

Even though there are thousands of documents about transfer of development rights, these articles and papers provide little guidance for measuring the effectiveness of this much-touted approach to land use management. There is little analysis, if any, comparing the various approaches to implementation of the programs or standards for "incentivizing" the programs to encourage participation. The typical measure of evaluation for these programs has been either to quantify the number of acres "protected" (not all TDR programs provide permanent protection for the sending sites) or the number of transactions completed.

There are three main types of reference on TDR: academic, advocacy and instructional. A high percentage of the work available comes from the academic arena, both student research and academic studies.

Little analysis is available from conservation practitioners, although several papers soon to be released may shed more light on how effective an approach TDR has been in reaching the stated goals of the programs. The Maryland Center for Agro-Ecology will be releasing a feasibility study for TDR programs on the Eastern Shore of Maryland and Resources for the Future will be releasing further analytical analyses on programs in New Jersey.

There are a number of ways that outcomes can be analyzed but the bulk of the analysis available is narrowed only to looking at the few programs that have "protected" the most acres. Unfortunately, the typical analysis has looked at a program in isolation from its context – comprehensive plan, zoning, growth rates, etc. – and reports about successes are tied only to number of trades or acres under easement.

In measuring whether a TDR program has achieved its stated goals – or outcome – one must reference the program documents, so simply reporting the number of acres or transactions ignores any qualitative measures which might give more information about program effectiveness.

There are a number of issues which are repeated throughout the body of literature. These include:

- Public support for the program
- Balanced sending and receiving areas
- A robust real estate market able to absorb additional development rights profitably

- Strong comprehensive plan and zoning that support a TDR approach
- Political will
- TDR is as easy to use as other, traditional applications for development

There are variances in the details of programs that require localities to choose an approach:

- Voluntary versus mandatory program
- The incentive for sellers
- The incentive for buyers
- Strictly private process or semi-public
- Type of covenant, deed restriction or easement to secure the sending site
- Single or multiple sending and receiving areas

There is a lack of consistency in the use of terms describing TDR programs. There is a level of confusion inherent in some of the basic technical terminology like "voluntary," "mandatory," and "incentive." A voluntary program is one that does not utilize a blanket down-zoning in the sending areas, whereas a mandatory program down-zones all properties in the sending area regardless of program participation. The "incentive" in the mandatory program is the ability to recoup some of the value of the development rights through sale of those rights while the incentive for a developer may be a bonus density increase for using the program.

Many times, land use policies are described in terms of "the carrot and stick." The carrot is an incentive, or encouragement, to do something. The stick would be a disincentive or deterrent for certain behavior. Consistently across the TDR literature, though, we find that deterrents are labeled as "incentives." This may lead to cynical public opinions of and/or resistance by landowners to proposed TDR programs.

Transfer of Development Rights:
A Feasibility Study for Skagit County, Washington

TDR Summary & Literature Review
Phase 1 and Phase 2 and Phase 3 (partial)

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ABSTRACT *TDR programs are variously described as a solution to regulatory property rights issues, market-driven growth management approach, an historic preservation technique, and a natural resource preservation strategy. A large body of work describes how to design TDR programs, but only limited analysis has been completed assessing how effectively TDR has met stated program goals. This paper uses a case study approach to: (1) identify TDR program elements and characteristics; (2) review the existing literature related to TDR program analyses; and (3) develop recommendations for further consideration in the development of an expanded land conservation strategy for Skagit County, Washington. Any new approach must work in harmony with the current farmland purchase of development rights program, rural and urban policies, and land use pressures.*

Overview of TDR

Transfer of development rights (TDR) is based upon the premise that development rights are part of the bundle of rights making up fee simple land ownership, and that these rights can be severed from the land. TDR programs allow landowners to sever specific development rights from their properties and to transfer those rights to other parcels and/or owners. With a few exceptions, the transfer is typically done through a locally promoted TDR program.

