



# Skagit County Planning & Development Services

DALE PERNULA, AICP Director

JACK MOORE, CBCO Building Official

## Supplemental Staff Report

To: Planning Commission  
From: Kirk Johnson, AICP, Senior Planner  
Re: Conservation and Development Incentives (CDI) Program Proposal  
Date: November 17, 2015

## Contents

Introduction.....	1
Responses to Specific Comments.....	2
Development Priority Areas.....	2
Conservation Priority Areas.....	6
Proposed Comprehensive Plan goals and policies.....	6
Proposed development code.....	8
Responses to Substantive Questions and General Comments.....	9
General questions and comments.....	9
Effects on affordable housing .....	12
Transaction mechanism.....	13
Fee schedule/exchange rates .....	14
Program administration .....	14
Resource lands.....	16
Impact on Farmland Legacy Program.....	17
Responses to Factual Misstatements.....	18
Department-Recommended Changes to the Proposal.....	22

## Introduction

This memo addresses public comments received about the proposed Conservation and Development Incentives (CDI) program during the written comment period that ended Thursday, November 5.

Most of the substantive comments concerned what areas would be included in the list of Development Priority Areas. The Department believes the program would still be valuable if the zones that raised such concerns were deleted from the list of Development Priority Areas, and makes suggestions for modifications in the last section of the memo.

## Responses to Specific Comments

The rural Development Priority Area provisions have been the most controversial parts of the proposal.

The Board directed the Department to draft the proposal “largely based on the TDR Advisory Committee’s majority recommendation,” and that recommendation included the following: “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.” Rural infill opportunities were a particular interest to Commissioner Dahlstedt, and some of the greatest interest in TDR among developers interviewed through the process was in rural rather than urban areas. See [page 57 in the TDR Report](#).

The Department included what it considered to be the feasible—and GMA-compliant—Development Priority Areas, with the understanding that the proposal could be scaled back much more easily than it could be broadened. The public comment period is the opportunity to float ideas and receive public reaction and it has succeeded at that. In this document, ideas about how the Planning Commission could respond to the public comments are flagged with the ☐ symbol.

- ☐ *The Planning Commission is free to recommend modifying or removing specific provisions of the proposal, including those establishing rural Development Priority Areas.*

## Development Priority Areas

- ☒ **CDI would allow additional development in rural zones inconsistent with GMA.**

**Comprehensive Plan/Zoning Map amendments (“rural upzones”)** can occur right now, provided they are consistent with GMA and the plan’s designation criteria. The CDI would not change that; it would require the purchase of development credits to utilize additional development potential obtained through a rural upzone.

**The limited infill proposed in Rural Village Residential and Rural Intermediate** could occur only within already established logical outer boundaries of these areas. That limited infill development would be consistent with the parcel size and intensity of existing development in these zones and thereby, in the Department’s view, would comply with GMA and the County Comprehensive Plan.

The Rural Intermediate and Rural Village Residential zones are characterized by pre-GMA small lot development and are therefore allowed as pre-existing “Limited Areas of More Intensive Rural Development,” which is an exception to the general GMA rule to prevent urban densities in rural areas. See RCW 36.70A.070(5)(d). Skagit County’s LAMIRD designations have been appealed and found GMA compliant.

Land divisions down to 1 acre are already allowed in Rural Villages served by public water. This CDI provision would only apply to Rural Villages or those parts of Rural Villages not served by public water but where private water (i.e., well water) is available. Currently this situation is present in a very limited number of Rural Villages.

- ☒ *The Planning Commission may recommend removing or further limiting this provision—for instance, only to Rural Villages, or only allowing infill parcels down to 1.5 acres rather than 1 acre—if it chooses.*

**Use of the CaRD small lot provision** would result in a slightly higher density than 1 dwelling unit (du)/5 acres; with a tightly drawn threshold of 9 acres, it would result in 1 du/4.5 acres. If that retired a development right from Natural Resource Land, CaRD lots were limited to 1 acre each, and the remainder of the land conserved in open space, the Department believes the provision would be compliant with GMA and would have minimal impact on rural character.

- ☒ *The Planning Commission could recommend removing or further limiting this provision—for instance, with a more tightly drawn minimum acreage threshold—if it chooses.*

🗣 “**To help preserve the rural character of South Fidalgo, we believe that the program should be modified by deleting the Rural Reserve and Rural Intermediate zones, on South Fidalgo, from the list of Development Priority Areas so that the CDIP cannot be used to increase development on South Fidalgo. Rural Intermediate on South Fidalgo has all too many lots already smaller than the minimum 2½ acre lot size. With many of our wells, that draw from our island aquifer, already failing – we cannot be allowing any additional development, especially the addition of 1 acre lots with a development credit purchase, in these zones.’**

- ☒ *If it finds these arguments persuasive, the Planning Commission could recommend excluding Fidalgo Island, or any island or area with potential groundwater issues, from the Development Priority Areas.*

Existing code already allows lots of less than an acre in Rural Reserve when developed as a CaRD. The proposal would allow *one* additional lot only when an existing undivided lot is *almost* the minimum size (10 acres) to achieve the density bonus.

- ☒ *The Planning Commission could recommend changing that proposed “almost” threshold for achieving the density bonus from seven acres to nine acres.*

🗣 **CDI promotes low density sprawl; it's not sensible. Including RI and RVR as Development Priority Areas doesn't preserve rural character, and would allow urban densities in RI and RVR contrary to GMA.**

As described above, the Department believes the proposal's rural Development Priority Areas have been crafted carefully to be consistent with the GMA requirement to prevent low density sprawl.