TDR was first introduced in New York City almost a century ago when a zoning ordinance allowed for air rights to be transferred to adjacent parcels to with the intent of preserving landmark buildings and neighborhood character. In recent years, the City has begun using transfer of development rights to encourage redevelopment projects and to raise funds for municipal agencies holding properties that would otherwise have great development potential (Bagli 2006). Non-profits and churches in particular, are looking at this technique as a way to raise needed capital (Eckstrom 2006).

Transfer of development rights is defined as, "an implementation tool that encourages the voluntary transfer of development from places that communities want to save, called sending areas, to places that communities want to grow, called receiving areas," by Rick Pruetz in the most recent edition of Beyond Takings and Givings: Saving Natural Areas, Farmland and Historic Landmarks with Transfer of Development Rights and Density Transfer Charges (Pruetz 1997).

In 2000, there were 142 adopted TDR programs throughout 31 states and Washington, D.C. according to Pruetz. He ascribes 30 purposes of these programs. From the initial implementation in urban settings, TDR has also been applied to:

- protect environmental values on natural resource lands,
- protect historic properties and settings,
- preserve water quality,
- protect aquifer recharge areas,
- provide recreational opportunities,
- conserve farmland,
- retain hillside viewsheds,
- to assure infrastructure capacity,
- to encourage urban redevelopment,
- to retire substandard lots, and
- to preserve wetlands.

A legal memorandum from a former New York State Attorney General characterizes TDR as "a land use regulation technique which can let a municipality have its cake and eat it too." The memo concludes that there are three primary benefits to TDR:

- it permits preservation of lands where further development is undesirable for a variety of reasons;
- it does so without loss of new development to the community; and
- it does so without depriving landowners of a reasonable economic return on their property (Shaffer 2005).

In general, TDR success remains illusive for rural programs. A majority of adopted programs have not been implemented or have completed very few transfers due to a variety of impediments. Some programs have been formally abandoned due to a lack of interest and participation.

The most successful rural, or farmland TDR programs are administered as the primary land conservation approach in the locality, supported by other programs and policies. Typically, more acres have been protected through TDR than all other approaches combined. To sustain a program, a locality must have a robust rate of development.

History - Implementation

TDR programs in New York City; Calvert County, Maryland; and Collier County, Florida are described as "first generation programs" in a paper which proposes a framework for evaluating programs. These programs were adopted in the 1960's and 1970's (Machemer 2002). While these three programs differ in the character of the program goals and implementation, one common factor is that all have been amended and adapted to meet new and changing market demands, and to encourage utilization of the program.

New York's program has expanded the transferability over time, creating larger and new designated transfer districts. Recently, the City has initiated transfers to support targeted redevelopment and to channel funds to specific agencies holding properties and parcels with significant development potential. Calvert County has implemented three comprehensive, county-wide down-zonings to make the TDR program more attractive and to ensure that it is meeting the county's land use goals. Collier County changed the incentive structure and developed a detailed plan with detailed implementation strategies that require the utilization of TDR to build out to the plan.

According to Machemer, the "second generation" of programs were adopted and implemented in the 1980's, include the New Jersey Pinelands; Denver, Colorado; and Pittsburgh, Pennsylvania. The Pinelands is the first regional program and has an element of Congressional input that other programs lack; in 1978, the region was designated the first National Reserve in America and the region was charged with adopting a Reserve Plan within eighteen months. The urban programs built upon the first generation programs and the lessons learned from their implementation.

The 1990's saw more programs adopted, including the Montgomery County, Maryland, program which is held up as the "most successful farmland preservation TDR program in the country. Montgomery has transferred development rights from over 40,000 acres in its 110,000 acre Agricultural Reserve. Montgomery left a residual residential density of 20% on each parcel transferring rights; this means there are about 1,800 potential additional units that are allowed in the protected areas of the Agricultural Reserve which the County is currently studying. (Pruetz 2003).

Programs continue to be adopted throughout the country for varying, and sometimes, multiple purposes. In 2000, there were 142 adopted TDR programs throughout 31 states and Washington, D.C. according to Pruetz. Implementation continues to lag well behind adoption, and we can now also assess abandoned and discontinued programs throughout the country.

There is a continuing focus on this "planning or growth management tool" in the professional planning community; presentations advocating TDR are offered at almost every major planning forum. TDR may be better viewed as a *tactic* that can be implemented to achieve specific community land use goals, whether land preservation or neighborhood redevelopment.

One question a community must answer is whether the local economy can absorb and support a newly created market in development rights. The market, or developers, must be able to utilize TDRs faster and cheaper than other approaches, or the TDR program will remain idle (Boyd 2003).

History – Legal Challenges

The idea of transferring development rights was first formalized in New York City in 1916 where a zoning ordinance allowed lot owners to sell unused air rights to adjacent lots. In 1968, New York City expanded the transfer program by allowing sale of development rights to certain non-contiguous parcels; this accommodation was made to reduce the financial hardships imposed by the historic landmark regulation.

The first court case to speak to TDR examined New York City's limitation of development on two privately held parcels. The City rezoned the parcel to park use to prevent construction of apartment buildings but allowed for the transfer of the unused development rights to other Manhattan parcels larger than 30,000 square feet. The owner sued on the grounds that this was a taking without compensation. The court agreed but did uphold the legality of TDR [Fred R French Investing Company, Inc. v. City of New York, 39 N.Y.2d 587, 385 NY2d 5 (1976)].

The owners of Grand Central Terminal challenged the historic landmark regulation as a taking of private property. This challenge rose to the level of The U.S. Supreme Court. The court found that transferable rights "undoubtedly mitigate whatever financial burdens the law has imposed..." but did not rule on the validity of TDR itself. [Penn Central Transportation Company v. New York City, 438 U.S.104(1978)] (Johnston 1997 and Shaffer 2005).

Program Elements

The basic elements of "successful" TDR programs have been identified as:

- A clear, valid public purpose: open space preservation, agricultural or forest preservation, protection of historic landmarks;
- Clear designation of the sending and receiving areas;
- Consistency between the location of sending and receiving areas and the policies of the comprehensive plan;
- Recording of the development rights as a conservation easement which informs future owners and makes the restrictions enforceable through civil action;
- Uniform standards for what constitutes a development right, preferably based upon quantifiable measures;
- Sufficient pre-planning in the receiving areas including provisions for adequate public facilities; and
- Sufficient allowable density in the receiving area to help ensure development is economically viable (Bredin 2000).

Numerous references have identified a variety of approaches and checklists to assist in the design and implementation of a successful TDR program. In 1975, Frank Schnidman presented 142 questions in an article in Urban Land that he recommended local jurisdictions answer before implementing a program (State of Washington 1992).

Another body of work discusses and makes recommendations on the process of creating TDR programs. Most authors agree that creating a "successful" TDR program requires in-depth planning, education and economic analysis. This work may be much more than is usually completed for traditional planning programs (State of Washington 1992).

Six essential steps in the creation of an effective TDR program are:

- Identify the actors in the real estate marketplace affected by the TDR program and the economic motivation of each actor;
- Identify potential receiving areas and thoroughly analyze the development opportunities and profits at various densities;
- Identify and analyze potential sending sites and balance environmental goals against economic realities;
- Make a critical choice between a voluntary or a mandatory program and between a totally private TDR market or a quasi-public market assisted by a TDR bank;
- Make the program and ordinances implementing it simple and flexible; and
- Ensure adequate promotion and facilitation of the program once it is initiated, and that the program is designed to continue despite possible political changes (Roddewig 1987).