- ☒ *If the Planning Commission disagrees or finds some or all of the rural Development Priority Areas to be inconsistent with the Comprehensive Plan's vision of rural character, it may recommend modifying or removing those provisions.*

🗣 **Any CaRD density bonuses (including CaRDs allowed under current code) should require purchase of development credits.**

- ☒ *The Planning Commission could recommend that all CaRDs with density bonuses (Rural Intermediate and Rural Village Residential CaRDs don't receive density bonuses) be identified as Development Priority Areas.*

The result would be a new requirement for property owners to purchase development credits to exercise development potential they could achieve today without such a purchase. The Department does not believe the Board desires the CDI program to reduce development potential without compensation, so it did not include such a provision in the proposal.

- ▮ **The one aspect of the CDIP program that we have concerns about has to do with CaRDs.**  
The CDI program proposes to allow additional density in Conservation and Reserve Developments (CaRDs) and Rural Intermediate zones. While there are benefits to allowing maximum flexibility for participants, this provision may have unintended consequences leading to more rapid development in rural areas and thus should be further examined.
- ▮ *The Planning Commission may recommend modifying or removing the CaRD provision.*
- ▮ **Regarding the CaRD provision—what's the difference between a CaRD on 10 acres versus one on 7 acres? Both yield two one acre lots, and preserved open space onsite, plus with CDI you also get conservation of resource land. That's a good thing.**

This thinking was the basis for the proposal which was suggested in concept by former Planning Commissioner Matt Mahaffie who had direct experience with CaRD developments.

- ▮ **A number of problems with the word “suitable,” which lurks in the document. There are no criteria for determining Development Priority Areas.**

The word “suitable” does not appear in the proposed policies, code, or staff report. The materials do make use of the phrase “best suited,” for example in the policy section of the proposed code: “The objectives of this chapter are to...offer incentives to developers to concentrate development in areas **best suited** for additional growth...” In each case, the phrase is used as policy guidance, not in a regulatory sense. The development priority areas are set in advance, through the legislative process of establishing the CDI development code.

- ▮ **Cities and urban areas should be priority for Development Priority Areas.**

The Department agrees with this comment and has encouraged participation by the cities throughout the development of the proposal. City planners suggested that advocates should encourage city and town elected officials to consider implementation of TDR as part of their 2016 Comprehensive Plan updates currently underway.

- ▮ **Support the County’s commitment to working with cities to provide a market for conservation development rights in urban areas planned to accommodate population growth.**

The Department agrees with this comment.

- ▮ **The City of Burlington is rethinking its commitment to the Burlington Agricultural Heritage Density Credit Program.**

That is certainly Burlington’s prerogative as a city. The City developed the proposal in the mid-2000s with funding from Skagitians to Preserve Farmland and with involvement from other

local individuals and organizations. The City Council adopted the program into city code as Chapter 17.70, Agricultural Heritage Credit Program, in 2010.

With the mayor's and city attorney's signatures, the City of Burlington entered into a [2012 interlocal agreement with the County](#) agreeing to the City's involvement in the County's TDR project. The agreement designated Planning Director Margaret Fleek as the City's representative and acknowledged her participation on the TDR advisory committee. The agreement also authorized the use of \$50,000 to support the city's work with the University of Washington Green Futures Lab on a Burlington Commercial Core Redevelopment Analysis. The final product of that work was released as [Burlington at the Crossroads: Final Recommendations, University of Washington Green Futures Lab, December 2013 \[28MB\]](#)), and has informed many aspects of the city's 2016 Comprehensive Plan Update.

The city's Draft Environmental Impact Statement (EIS) for its 2016 Update describes options for increasing multi-family workforce housing within and around Burlington's downtown core. Under current code, that would substantially increase the area where agricultural heritage development credits could be used. At the direction of the mayor, however, the city is exploring discontinuance of the Agricultural Heritage Credit Program. Since the program is adopted into Burlington code, its removal would require action by the Burlington City Council through the public planning process.

 **The analysis of the potential application of CDI/TDR to Burlington commercial development misunderstands Burlington's existing commercial code requirements.**

The CDI proposal contains no requirements related to commercial development in Burlington; in fact, the City is not mentioned once in policy or code. The City has sole authority to adopt policies and code that apply within its municipal limits. The County's TDR market analysis did explore how density credit or TDR provisions could be applied to commercial development in Burlington, with the support of the City's designated representative on the TDR project, and with the understanding that the City was under no obligation to implement any of the findings or recommendations. The City has chosen not to follow up on the findings contained in the TDR market analysis of how, if the City wanted to, it could apply TDR or density credit provisions to commercial development.

 **The multi-family development project that used density credits to increase the number of units allowed was very controversial with the public; the city has no maximum density for projects in its zones that allow multi-family development.**

It is completely within the City's ability to establish an upper density limit for residential development, and such an upper limit would be completely compatible with the existing Ag Heritage Credit Program. The density of the referenced project was just under 20 units per acre, typical of two- to three-story apartment or townhouse developments. Burlington's draft EIS for its Comprehensive Plan update said there is "clearly a need to increase the availability of workforce housing in locations that allow employees to walk to work, with a focus on development of the historic town site area that reflects the historic character of the community." Options for encouraging multi-family housing in this area include increasing "the height limit from two to three or four story buildings." Whether that density is permitted outright or only with the purchase of density credits, the City will need to deal with public

perceptions and reactions to density and multifamily housing if it wants to achieve the above goals.

## Conservation Priority Areas

### **¶ Remove Ag-NRL from the list of Conservation Priority Areas.**

The Department sees no reason to exclude Ag-NRL from the list of Conservation Priority Areas, but the Planning Commission can make that recommendation. That same choice was presented to the TDR Advisory Committee, but the majority who supported moving forward with a TDR and density credit proposal did not see inclusion of Ag-NRL as detrimental to that zone or to the Farmland Legacy Program. The Skagit County Agriculture Advisory Board supports excluding Ag-NRL from the program; Skagitians to Preserve Farmland supports its inclusion.

### **¶ Shouldn't parcels affected by Swinomish vs. DOE instream flow rule decision be eliminated from the sending pool?**

The Planning Commission could recommend this, but the Department (and the TDR advisory committee majority) did not see the water limit as a permanent, blanket prohibition on development (as is being in the floodway or in Industrial Forest outside of a fire district). The committee majority recommended those properties should be eligible, while recognizing that their development rights may only sell at reduced value reflecting reduced development potential.