Mandatory Versus Voluntary Programs

A mandatory TDR program designates all parcels within the sending area to have specific use restrictions whether or not a TDR transfer occurs. A voluntary program allows property owners in a sending area the option of using their property subject to legal use restrictions, or to sell/transfer the TDR and place the land use restriction on the property. "A voluntary program may avoid the legal taking issue that could result from mandatory programs. However, mandatory programs seem more successful because they provide incentives for sending parcels to sell their transferable development rights...However, programs can be voluntary and successful, but they must have strict sending area development restrictions as incentives to property owners to use the program along with other organized program characteristics or there is no market with supply and demand of the TDRs" (Danner 1997).

In the presentation and proceedings of the APA National Planning Conference of 2000, Bredin brings up the issue of whether a TDR program should be voluntary or mandatory but does not answer the question, instead suggesting that enabling legislation should authorize both.

Valuation

Four interdependent economic factors create value: utility, scarcity, desire, and effective purchasing power. The existence or nonexistence of these basic factors in a TDR program will affect market value of all TDRs in that program (Danner 1997). The principle of supply and demand, as applied in an appraisal context, states that the price of real property varies inversely, but not necessarily proportionately, with demand, and directly, but not necessarily proportionately, with supply (Appraisal Institute 1996).

Danner further comments that "unless a program is designed to give TDRs the four economic factors: utility (use), scarcity (limitations on availability), desire (demand), and effective purchasing power (reasonable price) – there is no market for them and hence no market value." This would imply that the utilization of the TDR approach is not suited to markets with modest growth.

According to <u>The Appraisal of Real Estate</u>, "Appraisers can value TDRs with ordinary sales comparison techniques if there are sufficient transactions to constitute a market. When market sales are lacking, the income capitalization approach may be applied." But Danner warns that the income capitalization valuation approach may not reflect any value associated with market activity.

In the state of Washington, "development rights are considered real property, and are taxed at the time of the sale or transfer" (Washington State 1992). Whether TDR is personal or real property differs in some legal interpretations and state codes. Therefore, comparison of values of TDR may not be possible across all different programs.

Enabling Legislation/ Legal Authority

Washington State does not have specific TDR enabling legislation but the Growth Management Act (GMA) provides numerous references to this approach, indicating legislative approval of the concept (State of Washington). A model enabling statute has been prepared as an element of the Growing Smart^{SM} project, a multi-year initiative of the American Planning Association (Meck 2002).

Issues/Obstacles

Issues identified in a 1997 conference co-sponsored by the Regional Plan Association and the Lincoln Land Institute identified obstacles to establishing a working TDR program:

- Finding communities that will locate receiving areas for higher density development;
- Calibrating values for development rights in sending and receiving areas to insure a market for the rights;
- Creating a program that is simple enough to understand and administer and complex enough to be fair;
- Developing community support to insure the program is used; and
- Avoiding litigation and evasion (Lane 1998).

The second point addresses how to regulate (influence) the values of the TDR's. This would include how the "incentives" are designed for sending and receiving areas. Successful rural programs like Calvert County, Maryland, offer density bonuses to developers up to 1900% over base single family density. A community's growth must be sufficient to make this leap in rate of development for the program to be utilized.

While public support of TDR is repeatedly mentioned as an essential element of a successful program, a lack of political support is often the Achilles Heel to program utilization. If there is a faster or less expensive way for a developer to achieve additional density for a specific project, TDR will not be a viable business option (Boyd 2003).

One of the shortcomings of the Montgomery County program has been the lack of adequate public infrastructure in receiving areas. For example, the Fairland Planning Area was placed under a residential development moratorium in 1982 (still in place) because of failing infrastructure even though the new master plan promoted in 1981 included increased density with TDR. Other receiving areas allow building at less than maximum density and TDRs have not been implemented to the extent expected by planners (University of Maryland 2002).

Skagit County is currently implementing a successful purchase of development rights (PDR) program. Successful TDR programs tend to be the centerpiece land conservation program in localities. Skagit must consider whether the conservation market can and will make this adaptation; Skagit must determine how it can equalize the values between its PDR and TDR programs, when it appears the potential TDR market will not be able pay the same per development right that the PDR program has established.

Market Creation and Its Effects

A paper addressing the different markets in tradable environmental credits, notes that "the amount of development can actually rise from the sale of TDRs" The article also points out that if there is no cap on development in a single year, both the supply and demand for development rights will be critical for determining the amount of land to be preserved. "Often, reducing the allowable zoning density in preservation areas creates a large supply of development rights, but the difficulty remains in establishing a demand for those rights. Local governments are not inclined to reduce zoning density in other areas to create demand," so they allow developers to purchase development rights to build at a higher density than existing rules permit. However, with little demand for high-density development in many communities, there have been few sales of TDRs. "Such is the case in Montgomery County, where demand for rights has dropped and TDR prices are currently low" (Boyd 2003).

A TDR bank which buys development rights from the owners of sending parcels and sells them to developers of receiving parcels can be an important economic component of a successful TDR program. A bank can help stabilize a market by providing steady demand and reduce transaction costs because the bank can assist with legal and real estate procedures such as placement of use restrictions (Danner 1997).

Evaluating TDR Programs

There appears to be no consensus on measuring the success of a TDR program whether it be the amount of open space preserved, the number of transactions, the number of acres kept in farming, or the quality of development in the receiving areas. One planner, Charles Siemon, suggested that a TDR program might be considered a success even if no transactions take place because, in the context of the larger land use plan, the TDR program can make a preservation program more palatable by providing a landowner with additional options (Lane 1998).

At this same conference, the author states that it became clear that perceived success or failure of TDR is colored by excessive expectations. Some participants asked, 'Why should a TDR program be expected to accomplish more than any other single land use tool, such as zoning' (Lane 1998)?

Rick Pruetz, author of Saved by Development and Beyond Takings and Givings, the two most comprehensive texts on TDR programs, presents the Montgomery, Maryland, program as the "most successful program in the country," based upon the number of acres preserved through the program (Pruetz 2003). This determination is echoed in many papers on this issue, as many reference Pruetz for program statistics and evaluations. Public education and buy-in are presented as a critical element in program success and a pre-existing constituency is credited in both Montgomery County, Maryland, and Lake Tahoe, Nevada, in adoption of those programs (Hanley-Ford).

A 2002 study published in the Journal of Environmental Planning and Management proposes a framework for evaluating TDR programs, based upon a comparative analysis of 14 programs to develop a list of program characteristic and elements. A more in-depth analysis of 3 "well-documented programs" (New Jersey Pinelands; Montgomery County, Maryland; and Manheim Township, Pennsylvania) allowed development of an evaluative tool which characterizes program elements as "high, medium and low" (Machemer 2002).

The list of program characteristics this study chose for evaluation includes:

- Political foundation
- Consistent regulatory process
- Sense of place
- Resources in area seen as valuable
- Rapidly growing area
- Public acceptance
- Appropriate receiving areas
- TDR leadership
- Mandatory program
- TDR bank
- TDR compatible with PDR
- Simple and cost-effective
- Knowledge of development, local land use demands and patterns

This study ranked programs base upon the inclusion of program characteristics (above) that the review team identified in the comparative analysis and then assesses the "level" of effectiveness of each element. The paper does not detail how the levels of effectiveness were determined. But the study did "rank" Montgomery County's program as most effective with ten (10) "high" rankings, three (3) "medium" rankings and no (0) "low" rankings.

An in-depth analysis of the Montgomery County, Maryland, TDR program was completed in 2001 by the Community Planning Studio of the Urban Studies and Planning Program of the University of Maryland. Among the major findings about the health of the regional agricultural industry in this study:

- The program does not assure that agricultural lands will remain open space in perpetuity, "but only that they will be developed at a minimum of the zoned density 1:25. When Maryland counties are ranked by programs that provide long-term protection, (the distinction between TDR program and easement programs) ...Montgomery County slips to fourteenth in the rankings."