### **¶ We like the inclusion of Rural Reserve in the list of Conservation Priority Areas. There are many large parcels of Rural Reserve on South Fidalgo that we would like to see preserved without development.**

The Department agrees with this comment.

### **¶ Supports County's willingness to identify city or town conservation priorities within or surrounding its urban growth areas; citizens in cities need to see connection between increased density in their neighborhood and benefits of conserving farm and forest land.**

The Department agrees with this comment.

## Proposed Comprehensive Plan goals and policies

### **¶ Policy 2H-4.1—Department of Commerce suggests strengthening to reflect the County's commitment to work with the cities to create a market for conservation incentives: "Skagit County should encourage cities and towns to implement similar incentive programs in ~~coordination~~ partnership with the County, enabling cities and towns to assist in conserving county designated farm, forest and open space lands that are important to their residents."**

The Department supports this recommendation.

### **¶ Policy 2H-4.1(d) "The County and any participating city or town should enter into an interlocal agreement addressing the terms of their cooperation." — Department of Commerce recommends that the policy clearly state that an interlocal agreement is**

**necessary if the County and a city decide to cooperate in transferring development rights from the County into a city receiving area. An interlocal agreement will set out requirements for how transfers are tracked. For example, how certificates for development rights are issued by the County, used in a city, and retired once they have been used.**

The Department supports this recommendation.

- ¶ **Policy 2H-4— The Department of Commerce suggests that the County consider adding a policy that encourages the cities to designate their downtowns or urban centers within municipal boundaries as priority development areas to conserve county farm and forest land. Many other cities in the Puget Sound region have adopted similar programs in partnership with the county as part of their plans for redevelopment and revitalization of their downtowns and urban centers.**

The Department supports this recommendation.

- ¶ **Policy 2H-1.5. Skagitonians to Preserve Farmland requests the policy should be modified to clarify that the program must be designed to be in compliance with GMA in addition to advancing the overall goals of GMA. (Skagitonians to Preserve Farmland)**

The Department supports this recommendation.

- ¶ **Policy 2H-3.2(c) “Certain Conservation and Reserve Developments (CaRDs) that are slightly short of the acreage needed for a bonus density.”— Skagitonians suggests policy 2H-3.2(2) is inconsistent with GMA by granting non-conforming building lot(s) the ability to become buildable through the proposed CDI program and therefore increase density in rural areas. Only lots that have been gone through the lot certification process and received an approved lot certification from Skagit County should be eligible to transfer and/or receive development units under the proposed CDI program.**

There is no policy 2H-3.2(2); the Department believes the commenter is referring to 2H-3.2(c). All parcels, to be eligible for conservation or development under the proposal, must be determined to be buildable under the Lot Certification process. The proposed policy does not modify Lot Certification; it does modify the size threshold under which a parcel in Rural Reserve may be eligible for a CaRD density bonus.

- ¶ **Policy 2H-4.1(b)(i). Bryan Harrison, City of Burlington: the exemption for agency or non-profit housing developers should be made permissive and optional as it applies to municipal urban growth areas, subject to approval by the affected city or town.**

The Department supports this recommendation.

- **Policy 3C-1.1— Skagitonians; Friends of Skagit County: The current CaRD already provides a density bonus of an additional development right in exchange for clustering. We believe increasing the density bonus through the CDI program will serve to exacerbate rural sprawl and is inconsistent with the spirit and intent of the GMA.**

The Department has described the rationale for the provision above. If the Planning Commission finds this comment persuasive, it may tighten or eliminate the CaRD small lot provision.

## Proposed development code

- **14.22.060: Department of Commerce: This section does not provide a clear process for who decides whether to purchase a conservation easement under the CDI program. We recommend that the County establish a clear process in the Code for these decisions to provide transparency to the public and landowners interested in selling their development rights.**

The Board of County Commissioners would make the final decision. The Department supports this clarification which could be achieved by amending SCC 14.42 Accepting Grants of Real Property; however, it would need to be done outside of this process because it would apply to more than just the CDI.

- **14.22.050(d). Department of Commerce: The draft code section has a placeholder of five to twenty acres for the minimum size of a tract eligible for the sale of development rights. In order for the County to realize the most conservation benefit from a development right transaction, we suggest that the County adopt a higher rather than lower minimum number of acres per tract. This minimum could be based on the allowed density for designated conservation priority lands. For example, in Pierce County forest land sending sites must be at least 80 acres.**

The Department supports this recommendation and will seek input from the Planning Commission on appropriate minimum size limits.

- **14.22.030(2)(a). Skagitonians: This proposed code addition should be stricken as the current CaRD provisions already grant a “free” development right to property owners in exchange for clustering. Granting a third development right through the CDI program will exacerbate sprawl and is contrary to the spirit and intent of GMA.**

The proposal would not grant a third development right for a 10-acre CaRD. It would allow a CaRD density bonus to be obtained with the purchase of a development credit on RRv parcels that are smaller than the current 10-acre requirement.

- **14.22.030(2)(c). Skagitonians: We would like this proposed new section to also include urban growth area expansion for commercial and industrial expansion.**

The Planning Commission could recommend a policy in support of this concept but it would be difficult to develop implementing code without further analysis to determine what measures of commercial/industrial expansion would be used—such as acreage or lot coverage—and how they would be valued.

- **14.22.030(2)(d). Skagitonians:** We would like this proposed new section to also include urban growth area expansion for commercial and industrial expansion.

See above comment.

- **14.22.100(3) Revenue. Roger Mitchell:** This provision should be revised to require that “The County must use all revenue from sale of development credits in unincorporated Development Priority Areas, or from a municipal program established per this Chapter, to purchase conservation easements from properties in conservation priority areas.”

The Department supports this recommendation.