- "Montgomery County's TDR program is preserving open space and maintaining farmland in the short-term, but not necessarily in the long-term...Recent county development pressures and resident wealth have instigated farm parcelization with the remaining right for division into 25-acre lots. The selling of rights helps farmers invest in their farms, but does not prevent development in the reserve or insure preservation of the agricultural uses."

This study also examined changes in the County's agricultural landscape including a 33 percent decrease in county farmland acres and a 21 percent decrease in the number of farms between 1978 and 1997 contrasted with only a 17 percent decrease in statewide acres of farmland and numbers of farms. The reductions in average market value of agricultural products sold, average market value of farmland and buildings, and gross revenues decreased more in Montgomery County than statewide (University of Maryland 2002).

The study the University of Maryland was the only analysis found during in this review that examined the economic condition of the working landscape and local resource industry as an aspect of their review of the program. They did not simply count the number of transactions or acres under easement as the sole measure of program performance. From that perspective, Montgomery's program might be considered a success as an open space program, but a failure as an agricultural program.

Conclusions

Managing growth and land use effectively is a challenge many American communities face. In the context of property rights and personal profit, American communities of the 21st century are being forced to consider zoning and other regulatory policy as permanent and unchanging, with few options for improving conditions.

Adding to the challenge of making limited and obsolete policies work to solve growth issues, communities typically view land use and growth issues serially, in many cases expecting a new "tool" to solve the inadequacies of the others (Lane, 1998). Transfer of development rights (TDR) programs have been promoted as a market-based solution to almost every growth or preservation challenge local governments face. Unfortunately, when we look at them in the context of farmland and forestal preservation, we do not see the successes that the literature describes.

The common vocabulary associated with TDR is problematic. It characterizes disincentives as incentives. The distinction between voluntary and mandatory programs is confusing if not misleading. The outcomes are assessed quantitatively rather than qualitatively, if the outcomes are evaluated at all.

In terms of applicability for Skagit County, it must be determined, at the very least:

- if the local real estate market is sufficiently active to support new market TDR's;
- if there is a potential for down-zoning sending and/or receiving areas, and if this is politically feasible;
- whether TDR development right values can be equalized with the current PDR market; and
- whether other approaches will be more efficient and timely to achieve the goal of increasing the rate and amount of resource land conservation.

The TDR approach is most successful in targeted transactions that are either requested by a developer for a specific project or promoted by a locality as part of a finely detailed community development plan. Examples of successful implementation are usually in communities that have more overall development than Skagit County, where TDR serves as a corrective action to retire zoning capacity that is no longer desired and to promote higher density development as infill or redevelopment. Skagit lacks the existing urban/suburban element that absorbs the transferred rights.

Skagit may be well served to examine expansion of its existing Farmland Legacy Program through increased funding or innovative payment approaches; expansion of complementary conservation programs for both forestry and farming; and development of more specific goals for working lands conservation and industry support, in addition to development of a TDR program.

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(This package provides an overview of TDR and links to enabling legislation and statutes.)

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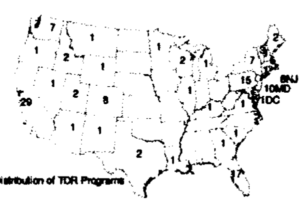
TDR Program Feasibility Study For Skagit County

Tuesday, July 18, 2006
Key County Staff Workshop



Distribution of TDR Programs

Country-wide Summary

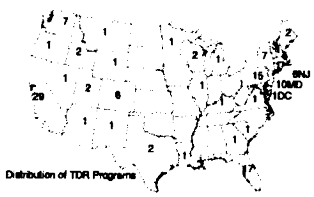
- 134 programs as of 2000 (Pruetz)
- Majority are multi-purpose programs (40)
- Next are environmental programs (34)
- Farmland is third most prevalent (27)
- 10 programs focus on historic resources
- 2 programs list open space as purpose
- None list forestry as primary goal

What is TDR?