- **14.22.90(2)(a) Conservation easements. Roger Mitchell:** Should specify that the required “legal description” be for the property subject to the conservation easement.

The Department supports this recommendation.

## Responses to Substantive Questions and General Comments

### General questions and comments

- **What does TDR program do that cannot be done using current existing zoning?**

As with the Farmland Legacy Program, the CDI program would purchase and retire residential development rights from Natural Resource Lands, while keeping the land in private ownership and permanently conserving it for farming or other natural resource uses. Zoning is not permanent and can be changed by a vote of two County Commissioners.

- **If the County starts this program and it does turnout to be a failure, what happens to those few left holding paid for un-used/useless development rights? Wouldn't this lead to takings and liability claims?**

It would be difficult for the program to be a “failure” in this sense; the only real way in which the program would fail is if no one used it.

The structure of the program defers the need to purchase development credits until the time they must be used. Development credits can only be purchased directly from the County for a specific project under review. The applicant is not required to furnish the credits until time of project approval, minimizing the above risk.

Development credits purchased through private transactions do not need to be purchased for a specific development project, and an applicant does not need to purchase them in advance. A letter of intent to purchase credits, signed by the potential buyer and seller, is adequate to initiate the development review process.

- **The program will help keep land in resource use and help with generational transfers, instead of forced sales.**

The Department agrees with this comment.

- ⌚ Wants to keep the landscape as is: rural, agricultural, and forested. Wants to conserve his 60 acres ag and forest land for farming and selective logging. Several of his neighbors do too. If program were available, he would use it. Has approached Farmland Legacy but turned down because land is not zoned Ag-NRL. Has approached Skagit Land Trust but not been selected because property didn't rank high enough. He would support the County finding a way to add program to the tool chest; try harder to make it work.

The Department agrees with this comment.

- ⌚ "Nowhere do I see that someone with rural property that has been swept into the Mount Vernon Urban Growth Area, might be allowed to place a conservation easement on their property. We have steeply sloping acreage that contains a salmon spawning creek. It is a perfect wildlife habitat and refuge. In the future, as development continues to sweep eastward along Division, I would like to see this land preserved. This should be my right as a property owner. Please confirm that the city of Mount Vernon's UGA does not restrict my right to protect this sensitive area."

The Department agrees with this comment. In his letter to the Planning Commission, Mount Vernon Community and Economic Development Director Bob Hyde indicated a willingness to consider use of the program for conservation of properties such as those on the eastern edge of the UGA that the city does not anticipate needing for growth over the 20-year planning period.

- ⌚ "I support the Conservation and Development Incentives (CDI) Program, which is a great tool for protecting our farms, forests and rural areas. The program will help our farmers and forest land owners unlock some of the value of their land, which provides an additional source of working capital, while permanently conserving their land."

The Department agrees with this comment.

- ⌚ "It is time to get the CDIP program up and running and allow for its gradual implementation. In an era where federal, state and private grants and funds for conservation of farms, forests and open space is shrinking, we must develop new tools to preserve our resource and natural lands. We also are aware of many cases of high quality farms, forests and open space in Skagit County that have no funding source available for their conservation at this time. These landowners must either have the resources to donate conservation easements - which can be difficult or impossible - or the land remains unprotected. We need tools to assist willing landowners to conserve more of these important resource and natural lands."

The Department agrees with this comment.

 **"As a co-owner of open space forest lands, I could see the advantage of having the county purchase future building possibilities and help us keep these forest lands in forest. We have forest lands that were originally purchased by my husband's grandfather, in the early 20's and it would be nice to be compensated for keeping them together and as forest land. It's a wonderful, multi-species forest that is habitat to a wide variety of flora and fauna. Also it would allow us to continue our limited harvesting of the forest, a renewable crop."**

The Department agrees with this comment.

 **The proposal inappropriately inserts financial incentives into planning process.**

Economic incentives are already a major force in land use planning. Generally, those incentives encourage landowners to seek additional development potential on their property in order to obtain added economic value, and make it difficult for owners of natural resource and open space land to pass up on the opportunity for development. This is why so many areas such as the Kent Valley that were once prime natural resource lands are now covered with development. The CDI proposal seeks to balance the incentives to obtain better land use outcomes overall. Some of the increased economic value generated when public land use decisions grant additional development potential to certain properties is retained and used to compensate owners of natural resource or open space land who are interested in conserving that land. The alternative to using economic incentives is to use mandates; economic incentives are almost universally preferred because they are more flexible, allowing better outcomes when property owners desire it.

 **CDI creates "islands of zoning."**

The Department has sought to craft the proposal so that the development that could be obtained with the purchase of development credits would be similar in intensity to development around it. Rural Village and Rural Intermediate areas already contain many parcels that are 1 acre or even smaller, reflecting pre-GMA zoning. If the CaRD small lot provision were tightened to a 9 acre threshold, the resulting development would be virtually indistinguishable from existing CaRDs. Rural upzones may already occur without the purchase of development credits.

 **Sending and receiving areas aren't mapped and aren't clearly defined.**

Development priority and conservation priority areas are defined in proposed code sections 14.22.030(2) and 14.22.040(2).

 **What definition of "free market" allows the County to decide who can and cannot participate and what the actual price of the transaction can be? Why are market-based appraisals not used?**

The proposal does not use the term "free market," although it does state that the program is "market-based" and supports "private development market" transactions. This is to indicate that the financial resources used for land conservation are private dollars rather than public dollars, generated by individuals who purchase development credits in order to access additional development potential in certain areas, and for a market price. As described in the

proposal, private market transactions are those where a buyer and seller negotiate a sales price for the purchase of development credits.

The County would use market appraisals when it sought to purchase development rights from landowners with revenues generated from the sale of development credits.

Finally, it is not at all unusual for government or regulatory agencies to establish the parameters within which private market transactions can occur.