"a land use regulation technique which can let a municipality have its cake and eat it too. It can be used to ensure that the open space requirements of the municipalities planning goals are met without causing financial burden to landowners or restricting needed development."

What is TDR?

" It permits preservation of lands where further development is undesirable for a variety of reasons; it does so without loss of new development to the community; and it does so without depriving landowners of a reasonable economic return on their property. The great advantage of the TDR approach is that it involves minimal expense to the municipality."



Distribution of TDR Programs

Elements of TDR Programs

- A clear, valid public purpose: open space preservation, agricultural preservation, or protection of historic landmarks
- Clear designation of the sending and receiving areas
- Consistency between the sending and receiving areas and the policies of the comprehensive plan and zoning
- Recording the removal of development rights as a conservation easement which informs future owners and to make the restrictions enforceable through civil action

Elements (cont.)

- Uniform standards for what constitutes a development right, preferably based upon quantifiable measures
- Sufficient pre-planning in the receiving areas including provisions for adequate public facilities
- Sufficient allowable density in the receiving area to help ensure development is economically viable
- Finding communities that will locate receiving areas for higher density development

Issues/Obstacles

- Calibrating values for development rights in sending and receiving areas to insure a market for the rights
- Creating a program that is simple enough to understand and administer, and complex enough to be fair
- Developing community support to insure the program is used
- Avoiding litigation and evasion

Identifying Success

Pruetz identifies 16 "top" programs:

- Montgomery County, Maryland + 40,000a
- New Jersey Pinelands +31,000a
- Calvert County, Maryland 8,900a
- Boulder County, Colorado 4,700a
- Dade County, Florida used 829 of 4,700 SUR
- Long Island Pine Barrens 315 a
- Cupertino, California 40 transfers
- Los Angeles, California

Identifying Success (cont)

- Pruetz identifies 16 "top" programs:
  - Malibu Coast, California
  - New York, New York
  - San Francisco, California
  - San Luis Obispo, California
  - Seattle, Washington
  - Tahoe Regional Planning Agency
  - Palm Beach County, Florida
  - Pitkin County/Aspen, Colorado

Montgomery County, MD

- Population 873,341 (2000)
- 323,000 acre county immediately nw of Washington, DC
- Cities of Bethesda, Silver Spring, Wheaton, Rockville and other suburbs
- Task force recommended a downzoning with compensation for sale of DRs
- 1980 Master Plan to preserve farmland

Montgomery (cont.)

- 163,000 acre study area
- 26,000 acres designated *Rural Open Space* already developed limiting agriculture
- 110,000 acres designated *Rural Reserve*
- 92,591 acres rezoned from 1:5 to 1:25 in Rural Reserve based upon a study showing 25 acres was smallest farm for cash crops

Montgomery (cont.)

- Rural Density Transfer encouraging cluster was adopted
- TDR allowed at 1:5 ratio to designated receiving areas (= transfer ratio of 5 to 1)
- Created 18,319 theoretical TDRs on 91,591 acres
- 12,297 TDRs actually existed
- 1980 – county identified first receiving area

Montgomery (cont.)

- County created TDR fund as last resort buyer to assure market available (ended)
- Planned adequate infrastructure in receiving areas
- Assigned dual densities in receiving areas
- Also can increase density by building moderately priced units (MPDUs)
- Minimum density at 2/3 maximum

Montgomery (cont.)

- Incentives:
  - Speed of approval
- Rezoning not necessary
- Consistent with normal review process

- *Status:*
  - 40,583 acres preserved through TDR (<50%)
  - 11,897 acres in other programs

Montgomery (cont.)

- Shortcomings:
  - Approval can take up to 2 years
  - Sending area densities were established in blanket fashion rather than site capacity, reacting inequities in compensation
  - Incorporated municipalities have not participated in program resulting in lower receiving area densities

Montgomery Analysis

- Major Findings:
  - MCTDR is preserving open space and maintaining farmland in the short-term, but not necessarily in the long-term.
  - The receiving area selection process did not take into account the already failing infrastructure of some Planning Areas and did not provide sufficient support to insure necessary level of service.