▮ **Shouldn't property owners decide to become a sending or receiving area? Shouldn't this be a public process and not an administrative decision of the PDS director?**

The premise of this question is false. The legislative process to develop the program would designate which areas are *eligible* to participate in the program, but individual property owners in conservation priority areas would decide whether to sell their development rights, and individual property owners in conservation priority areas would decide whether to purchase development credits to be able to do more development.

Eligibility is determined through the legislative process and the adopted code. Development priority and conservation priority areas are defined in proposed code sections 14.22.030(2) and 14.22.040(2). It's important that the County, through the legislative adoption process, determine which areas are eligible as development or conservation priority areas to ensure that the CDI program provides public benefits and is consistent with the Comprehensive Plan.

▮ **Wouldn't it be more responsible to recommend a limited pilot program of CDI to determine if the program does what it's supposed to do?**

▮ *The Planning Commission can recommend this if it wants.*

In terms of a time duration, the Department would recommend a 10-year time period, with a 5-year interim review. The Comprehensive Plan is a 20-year plan, and it may take time for necessary market conditions to develop following its adoption. If there were unexpected problems with the program, the Board of County Commissioners could adopt an interim ordinance or moratorium at any time to put a hold on the program.

## Effects on affordable housing

▮ **TDR or density credit fees will add to cost of housing; the CDI proposal is contrary to the provision of affordable housing.**

A developer who has used TDR in Mount Vernon explained that the cost of housing is set by the market; the developer can't raise the price of the house above market value because his costs were higher, just as he is not likely to lower the price below market value because his costs came in low. Instead, he would determine if he could make his desired rate of return on the project with the purchase of credits and the resulting increase in the number of units he could build; if so, he would proceed with the project.

It is unclear that market-rate development (even without TDR purchases) is able to meet the County's affordable housing needs, particularly for residents at the lower end of the wage spectrum. The County, the cities, and for-profit and non-profit housing providers are exploring more coordinated approaches for providing affordable housing in local communities.

In any case, policies are proposed that would exempt affordable housing providers from purchasing credits to obtain additional development potential in urban Development Priority Areas for projects that met accepted definitions and conditions of affordability.

- ⦿ **The CDI proposal supports affordable housing because where a greater number of units can be built with a given infrastructure investment, the cost per unit goes down, resulting in more units at a lower cost.**

The Department agrees with this comment, particularly as it applies to urban areas where additional residential densities are allowed and in fact encouraged under GMA.

- ⦿ **Affordable housing is a serious problem in Skagit; 2 in 5 residents live in housing that's not affordable. With some thought, we should be able to turn the problem of no urban receiving areas into an opportunity. Encourage you to keep working on it. We can turn this into a funding opportunity for affordable housing.**

The Department agrees that these goals are potentially complementary, not in conflict. Some cities interested in advancing affordable housing *and* land conservation grant density bonuses to developments that include a certain percentage of affordable housing units or that purchase development rights to conserve land.

Some communities in the Puget Sound region have even identified mobile home parks as TDR sending areas, allowing the owners of those parks to sell development rights as a hedge against economic pressures to redevelop the mobile home parks as higher cost housing.

## Transaction mechanism

- ⦿ **We support the County's decision to establish both a public option for purchasing development credits by the County, as well as allowing for private transactions between buyers and sellers of development credits. Each mechanism has complementary advantages.**

The Department agrees with this comment.

- ⦿ **A density credit approach is better than TDR. Density credits provide easier, cheaper and more effective method of achieving increased densities.**
- ☒ *The Planning Commission could choose to recommend only implementing this portion of the proposal.*

The upside of the density credit mechanism is its simplicity and low transaction costs for the buyer (unlike a private party transaction, the buyer doesn't have to search out and find a willing seller, or negotiate a price, and the density credit can be purchased from the county instantly); the downside of the density credit mechanism is that it relies on the County setting prices that are not too high or too low; establishing a process to select which properties to conserve; and paying for a market appraisal of the development right(s) to be purchased and retired. The upside of the TDR mechanism is that buyers and sellers can agree on prices that are acceptable to both parties. The Department believes the two mechanisms complement each other, and that both should be retained in the program.

- ¶ We recommend the program be changed to a density bonus program to fund the Farmland Legacy Program, and that the County establish a comparable Forest Legacy Program; and both be housed under the Farm and Forest Conservation Program.

The Planning Commission could make this recommendation. The Department would recommend the inclusion of open space lands to those eligible to be conserved, consistent with the Advisory Committee majority's recommendation.

## Fee schedule/exchange rates

- ¶ Rural transactions should use only a 1:1 exchange rate, so as not to promote development in rural areas. A 1-to-multiple exchange rate is only appropriate in urban receiving areas.

This is a valid concern particularly for the proposed Rural Village and Rural Intermediate infill provisions, and the CaRD small lot provision which would be new development opportunities under code. Recommendation 6-2 of the TDR project report states:

*One feature that might reduce concern over rural-to-rural transfers would be the stipulation of a 1:1 exchange ratio, so that such transfers create no additional development potential in rural Skagit County. Instead, they would move existing development potential from resource lands or environmentally sensitive areas to rural areas better suited for development. The Heartland market analysis suggests that in some cases such 1:1 transfers would be economically viable.*

The requirement of a 1:1 exchange rate would result in fewer transactions than the exchange rates included in the [Example Exchange Rate Schedule](#), but it would ensure that development rights were being transferred from resource to rural lands on a one to one basis. It's unclear this is warranted for Comprehensive Plan/Zoning map amendments, as those can happen currently provided they comply with the County's GMA-compliant designation criteria. It would make the purchase of development credits less affordable even to those who had met the rigorous redesignation process and criteria.

## Program administration

- ¶ Admin and enforcement costs: what are the costs of adding this program to the Planning & Development Services Department?

Existing county staff, mostly permit staff, would handle all features of the program. Staff impacts would be zero if no one participates in the program; and would add minimal staff work to permit processing. Responsibilities would likely increase as the program brought lands into conservation status, including prioritizing properties for development right purchases, working with landowners to implement conservation easements, and annual monitoring of easements for compliance.

- ¶ Can Seattle be brought into the equation?

The County is not looking to partner with any cities or towns outside of Skagit County, and it's not clear how out-of-county cities could be involved even if that were desired.

**¶ Can rights be continually transferred around? Will they be put in a “bank?”**

A landowner could only sell development credits after putting their land into a conservation easement held by the County that retired the property's residential development right(s). Development credits purchased from a private seller could be resold to a third party but they could not be used on the land from which they were originally sold. Development rights would not be put into a bank.

**¶ It is essential that the easements be permanent and not subject to revision or reversion except in extremely rare cases.**

CDI conservation easements would be permanent. Proposed code section 14.22.090(3) requires CDI easements to permanently encumber the property.

**¶ The County must rely on a robust, science-based ranking system that takes into account natural value, habitat connectivity, as well as farming interests, to prioritize any county purchases of conservation easements.**

The proposed code, specifically 14.200.100(5), discusses criteria such as these that would be developed to prioritize properties to be purchased with revenues generated from the sale of development credits. Typically, for private market (TDR) transactions, the areas eligible for conservation through the program are determined ahead of time and identified as sending areas (or conservation priority areas under this proposal). Any property located in a designated sending area and meeting eligibility criteria for participation (14.22.050 Conservation priority areas—eligibility to sell development right) is able to sell development rights and conserve their property through the program.

**¶ The County must take seriously its obligation to monitor compliance with the terms of each easement and impose stiff penalties on any non-compliant activities.**

The Department agrees with this comment. Easement compliance monitoring would be similar to how Farmland Legacy monitors its existing easements.

**¶ Who will pay real estate excise tax?**

The seller of development rights would be responsible for paying the real estate excise tax, just like in other sales of real property.

**¶ I support the CDI program because it also is low cost to taxpayers.**

The Department agrees with this comment. Funds used for land conservation would be generated by private purchases of development credits.

**¶ CDI may only be used once in five years, but it's good to have language that allows cities to become part of it over time.**

The Department agrees with this comment.

**• CDI should be run by a citizen advisory committee like the Farmland Legacy Program is.**

The Farmland Legacy Program is run by Public Works. It is not run by an advisory committee. SCC 3.18.050 establishes the role of the Conservation Futures Advisory Board as to make recommendations on selection of projects to be funded and on strategic planning.

Because the CDI program will not have funding to purchase easements at the outset (until sufficient development credits are sold to be able to fund such purchases), there is no similar role for an advisory committee in the CDI program.

## **Resource lands**

**• Additional residential development in rural areas is not consistent with protection of NRLs because it removes the future option of adding more rural lands to the resource land economic base.**

The County's Natural Resource Land designations are compliant under GMA. It is not reasonable to expect that Rural Intermediate or Rural Village lands could ever be converted to natural resource lands, nor has the Department heard of any proposal to downzone rural lands to resource lands. Downzoning, which would be the only available tool other than a voluntary or incentive program like CDI, would be very unpopular, while CDI would help place rural lands with resource values and uses in conservation status where that is wish of property owners.

**• In the mid-1990s, Skagit County got rid of Ag Reserve zoning.**

CDI will be a tool to help preserve those lands for agriculture.

**• Using rural lands for additional development rather than for ag or forestry is not “maintaining or enhancing NRL industries.”**

The CDI would result in extinguishing development rights off NRLs, which would help NRL industries. Owners in Rural Reserve lands who want to conserve their land for farm or forestry uses would have a new tool for doing so. The Department is not aware of any proposal to force people in rural lands to practice farming or forestry, which appears to be the desire of the commenter.

**• The CDI program provides no analysis of services that may be needed in the Development Priority Areas or effects of increased development on water resources. For instance, Alger/Friday Creek are low flow areas.**

Additional development in Development Priority Areas would only be approved if the applicant could demonstrate the project could be served by existing available water resources and other existing services. Development is required to meet the code's zoning and concurrency requirements. There already are limitations on CaRD density bonuses near “surface water source limited streams” (per 14.24.340(3)) and these could be broadened to apply to additional densities allowed through CDI.

## **Impact on Farmland Legacy Program**

- ↳ **Objects to language in staff report regarding onerous FLP easement conditions where federal funds are used.**

County legal staff have described serious and extensive problems working with the US Department of Agriculture and the Natural Resources Conservation Service. The Washington State USDA/NRCS office has not been a cooperative partner in managing and remedying problems with several existing Farmland Legacy Program easements: the office has been inflexible, does not provide timely responses to County inquiries, and has even been non-responsive to Congressional inquiries on the County's behalf. County legal staff do not recommend further participation in USDA/NRCS programs unless they agree to substantial changes in future contracts to ensure reasonable and timely responses.

Moreover, recent USDA/NRCS grant agreements, which in the past have provided a substantial amount of funding to the Farmland Legacy Program, have included requirements that farmers add uncompensated riparian buffers to their properties in order to obtain compensation for the conservation easement. These requirements have proven entirely unpopular with prospective Farmland Legacy Program participants. On April 15, 2015, the Board of County Commissioners wrote to USDA/NRCS to terminate its \$1.1 million grant agreement ([County contract C20130406](#)) due to the mandatory riparian buffer conditions USDA/NRCS had included in the agreement and had refused to negotiate.

- ↳ **There is no support to use Conservation Futures funds on this program.**

No one has proposed using Conservation Futures funds on CDI.

- ↳ **The Farmland Legacy Program uses appraised values for purchasing development rights. Because of that I can sleep at night.**

There would be no requirement for an appraisal in a transaction between a private buyer and a private seller. That is typical of TDR transactions. There would also be nothing preventing either or both parties from paying for or sharing the cost of an appraisal. Where the County used funds generated from the sale of development credits to purchase development rights, it would be required to obtain an appraisal to prevent the County from paying *more* than fair market value. There is no state law that prevents the County from paying *less* than fair market value; assumedly paying less is desirable to maximize the use of tax dollars.