Montgomery Analysis

- The portrayal of the TDR program to the residents in lower MC was not consistent with its implementation in the county.
- Jurisdictions with more political organization succeeded in reducing the number of receiving areas approved in the master planning process.
- One must compare the finer details of all the preservation programs across all Maryland counties to assess Montgomery's success in preserving agricultural land.

Montgomery Analysis

- *Changes in the County's Agricultural Landscape...*

  The future viability of farming in MC needs to be examined. After adjustments for inflation, the revenue from the land is decreasing.

  From 1978 to 1997, there was a decrease in county farmland acres (33 percent) and the number of farms (21 percent), while the state farmland acreage decreased by only 17 percent with a similar decrease in farms.

Montgomery Analysis

- Additionally, the average market value of farmland and buildings declined 37 percent
- Indicators showed Montgomery County agriculture lagged the state:
  - Smaller
  - Principal occupation
  - Older
  - Market value of agricultural products
  - Harvested cropland lags state average
  - Nursery and Greenhouse crops higher

Montgomery Analysis

- Some county regions with TDR zones lost a high percentage of development potential because of environmental constraints and public pressure against development.

- The county's Annual Growth Policy shows that a number of Policy Areas have been un moratorium for residential development for more than 12 years.

Montgomery Analysis

- Landowners are allowed to retain the last 20 percent of rights. The owners may still develop at 1 unit per 25 acres (1:25), the zoned density. This has caused farm parcelization.

- When Maryland counties are ranked by programs that provide long-term protection for farmland, (the distinction between TDR and easement programs) Montgomery County slips to 14th in the rankings.

Montgomery Analysis

- *The county should facilitate the creation of a data bank.* Current available information is not sufficient to analyze the needs of county residents in relation to the use of TDRs and increased density. Among its many benefits, an effective data bank would enable planners to monitor the trends in agricultural land uses, locate the remaining 5th TDR, and measure historic changes in school capacity and the subdivision of reserve parcels for non-agricultural uses.

Montgomery Analysis

- The average market value of agricultural products sold dropped 48 percent ($16m decrease) while the state only saw a 32 percent decrease.

- *Concerning Development Rights...*
  - Over 5,000 development rights have been sold since 1980. Since 1990, fewer than 200 have been sold per year, over the past 3 years, less than 100 have been sold annually.

Montgomery Analysis

- TDR prices have fluctuated greatly. When adjusted for inflation (to 1999 dollars), the price per right reached a low of about $5,500 in 1987 and a high of $11,600 in 1996. The price of $7,500 in 1999 was considerably lower than the starting price of $9,100 in 1981.

- As of 2000, about 41,270 acres were in the TDR program and about 12,211 acres in easement programs. About 88,800 acres are public land.

Montgomery Analysis

- *Impacts of the TDR Program on Receiving Areas...*
  - The median value of homes for all receiving areas is approximately 89 percent of the value of homes in Planning Areas which contain receiving areas. The rate of owner-occupied housing is lower, as well.
  - The proportion of total housing units developed with TDRs is extremely varied across developed areas.

Montgomery Analysis

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Montgomery Analysis

- Reference:
  - *An Analysis of the Transfer of Development Rights Program in Montgomery County, Maryland: A Report of the University of Maryland's Spring 2001 Community Planning Studio.*

Conclusions

- Accurate data are needed to create an effective and balanced program.
- Adequate infrastructure must be provided in receiving areas.
- The residual density of sending areas must be low enough to assure the viability of working landscapes.

Conclusions

- Lack of political will can render TDR superfluous.
- Balance between the sending and receiving areas is essential to a fair and successful program.
- The real estate market must be robust enough to utilize a TDR program.