- ↳ **What effect will CDI have on the highly successful Farmland Legacy Program?**

The numerous planning and land conservation experts the Department has consulted through this process agree that TDR and PDR (purchase of development rights) programs are complementary and not counterproductive. In fact, the CDI proposal includes a PDR mechanism that would be funded by revenues from the County's sale of development credits, as well as a TDR mechanism. The issue of their compatibility is discussed at some length in Chapter 9, on [pages 78 – 82 \(hard-copy page numbers\) of the TDR project report](#). In short, by engaging the private development market, the program can provide another means of support for conserving of Ag-NRL lands which currently is funded almost exclusively by public tax dollars and state and federal grants. The CDI program could also help to conserve the estimated 9,500 acres of

farmed land in Rural Reserve and Rural Resource-NRL designation that are not eligible for Farmland Legacy participation.

## Responses to Factual Misstatements

### • TDR doesn't work in growth management areas.

*The TDR Handbook, Designing and Implementing Transfer of Development Rights Programs*, (Island Press 2012), a comprehensive evaluation of TDR and density credit programs across the country, directly contradicts this assertion: "Some people believe that TDR programs would not be needed if planning and zoning were done right to begin with or improved to effect the right outcomes.....These arguments, however, suggest that TDR is a substitute for zoning. In fact, TDR works with zoning. TDR can help make zoning more effective, **and strong zoning is essential for a successful TDR program.**" (p. xxiii; bold emphasis added).

Similarly, a comprehensive review of TDR programs and factors associated with successful programs identified "strict sending-area development regulations" as a key element of success. (see "*What Makes Transfer of Development Rights Work: Success Factors from Research and Practice,*" Journal of the American Planning Association, Vol. 75, No. 1, Winter 2009). Strict development regulations in rural and natural resource lands (typical TDR sending areas) are one hallmark of "good land use planning" and they exist here in Skagit County.

### • TDR is unproven; there is no proof it has worked anywhere, including in Washington State.

False. [Appendix E of the TDR Project Report](#) lists the 25 most successful or active TDR programs in the country in terms of acres of land conserved, and indicates which of those programs are in rural counties or in cities comparable in size to those in Skagit County.

Several of the rural TDR programs in the top 25 list are profiled in *The TDR Handbook: Designing and Implementing Transfer of Development Rights Programs*, which is available for review at Planning & Development Services. These include:

- Blue Earth County, Minnesota, population 65,000, acres conserved about 6,100
- Rice County, Minnesota, population 65,000, acres conserved about 4,000
- Douglas County, Nevada, pop 47,118, acres conserved about 4,000
- Chesterfield Township, New Jersey, pop 8,000, acres conserved about 7,500 (see [program website](#))
- Warwick Township, Lancaster County, Pennsylvania, population about 17,000, acres conserved about 1,560 (see [program website](#)).

Another rural community included in the Top 25 list that has implemented a TDR program but is not profiled in *The TDR Handbook* is [Churchill County, Nevada](#).

It's important to keep in mind in reviewing these programs that each was developed by a given community to address its unique development and land conservation goals, which may be similar to or quite different from Skagit County's. If Skagit County implements a program it

wouldn't be a carbon copy of another program but rather needs to be designed to complement our existing land use planning framework, our particular market conditions, and our local conservation and development goals and existing programs.

The most successful TDR program in the country in terms of acres conserved is [King County's](#), which has conserved more than 141,000 acres of rural and natural resource lands, the latter mostly forest lands. Contrary to assertions in the public comments, an average of 34 TDRs are bought and sold annually through private transactions, resulting in a total of 46,784 acres of land conserved through private transactions.

Several other counties in Washington have adopted TDR programs (including Snohomish, Pierce, Thurston, Kitsap, Kittitas, and Whatcom), but none has been nearly as successful to date as King County's. Some were implemented or updated during the recent "Great Recession" and may start seeing more private market transactions as the development market heats up.

The Mount Vernon TDR program is a local example of a program that has worked, with a total of 51 development rights having been purchased and used in or applied to residential developments in the city, permanently conserving 35 acres of prime farmland in the city limits (see [letter on CDI proposal from Bob Hyde, City of Mount Vernon](#)). Other city TDR programs in Washington State include those in [Redmond](#), [Issaquah](#), and [Bellevue](#).



#### **Proposal underwent “complete change” in last few months, from TDR to CDI.**

False. The proposed program is named the "Conservation and Development Incentive" program because it is not simply a TDR program—it incorporates aspects of both TDR and PDR (density credit) programs.

The proposal is largely the same as the advisory committee's recommendation and the Board's direction to the Department in Resolution R20140298. It would: implement a density credit and a private TDR transaction option; encourage cities to participate; require development credit purchases for rural upzones, including UGA expansions; and include all resource lands plus certain Rural Reserve lands as conservation priority areas. The one area the Committee's recommendation mentioned but didn't flesh out is the Rural Intermediate and Rural Village infill and CaRD small lot provisions. The Planning Commission may want to recommend their removal from the proposal.

Using revenues from the sale of development credits to fund the purchase of development rights by the County was discussed extensively by the TDR Advisory Committee and was a core piece of the committee majority's recommendation as excerpted below. There is absolutely nothing new about this aspect of the proposal:

1. Skagit County should develop policy and code provisions to implement a combined TDR and density credit program at this time.....
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.

 **RCW 39.108.010 only allows TDR in counties with more than 600,000 residents.**

False. RCW Chapter 39.108, which is not part of GMA, allows certain counties (those bordering Puget Sound of 600,000 or more residents that have a TDR program) to use tax increment financing (which is not generally allowed in Washington). This chapter has nothing to do with any other county's authority to create a TDR program.

In fact, RCW 36.70A.090 (which is part of GMA) directs that "A comprehensive plan should provide for innovative land use management techniques, including, but not limited to, density bonuses, cluster housing, planned unit developments, and the transfer of development rights."

 **CDI easements wouldn't be permanent.**

False. Proposed policies 2H-1.1 and 2H-6.1 require permanent conservation and permanent conservation easements of conservation priority areas. Proposed code section 14.22.090(3) requires CDI easements to permanently encumber the property. CDI easements would be based on the Farmland Legacy Program easement, which are all permanent easements.

 **This is the third consideration of TDR; Skagit County has rejected TDRs two previous times.**

False. Skagit County has talked about creating a TDR program since the mid-1990s if not before. This is the first and only time a TDR program has been written and has reached the Planning Commission. The Board of County Commissioners has never made any affirmative decision to reject a TDR program.

 **The CDI program would be run by outside consultants.**

False. The proposed program makes no such suggestion. Existing county staff, mostly permit staff, would handle all features of the program. Staff impacts would be zero if no one participates in the program; and would add minimal staff work to permit processing.

 **The Planning Director decides who can participate in CDI as a Level 1 decision.**

False. Development priority and conservation priority areas are defined in proposed code sections 14.22.030(2) and 14.22.040(2). The Planning Director is responsible for application of that code, but that's no different than how the entirety of the rest of the development code operates.

 **Conservation easements are not linked in the Assessor's web database.**

False. The Assessor does not maintain conservation easements or other recorded documents; the Auditor does. While the Department agrees that the display of information in the County's property search webpage could be improved, the County's property search webpage *does* currently show when parcels are subject to conservation easements; those parcels appear with "(Conservation Easement)" in the legal description. The user can then click the link to "Recorded Documents" to view the documents related to that parcel, including the conservation easement(s).

 **CDI will diminish the County's tax base and push higher taxes on all others.**

The Department does not believe that the CDI program's conservation easements would substantially diminish the County's tax base. However, if that were true, it would also be true of the Farmland Legacy Program, which similarly retires residential development rights from resource lands.

Like Farmland Legacy, the CDI program would leave conserved land in private ownership, meaning the land would remain on the tax rolls, albeit at a reduced assessment value because of the lack of development potential. But most of the properties likely to sell development rights under the program, specifically those in Natural Resource Land designations or open space status, are already enrolled in the Current Use Tax program, where they are assessed at their forest, agriculture, or open space value rather than their "highest and best use" value. In instances where development rights are permanently retired, those properties will continue to be taxed at their natural resource or open space value.

Conserving additional Natural Resource Lands for natural resource production would help maintain the viability of the agriculture and forest products industries which generate jobs, earnings, and tax revenues for the County. (Although as one Planning Commission member has noted, simply preserving the land base does not ensure the economic viability of natural resource industries; that is a larger question than land conservation programs are able to address, although they are part of the picture.)

A large number of land use fiscal studies indicate that retaining Natural Resource and open space lands in an undeveloped state would also provide a greater fiscal benefit to the County than residential development on those lands. According to an American Farmland Trust study conducted with Skagitians to Preserve Farmland in 1999:

*Study findings indicate that farm, forest and open land had a positive fiscal impact on Skagit County in 1997. Because of its modest requirement for services, open land creates a surplus of revenue for the county. For every dollar of revenue they generated, farm, forest and open land only cost 51 cents. Residential development overall did not pay for itself, requiring \$1.25 in services for every dollar of revenue generated.<sup>1</sup>*

More recent "cost of community services" studies by American Farmland Trust and numerous other organizations across the country have reached similar conclusions.<sup>2</sup>

The one difference between Farmland Legacy and the CDI program on the conservation side is that FLP extinguishes the residential development rights, while CDI would transfer them either to rural or urban areas. If development rights were transferred to cities or other urban areas, those jurisdictions would pick up more of the service costs of that development, while the County would continue to receive some property tax revenues from residential development even when it occurs in a city. If the residential development rights were transferred to a rural area, and then developed, the County would benefit from additional property tax revenue but would also experience additional service costs.

---

<sup>1</sup> American Farmland Trust, *Cost of Community Services, Skagit County, Washington*, March 1999.

<sup>2</sup> American Farmland Trust - Farmland Information Center, *Fact Sheet: Cost of Community Services Studies*, August 2010.

**☛ The proposal would allow additional development in Natural Resource Lands, exceeding densities in NRLs allowed under GMA.**

False. The proposal does not allow additional densities in Natural Resource Lands. In fact it does the opposite, by establishing incentives for voluntary mechanisms to sell and retire development rights from Natural Resource Lands.

**☛ There is no information on the number of development rights available in resource lands or rural lands.**

The County GIS Department's best estimate of that information is provided in [Appendix F](#) of the *TDR Project Report*.

**☛ The proposed permanent removal of the right to build a home and live on one's rural property is "discrimination against the rural community."**

False. Selling development rights would be an entirely voluntary choice of the landowner.

## Department-Recommended Changes to the Proposal

Based on the public comments, the Department recommends the following changes to the CDI proposal:

1. **Rural Reserve in the list of Development Priority Areas:** (a) delete, or (b) set Rural Reserve CaRD threshold at 4.5/9-acres, or (c) exclude from South Fidalgo Island.
2. **UGA Expansions as Development Priority Areas:** retain for non-municipal UGA expansions; make clear in policy and code that for municipal UGA expansions, designation as a Development Priority Area is contingent upon agreement by the municipality; and such agreement is not a requirement for County approval of a UGA expansion that otherwise meets applicable requirements.
3. **Affordable housing:** move policies regarding affordable housing, i.e., 2H-4.1(b)(i) and (ii), to general UGA policy section, so that such policies apply to non-municipal UGAs as well as municipal UGAs.
4. **Rural Reserve lands eligible for conservation.** Amend the proposed code as follows, to make the language more consistent with policy 2H-5.1(b): "14.22.040(2)(e) all parcels designated Rural Reserve that have active farm or forestry uses or significant open space values and are enrolled in or eligible for the Open Space Taxation program.